

# Cut Off From Justice

The impact of excluding  
separated migrant  
children from legal aid

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**The  
Children's  
Society**

*Main report*

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## Introduction

*Josephine is a separated migrant child aged 17 and originally from Uganda. She arrived in the UK at the age of 14 years old after the death of her parents via an international adoption arrangement which had been organised by her British 'uncle' who was living in Uganda. Soon after her arrival to the UK, an application was made to regularise her status and she was granted indefinite leave to remain in the UK with her 'aunt' and 'uncle'. These adults had only been masquerading as safe and reliable hosts. Instead, they were unscrupulous and turned a formal care arrangement upside down and into something ugly and exploitative. Josephine was subjected to conditions of domestic servitude, physical and emotional abuse. She was forced to care for the young child of her adopted parents, given limited freedom of movement, was often followed whenever she did leave the house, and was rendered powerless by threats made to return her to Uganda where she had no existing family or social networks.*

*At the age of 16, Josephine escaped from her abusers, finding refuge with another aunt and uncle. She is now safer, happier and doing well in her final year at college. When we met her, she was making an application to become naturalised as a British citizen. She felt this would give her added security and help shake off what she referred to as 'out of place' feelings. Despite clear indicators of trafficking in Josephine's story, she was never referred into the National Referral Mechanism. As a result of the Government's changes to legal aid entitlement, she cannot get legal aid to support her application for naturalisation or to support her in making a referral into the National Referral Mechanism. Josephine's only source of money is income support, which she uses for basic subsistence and education. She has been placed under considerable pressure to save money from her income support in order to pay the £750 administration fee for her application and she cannot afford the additional costs of a solicitor to ensure the reliability of the content of her application.*

We begin this report with the case study above because it highlights the context of the themes and issues of this report. Josephine's situation is not unique. She is just one of thousands of unaccompanied and separated children in the UK who have been negatively impacted by the introduction of the *Legal Aid, Sentencing and Punishment of Offenders Act (LASPO 2012)* (see below)<sup>1</sup>. This law is responsible for changes to the legal aid system that has seen many vulnerable groups of children become excluded from legal aid entitlement. This report will focus on one group of children – unaccompanied and separated migrant children. These children are one of the most vulnerable groups in our society. Indeed, Jorge Bustamante, the previous

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<sup>1</sup> Legal Aid, Sentencing and Punishment of Offenders Act (2012)  
<http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted>

Special Rapporteur on the Human Rights of Migrants, explicitly stated in his final report to the United Nations Human Rights Council (2011), that:

*“Children who are unaccompanied or separated from their parents were particularly vulnerable to human rights violations and abuses at all stages of the migration process”<sup>2</sup>*

Closer to home, the outgoing Children’s Commissioner of England has unequivocally echoed these concerns, highlighting that *“children arriving unaccompanied in the UK are some of the most vulnerable that my office deals with.”*<sup>3</sup> This risk is derived from their triple vulnerability as children, as migrants and as children without their primary caregivers<sup>4 5 6 7 8 9</sup>

The Children’s Society has been working with migrant children and young people for nearly 20 years, through 8 specialist centres across England, as well as through children’s centres and other mainstream services. The Children’s Society’s expertise has shown that accessing legal support to resolve unaccompanied and separated children’s immigration issues is one of the key ways to mitigate their vulnerabilities, by establishing a solid place of safety and belonging for them, and by ensuring that their rights as children are engaged and not undermined<sup>1011</sup>. Their experience illuminates a recurrent theme in other literature<sup>121314151617</sup>. This knowledge and expertise is shaping growing concerns from The Children’s Society’s services about the Legal Aid Sentencing and Punishment of Offenders Act (2012) and the ways in which it is playing out to prevent unaccompanied and separated migrant children from accessing legal assistance to support them through immigration processes.

Other prominent children’s and human rights organisations and institutions have also highlighted the ways in which the legal aid changes are having

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<sup>2</sup> Page 8 : <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/121/83/PDF/G1112183.pdf?OpenElement>

<sup>3</sup> Cited in Matthews, A (2012) Landing in Dover: The Immigration Process Undergone by Unaccompanied Children Arriving in Kent.

<sup>4</sup> Diop, M (2009) Unaccompanied Minors’ Rights Within the European Union: Is the EU Asylum and Immigration Legislation In Line with the Convention on the Rights of the Child?

<sup>5</sup> Kohli, RKS (2002) Social Work with Unaccompanied Asylum Seeking Young People. Forced Migration Review, 12, 31-33

<sup>6</sup> Bicchocchi, L (2011) Undocumented Children in Europe. In Bhabha, J (ed) Children Without A State: A Global Human Rights Challenge. The MIT Press.

<sup>7</sup> Rigby, P (2010) Child Trafficking in Glasgow: The Views of Professionals. Glasgow Child Protection Committee. Glasgow City Council.

<sup>8</sup> Dorling, K and Hurrell, A (2012) Navigating the System: Advice Provision for Young Refugees and Migrants. Coram Children’s Legal Centre.

<sup>9</sup> Terre des Hommes (2009) Disappearing, Departing, Running Away: A Surfeit of Children in Europe, Lausanne, Switzerland.

<sup>10</sup> Pinter, I. (2012) I Don’t Feel Human: Experiences of Destitution Among Young Refugees and Migrants.

<sup>11</sup> The Children’s Society (2007) Going it Alone: Children in the Asylum Process.

<sup>12</sup> Kohli, RKS and Connolly, H (2009) ‘Young People Seeking Asylum’ In Petch, A (ed). Managing Transition: Support for Individuals at Key Points of Transition. Policy Press

<sup>13</sup> Crawley, H (2012) Working with Children and Young People Subject to Immigration Control: Guidelines for Best Practice. Second Edition.

<sup>14</sup> Connolly, H (2015) Seeing the Relationship between the UNCRC and the Asylum System Through the Eyes of Unaccompanied Asylum Seeking Children and Young People. International Journal of Children’s Rights. Vol 23 (1)

<sup>15</sup> Smith, T and Brownlees, L (2011) Lives in the Balance: The Quality of Immigration Legal Advice Given to Separated Children Seeking Asylum. Refugee Council.

<sup>16</sup> Bhabha, J and Finch, N (2006) Unaccompanied and Separated Children and Refugee Protection in the UK. A report funded by the John D and Catherine Macarthur Foundation.

<sup>17</sup> Dorling, K and Hurrell, A (2012) See note 8 above

negative consequences for unaccompanied and separated migrant children. In particular, an impact review of the legal aid changes on children undertaken on behalf of the Office of the Children's Commissioner<sup>18</sup>, highlighted that as a result of cuts to legal aid migrant children are now:

- a) At a heightened risk of having to support and represent themselves through legal processes and procedures.
- b) More likely to receive an unfavourable legal outcome.
- c) Less likely than other children to be able to fund private legal advice.
- d) At an increased risk of exploitation through the need to fund legal services.

The House of Commons Justice Committee, in a hard-hitting review of the effects of civil legal aid, also asserted particular concern in relation to the consequences for separated and trafficked children, recommending that:

*"The Ministry of Justice review the impact on children's rights of the legal aid changes and consider how to ensure separated and trafficked children in particular are able to access legal assistance."*<sup>19</sup>

Furthermore, The Joint Committee on Human Rights has repeatedly emphasised the severity of the legal, social, psychological and practical consequences for unaccompanied and separated children<sup>20 21 22</sup>. In their most recent review on the *UK's Compliance with the United Nations Convention on the Rights of the Child* (2015), their focus on separated and unaccompanied children formed part of a broader concern around the ways in which children more generally are being denied the use of the law to assert their rights and legal needs within a post LASPO environment.

*"The Government's reforms to legal aid have been a significant black mark on its human rights record during the second half of this Parliament.....The evidence we heard from the outgoing Children's Commissioner for England and from all the NGOs we took oral evidence from provides firm grounds for a new Government of whatever make-up to look again at these reforms and to undo some of the harm they have caused to children."*<sup>23</sup>

It is this bleak legal landscape that prompted the Children's Society, in August 2014, to commission the University of Bedfordshire to undertake research relating to the ways in which the Legal Aid, Sentencing and Punishment of Offenders Act (2012) was influencing the lives and circumstances of separated and unaccompanied children.

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<sup>18</sup> Office of the Children's Commissioner (2014) Legal Aid Changes Since April 2013: Child Rights Impact Assessment. London. Office of the Children's Commissioner.

<sup>19</sup> House of Commons Justice Committee (2015) Impact of Changes to Civil Legal Aid Under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act (2012). 8<sup>th</sup> Report of Session, 2014-2015.

<sup>20</sup> Joint Committee on Human Rights (2013) Human Rights of Unaccompanied Migrant Children and Young People in the UK. 1<sup>st</sup> Report of Session. 2013-2014.

<sup>21</sup> Joint Committee on Human Rights (2014) Legal Aid: Children and the Residence Test. 1<sup>st</sup> Report of Session 2014-2015.

<sup>22</sup> Joint Committee on Human Rights (2015) The UK's Compliance with the UN Convention on the Rights of the Child. 8<sup>th</sup> Report of Session. 2014-2015.

<sup>23</sup> Joint Committee on Human Rights (2015) Page 35 See note 22 above



The research had the following three aims:

1. To increase knowledge and understanding of the nature of the changes to legal services for unaccompanied and separated migrant children since the implementation of LASPO (2012), the scale of the Act, and the profile of children at risk of being left vulnerable to a lack of access to justice.
2. To identify the main issues arising from these changes, including how they have affected immigration related processes, procedures and practices, the indirect consequences of the changes, and the impact they have had on children's rights under the United Nations Convention on the Rights of the Child (UNCRC, 1989).
3. To consolidate multiple perspectives on the legal aid changes, drawing from the first hand experiences of children and young people themselves, local authorities, advocates and legal practitioners.

The research process involved:

- A desk-based review of the context, scale and impact of the changes on unaccompanied and separated migrant children.
- Locating the legal aid changes within the broader framework of the international standards and obligations of the United Nations Convention on the Rights of the Child (1989).
- Issuing Freedom of Information Requests to various public authorities as a means of getting baseline figures on the scale of the impact on unaccompanied and separated migrant children.
- Undertaking a survey with practitioners as a way of establishing baseline data about the frequency and circumstances of unaccompanied and separated children out of scope.
- Interviewing professionals across a range of legal, care and advocacy settings, concentrating on their experiences and perceptions of the ways in which the legal aid changes are directly and indirectly affecting the lives of unaccompanied and separated migrant children.
- Having conversations with separated and unaccompanied migrant children directly caught up in the changes about their first hand experiences of immigration processes and procedures and their hopes for others in the future.

This report is built around the framework of these approaches. In Chapter 1 we establish the context of the movement of unaccompanied and separated children to the UK, introduce the legal aid changes that were brought into effect through the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO 2012), situate LASPO within the framework of the UNCRC and highlight the immigration circumstances and the super-vulnerabilities of unaccompanied children that are being affected by LASPO. In chapter 2 we explain how we conducted the research and focus on our collaboration with children and young people as a way of seeing the legal aid changes through their own eyes. We describe how we consulted with legal, social work and

advocacy practitioners around their experiences and perceptions of LASPO, through the use of online survey and semi-structured interviews. We further describe how we obtained facts and figures on the numbers of children out of scope through freedom of information requests sent to the Ministry of Justice and local authorities.

In chapter 3 we present our findings from our consultations with children, young people and professionals in addition to the data from the freedom of information requests. Finally, in chapter 4 we make our conclusions and recommendations about the impacts of the legal aid changes on unaccompanied and separated children in addition to its effects on social care and legal practice. This final section consolidates our findings and highlights the need to reinstate civil legal aid for all unaccompanied and separated children seeking to regularise or enhance their immigration status.

## CHAPTER 1: Setting the Context

### 1.1 Child migration

The cross-border movement of children is a prominent feature of the 21<sup>st</sup> century global landscape. Whilst children have always formed an integral part of migration patterns<sup>24</sup>, contemporary migratory processes have seen a marked change in the numbers and experiences of children and young people that migrate.<sup>25 26</sup>

There are many reasons why children become parted from their countries of origin. In much the same way as their adult counterparts, they can become caught up in events that generate processes of forced migration and displacement and are equally as vulnerable to the impacts of political upheaval, political persecution, bad governance, armed conflict, civil war and natural disaster.<sup>27 28 29 30</sup>

Children are also caught up in systems of global inequality. Therefore, the movement away from serious deprivation towards more prosperous places can offer them better opportunities along with hopes for a sustainable and better future.;<sup>31 32</sup> They can also become scattered away from their homelands for reasons that are particular to their status as children, such as escaping harmful traditional practices, avoiding forced military recruitment, child abuse and domestic violence, international adoption and fostering, and child trafficking and exploitation.<sup>33 34 35 36 37 38 39</sup> Whilst the majority of migrant children are accompanied by their parents or customary caregivers to their new countries, many also have to make the journey alone. In legal and policy terms, these children are known as unaccompanied and separated migrant children.

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<sup>24</sup> Sigona, N and Hughes, V (2012) No Way Out, No Way In: Irregular Migrant Children and their Families in the UK. ESRC Centre on Migration, Policy and Society. University of Oxford.

<sup>25</sup> Furia, A (2012) Victims or Criminals? The Vulnerability of Separated Children in the Context of Migration In the UK and Italy. Working Paper, No. 69. University of Sussex. Sussex Centre for Migration Research.

<sup>26</sup> United Nations Committee on the Rights of the Child (2005) General Comment No. 6 on the Treatment of Unaccompanied and Separated Children Outside their Country of Origin.

<sup>27</sup> Kohli, RKS, Connolly, H and Beckett, H (2014) By their Side and On their Side; Reviewing the Evidence for Guardianship for Separated Children in Northern Ireland. Northern Ireland Commissioner for Children and Young People.

<sup>28</sup> Finch, N (2005) Seeking Asylum Alone. In Andersson, HE, Ascher, H, Bjornberg, U, Eastmond, M and Mellander, L. The Asylum Seeking Child In Europe. Centre for Research of Goteberg University.

<sup>29</sup> Touzenis, K (2008) Human Rights of Migrant Children. Vienna. International Organisation for Migration

<sup>30</sup> Ayotte, W (2000) Separated Children Coming to Western Europe. Why they Travel and How they Arrive. Save the Children.

<sup>31</sup> Kohli, RKS, Connolly, H and Beckett, H (2014) see note 27 above

<sup>32</sup> Ayotte, W (2000) see note 30 above

<sup>33</sup> Finch, N (2005) see note 28 above

<sup>34</sup> Ayotte, W (2000) see note 30 above

<sup>35</sup> Touzenis, K (2008) see note 29 above

<sup>36</sup> Bhabha, J and Finch, N (2006) see note 16 above

<sup>37</sup> Bustamante, J (2009) Report Submitted to the UN Human Rights Council by the Special Rapporteur on the Human Rights of Migrants. A/HRC/11/7, of 14.05.2009.

<sup>38</sup> Connolly, H (2014) For a While out of Orbit.: Listening to What Unaccompanied Asylum Seeking Children Say about their Experiences in Private Foster Care. Journal of Adoption and Fostering. Vol 38. No.4

<sup>39</sup> Finch, N (2014) Always Migrants, Sometimes Children.. UK Report for the EU Commission CONNECT Project Identifying Good Practice in and Improving, the Connections Between Actors Involved in Reception, Protection and Integration of Unaccompanied Children in Europe.

Restrictive immigration policies, such as those in the UK, can even designate children that are born in the new country of their parents as migrant and not citizen children. This happens when neither their mother nor father has been able to acquire citizenship.<sup>40</sup> This report is also concerned with those children where circumstances, such as family loss or breakdown, have caused them to become separated migrant children during their childhood in the UK.

## 1.2 Definitions of Separated and Unaccompanied Migrant Children

Separated migrant children are outside their country of origin and are:

*“Children, as defined in Article 1 of the Convention (i.e. under 18 years), who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other family members.”<sup>41</sup>*

Unaccompanied migrant children are outside their country of origin and are:

*Children, as defined in Article 1 of the Convention (i.e. under 18 years), who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.”<sup>42</sup>*

These definitions tell us that unaccompanied children arrive in host countries totally alone and without the care of family, whereas separated children may arrive with extended family members. Although separated children appear to be in the care of extended family, they can also be vulnerable to the same kinds of risk as those faced by unaccompanied children.

In UK policy and law, the term ‘*unaccompanied children*’ is used rather than ‘*separated children*’. This is problematic in the sense that it has less of a protective reach and creates uncertainty around whether it entails children who arrive with other family members or any other adults.<sup>43 44 45</sup> We have used both definitions in this report to include both groups of children whom we consider to be equally as vulnerable.

## 1.3 How many Separated and Unaccompanied Migrant Children are there?

It is a difficult task to quantify with any certainty the numbers of unaccompanied and separated migrant children living in the UK that are either subject to or potentially subject to immigration control.<sup>46 47 48</sup>

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<sup>40</sup> Finch, N (2013) Routes to Regularisation for People Without Legal Status in the UK. Paul Hamlyn Foundation.

<sup>41</sup> United Nations Committee on the Rights of the Child (2005) page 6. See note 26 above

<sup>42</sup> United Nations Committee on the Rights of the Child (2005) page 6. See note 26 above.

<sup>43</sup> Kohli, RKS, Connolly, H and Beckett, H (2014) see note 27 above

<sup>44</sup> Touzenis, K (2008) see note 29 above

<sup>45</sup> Crawley, H (2012) see note 13 above

<sup>46</sup> Finch, N (2014) see note 39 above

<sup>47</sup> Crawley, H (2012) see note 13 above

<sup>48</sup> Sigona and Hughes (2012) see note 24 above

There are three significant reasons for this. Firstly, the paucity of available information available on the numbers and circumstances of children in the UK who are subject to immigration control.<sup>495051</sup> The only 'solid' information that exists is for unaccompanied children seeking asylum where statistics are kept by the Home Office, the Department for Education (DfE) and local authorities. Secondly, many unaccompanied and separated children are not officially registered as being in the UK and live in hidden worlds. Others lead transitional lives, moving between hidden and seen worlds as they shift between legal and illegal statuses. This means that their lives and circumstances often exist outside of formal systems. Thirdly, it is known that many agencies working with separated and unaccompanied children interpret these legal and policy definitions in different ways and in addition to this, also engage with different methods of counting these children.<sup>52</sup>

We can get some indication of the potential scale of the issue, however, by pulling together a range of existing data and information sources as proxy measures. Unaccompanied and separated children seeking asylum in the UK form a more certain part of the numerical landscape given that data for this group of children and young people is the most comprehensive. Official Home Office figures for the last five years show the number of children applying for asylum on their own has been relatively low and has dropped significantly in comparison to previous years. In 2010, there were 1,717 children applying. This was almost a drop of 50 % from the previous 4 years. The numbers decreased again in 2011- 13 to 1,398 but began to increase again in 2014, rising to 1,861 children.. This decline over the past several years is in contrast to the numbers of adult asylum seekers, where the general pattern shows a consistent rise. It is difficult to know the reasons for this difference and the research does not address why this might be. One of the only identifiable factors highlighted in the research and statistics as a possible, although not an exclusive contributor, is the change in methodology used by the Home Office to record the data on unaccompanied children claiming asylum<sup>53</sup> The number of asylum seeking children in the care of local authorities has also decreased across the same period from 3,480 in 2010 to 1,970 in 2014.<sup>54</sup> This number is higher than the number of asylum applicants because it is a cumulative number rather than a year on year count. A point to note is that the official figures for the numbers of unaccompanied children in the care of a local authority differ quite significantly from the numbers we received back from our freedom of information requests from local authorities. In total, local authorities identified 3,612 unaccompanied / separated migrant children in their care. This was without a full return of the freedom of information requests (see section 2.2). Given that the local authorities that returned our freedom of information requests generally did not collate data on non-asylum migrant

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<sup>49</sup> Crawley, H (2012) see note 13 above

<sup>50</sup> Kohli, RKS, Connolly, H and Beckett, H (2014) see note 27 above

<sup>51</sup> Finch, N (2014) see note 39 above

<sup>52</sup> O'Kelly, E and Bokhari, F (2012) Safeguarding Children from Abroad: Refugee, Asylum Seeking and Trafficked Children in the UK. London: Jessica Kingsley Publishers.

<sup>53</sup> The Refugee Council (2014) [http://www.refugeecouncil.org.uk/assets/0003/1356/Asylum\\_Statistics\\_Feb\\_2014.pdf](http://www.refugeecouncil.org.uk/assets/0003/1356/Asylum_Statistics_Feb_2014.pdf)

<sup>54</sup> Statistics on looked after children in England, Department for Education

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/410394/SFR36\\_2014\\_National\\_tables\\_revised.xlsx](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/410394/SFR36_2014_National_tables_revised.xlsx)

children in their care, this figure, with one or two exceptions, appears to relate only to unaccompanied and separated asylum seeking children. Whilst we specifically asked for figures on children and not young care leavers over the age of 18 years, it could be that local authorities have included these numbers. This explanation of the difference between our numbers and those of the Government's coheres with the point made earlier in this section about the different ways in which service providers engage with the legal and policy terms.

As explained below, whilst asylum still remains in scope of legal aid, the figures for unaccompanied asylum seeking children are important to consider because many unaccompanied and separated children seeking asylum have to submit fresh claims to remain in the UK either at the age of 17.5 years or 2.5 years after their original application. During their stay in the UK, the majority of these children will accrue additional immigration reasons for remaining here which are not asylum /protection based and where legal aid is no longer available.

Sigona and Hughes estimate that approximately 120-140,000 children are living in the UK without any regular immigration status.<sup>55</sup> Although they suggest that the majority of these children either arrived in the UK with their parents and that over half were born here, a proportion of these children will be unaccompanied or separated and others will be at risk of, or indeed will already have entered into, local authority care after family breakdown.<sup>56</sup> Indeed, Finch has suggested that the family courts are encountering “*very large*” numbers of foreign national children being subject to child protection proceedings<sup>57</sup>. In addition, whilst it is difficult to determine the numbers of separated migrant children living in private foster care arrangements, partly because the majority of these arrangements exist unknown to child protection authorities<sup>58 59 60</sup>, various estimates do exist that can give us some baseline indication. Official statistics show that 1,610 children were reported as being cared for and accommodated in private foster care arrangements as of March 2014 and that 2,880 new, private fostering arrangements began during the year ending March 2014.<sup>61</sup> The difference between these official numbers and the reality is illustrated by the British Association of Adoption and Fostering who suggest figures of between 15,000 to 20,000 children in private foster care at any one time – a number that is still widely circulated within policy and practice literature.<sup>62</sup> While these numbers relate to the total

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<sup>55</sup> Sigona, N and Hughes, V (2012) see note 24 above

<sup>56</sup> Office of the Children's Commissioner (2013) Office of the Children's Commissioner's Response to the Ministry of Justice Consultation: Transforming Legal Aid Delivering a More Credible and Efficient System.

<sup>57</sup> Finch N (2014) see note 39 above

<sup>58</sup> Connolly, H (2014) see note 38 above

<sup>59</sup> Children, Schools and Family Committee (2009) Looked After Children. Third Report of Session. 2008-2009. Vol .11. House of Commons

<sup>60</sup> DCSF (Department for Children, Schools and Families) (2010) No Simple Answers: Report of the DCSF Advisory Group on Private Fostering 2008–2010. Available at: <http://webarchive.nationalarchives.gov.uk/20130401151715/http://education.gov.uk/publications/eorderingdownload/dcsf-00198-2010.pdf>

<sup>61</sup> Department for Education (2014) Statistical First Release of Notifications of Private Fostering Arrangements In England: Year Ending 31 March 2014.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/328518/SFR22-2014\\_text.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/328518/SFR22-2014_text.pdf)

<sup>62</sup> Philpot T (2001) *A Very Private Practice: An investigation into private fostering*. London: BAAF.

number of children in private foster care and not solely to separated migrant children, Crawley (2012) suggests that a sizeable number of children in private foster care will indeed be subject to immigration control.<sup>63</sup> This is supported by the DfE statistics which show that only 38 % of children in private foster care arrangements are UK born, that this number has been declining, and that the majority of children reported to be in new arrangements in 2013 were born overseas – a trend that continued into 2014.<sup>64</sup> If we apply this percentage to the estimates of children living in private foster care offered by BAAF (above), then we can estimate that between 9,300 and 12,400 migrant children may well be living in private foster care arrangements.

All of these sources together suggest that the number of unaccompanied and separated migrant children living in the UK is relatively large, and, therefore that the impact of the legal aid reforms may be far ranging, potentially affecting the lives of thousands of unaccompanied and separated migrant children (see section 1.4 below). Indeed, the Children's Rights Alliance for England have proposed, in their Immigration, Asylum and Trafficking report forming part of their series of reports on '*The State of Children's Rights in England*', that the "*vast majority*" of migrant children are now unable to access legal support as a result of LASPO.<sup>65</sup>

#### 1.4 How many unaccompanied and separated migrant children are out of scope?

In 2010/2011, before the commencement of the major legal aid changes of LASPO (2012), and as part of stakeholder interest on the potential impacts of the proposed legislation, The Children's Society, jointly with JustRights, sent a data request to the Ministry of Justice. This asked for caseload data on the legal categories and numbers of children and young people that had applied for immigration legal aid in their own right in the years 2009/2010, in addition to asylum legal aid for the same period. This was done with a view to establishing the potential scale of the changes upon separated and unaccompanied migrant children. We will report only on the figures for immigration legal aid in this section because asylum claims are not directly impacted by the changes.<sup>66</sup> The data revealed that 2,700 immigration cases had been submitted by separated / unaccompanied children and that **2,490** of these would theoretically be **out of scope** in a post-LASPO context. We were not supplied with any further information about the 210 immigration cases that would theoretically still be in scope<sup>67</sup>. Given what we know about the lives and circumstances of unaccompanied and separated children, we suggest

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<sup>63</sup> Crawley, H (2012) see note 13

<sup>64</sup> Department for Education (2014) Statistical First Release Notifications of Private Fostering Arrangements In England. Year Ending 31<sup>st</sup> March, 2014

<sup>65</sup> Children's Rights Alliance England (2014) Immigration, Asylum and Child Trafficking. State of Children's Rights in England, 2014.

<sup>66</sup> It is important to note that legal aid for non-asylum cases are treated as a separate category by the Legal Services Commission and the Legal Aid Authority and as such, asylum figures would not encompass immigration cases and vice versa.

<sup>67</sup> While we cannot say what these 210 cases are with absolute certainty, it is a possibility that these relate to detention cases.



that it is likely that it is just the tip of the iceberg that is shown in these numbers. Indeed, whilst it is a helpful proxy measure for establishing the **lowest estimate of children potentially out of scope**, it does not account for those children who did not seek to resolve their immigration status either because they did not know they needed to, or because they were unable to owing to barriers such as costs, e.g. the administrative costs in paperwork applications or the costs of paying private solicitors (for children that did not know about legal aid), or more generally because they were afraid, for a variety of reasons, to do so. Indeed research has shown that these factors, i.e. lack of knowledge of legal matters and barriers to securing a legal advisor, occlude children's access to justice more generally and migrant children more specifically.<sup>68 69 70</sup>

### 1.5 What Is the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO)?

This Act came into force in April 2013. Its aim was to radically lower the cost of public spending on legal aid by £350 million through the reduction and removal of specific categories of law from the scope of legal aid.<sup>71 72</sup> Immigration has been one of the domains of civil law that has been severely implicated and while asylum or protection under Article 3 ECHR still remains within the scope of legal aid, the majority of non-asylum immigration cases have been erased from scope.<sup>73</sup> People with immigration applications that fall under Article 8 ECHR and the right to family and private life are particularly affected by the legal aid changes.

Given that there are no child-specific provisions within the legal aid framework<sup>74</sup>, a new legal territory has been created where most migrant children, apart from those that have claims for asylum or protection under Article 3 of the ECHR, are no longer entitled to free legal advice and representation in the area of immigration.<sup>75 76</sup>

Unlike family law proceedings, where special provision has been made for children under the age of 18 years to obtain legal aid, no explicit or similar safety net has been made for migrant children.<sup>77 78</sup> Jonathan Djangoly, former Parliamentary Under Secretary of State for Justice, in a letter to the Refugee Children's Consortium, made the suggestion that legal aid was largely

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<sup>68</sup> Carter, J (2014) The Impact on Children of Legal Aid Changes Since April 2013. Participation Work with Children and Young People. London. Office of the Children's Commissioner.

<sup>69</sup> Bawden, F (2014) Chasing Status. If Not British, Then What Am I? Legal Action Group

<sup>70</sup> The Children's Society (2012) Hidden Children: Separated Children At Risk

<sup>71</sup> Cookson, G (2011) Unintended Consequences: The Cost of the Government's Legal Aid Reforms. A Report for the Law Society of England and Wales. Kings College London

<sup>72</sup> Symonds, S (2012) Implications of Cuts to Legal Aid for Children and Young People in Light of the Legal Aid, Sentencing and Punishment of Offenders Act (2012).

<sup>73</sup> Symonds, S (2012) see note 72 above

<sup>74</sup> Valdez, S (2012) Separated Children and Legal Aid Provision. Immigration Law Practitioners Association.

<sup>75</sup> Symonds, S (2012) see note 72 above

<sup>76</sup> Finch, N (2013) see note 40

<sup>77</sup> Refugee Children's Consortium (2011) Memorandum of Evidence to Public Bill Committee. Legal Aid, Sentencing and Punishment of Offenders Bill. July, 2011.

<sup>78</sup> JustRights (2015) Justice for the Young: A Snapshot.



unnecessary within the context of immigration cases on the assumptions that the majority entail a “*relatively straightforward process*” and that “*with the help of their guardian (most) children would be able to complete the process with recourse to specialist legal advice.*”<sup>79</sup> As will be demonstrated throughout this report, the circumstances of separated and unaccompanied children’s immigration cases are far from straightforward. The Minister, during Report stage of the Bill in the House of Commons, further and erroneously proposed that instead of accessing legal aid, separated and unaccompanied migrant children could seek advice and assistance from social workers, legal centres or pro-bono specialist legal advisors to protect their legal interests.

*“Unaccompanied children with an asylum or immigration issue would have a social worker assigned to them, whose role would include helping the child to gain access to the same advice and support as a child who was permanently settled in the UK. They could also offer assistance with filling in forms and explaining terms, and give emotional support. Legal support in such immigration cases may be found, if needed, from law centres and from pro-bono legal representation.”*<sup>80</sup>

This scenario generates a number of problems, not least because the domain of immigration is heavily regulated. Offering legal support will propel social work practitioners into illegal territory. Indeed, it is a criminal offence for a person to provide immigration advice or services in the UK unless their organisation is regulated by the Office of the Immigration Services Commission (OISC) and unless they are qualified to do so under the terms of section 84 (1) of the Immigration and Asylum Act (1999).<sup>81</sup> Furthermore, it cannot be assumed that children will always have access to legal centres or pro-bono specialist legal advisors that can support, advise and represent them. The ability to access legal advisors has always been a tricky process for unaccompanied and separated children, especially because of the niche focus of immigration law and the continued changes and cuts to legal aid, both of which have historically limited the supply of legal providers.<sup>82 83 84</sup> The gap between supply and demand, however, has grown ever wider as a result of LASPO (2012), with substantial funding reductions forcing many law centres into closure and private firms into reorienting the nature of their work.<sup>85</sup> It is therefore highly unlikely that children will be able to readily access free legal support via law centres or other specialist legal advisors and instead will have to rely upon the role of chance in finding legal support. This is explored further in section 3.5 in the findings.

Section 10 of the Legal Aid, Sentencing and Punishment of Offenders Act (2012) allows, in circumstances where a denial of legal aid will undermine ECHR or EU rights, for legal aid to be granted. This is known as the

<sup>79</sup> [https://www.childrenssociety.org.uk/sites/default/files/tcs/u32/rcc\\_briefing\\_laspo\\_bill\\_-\\_march\\_2012.pdf](https://www.childrenssociety.org.uk/sites/default/files/tcs/u32/rcc_briefing_laspo_bill_-_march_2012.pdf)

<sup>80</sup> Hansard HC Report, 31 October 2011, Columns 689-690

<sup>81</sup> <https://www.gov.uk/government/publications/how-to-become-a-regulated-immigration-adviser/how-to-become-a-regulated-immigration-adviser--2>

<sup>82</sup> Smith, T and Brownlees, L (2011) see note 15 above

<sup>83</sup> The Children’s Society, (2007) see note 11 above

<sup>84</sup> Joint Committee on Human Rights (2013). See note 20 above

<sup>85</sup> House of Commons Justice Committee (2015) see note 19 above

exceptional funding scheme. Theoretically, it has been built into the legislation to make sure that there is a 'safety net' enabling access to justice for the most vulnerable, including children in addition to circumstances relating to life, liberty, health, bodily integrity and protection from violence.<sup>86</sup> All of these circumstances are relevant to unaccompanied and separated migrant children's immigration claims and yet evidence is beginning to emerge that this system is not working. Indeed, the Public Law Project, in a commentary on the mechanics and outcomes of the exceptional funding scheme, highlighted that their experience of running a project assisting people to apply for exceptional funding has demonstrated that a whole host of intersecting problems exist within the current scheme.<sup>87</sup> The process of applying in the first instance, is overly laborious, complex and practically impermeable. In addition, to this, the application is a high risk process for legal practitioners given that funding for making the application is only granted if the case itself is granted, the quality of decision-making is patchy and there are no provisions for access for those that do not have the capacity to litigate.<sup>88</sup> More specifically in relation to children, JustRights, in their Justice for the Young Snapshot (2015) highlighted that in the period between October 2013 to September 2014, out of 50 children that applied for exceptional funding, only 3 were successful in this.<sup>89</sup>

The restrictive availability of exceptional funding has recently been put under scrutiny in a series of High Court test cases against the Lord Chancellor and the Director of Legal aid Casework in 2014. In these cases, the High Court and Court of Appeal concluded that the thresholds, for establishing which cases are and are not 'exceptional', were too high. It was further concluded that these high thresholds hinder the ways in which immigration applicants can effectively access Article 8 of the European Convention of Human Rights. As such, it was determined that the ways in which the exceptional funding scheme is currently working, violates an applicant's rights under human rights law and European law. There is also an on-going challenge to the exceptional funding system itself, in which the claimant is arguing that the system for applying for exceptional funding is unworkable.

## **1.6 What are the Immigration Circumstances of Unaccompanied and Separated Migrant Children that are Excluded from Legal Aid as a Result of LASPO (2012)?**

Our research identified a wide-ranging and complex set of immigration circumstances that will see separated and unaccompanied migrant children without any entitlement to legal aid, undermining the legal protection and support they need and should be afforded under international law (see section 1.7). These are represented in Table 1.1 and figure 1.1.

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<sup>86</sup> Lord Chancellor's Exceptional Funding Guidance (Non-Inquests)

<sup>87</sup> Public Law Project (2013) Exceptional Funding: A Fig Leave, Not a Safeguard.

<sup>88</sup> <http://www.publiclawproject.org.uk/resources/10/exceptional-funding-a-fig-leaf-not-a-safeguard>

<sup>89</sup> Justrights (2015) see note 79 above

The 10 categories of circumstances and 20 particulars identified in Table 1.1 illustrate the complex and intricate nature of immigration matters for separated children and therefore the need for access to legal support and advice for an effective resolution for them. Table 1.1 further demonstrates the breadth and depth of the legal aid changes in this area for children.<sup>90</sup>

**Table 1.1: Categories and Circumstances of Separated and Unaccompanied Children Out of Scope**

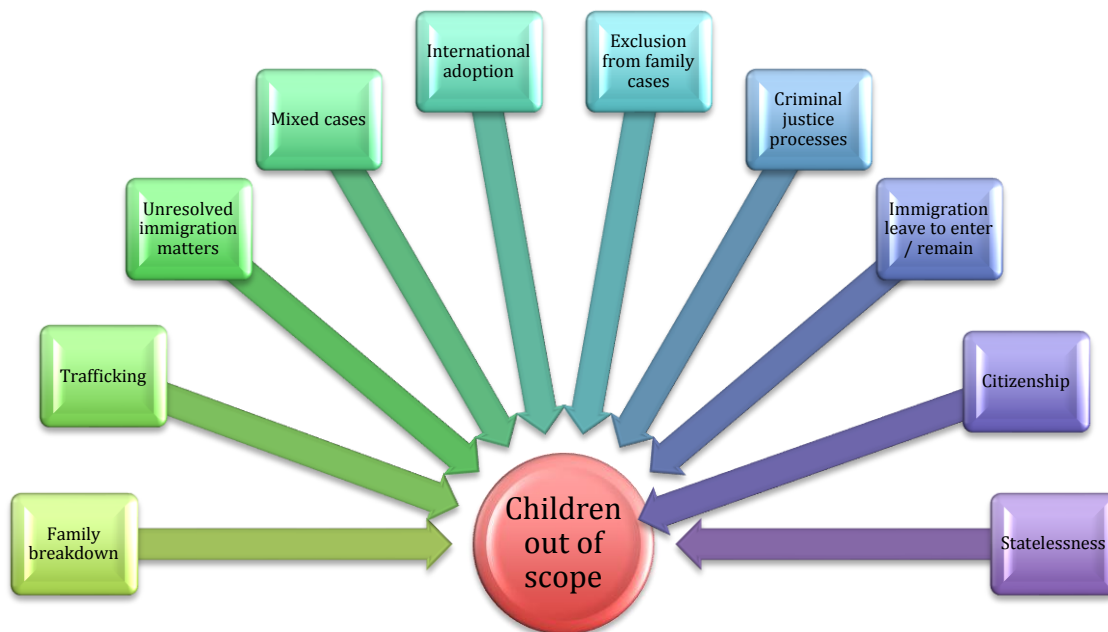
<b>CATEGORY OF CIRCUMSTANCES</b>	<b>PARTICULARS OF CIRCUMSTANCES</b>
<b>TRAFFICKING</b>	<p>Trafficked children who have not been referred to a first responder and/or the National Referral Mechanism (NRM)</p> <p>Trafficked children who have been referred to the NRM but are waiting for a 'reasonable grounds decision'.</p> <p>Trafficked children who have been referred to the NRM but have received a negative 'reasonable grounds decision'.</p> <p>Trafficked children who have been referred to the NRM but have received a negative 'conclusive grounds decision'.</p>
<b>CHILDREN SEPARATED FROM FAMILY DUE TO FAMILY BREAKDOWN</b>	<p>Separated children who have come to the UK at an earlier age but have since been abandoned by or separated from their parents and/primary care giver (e.g. due to child protection issues, domestic violence, death, family breakdown)</p> <p>British children born in the UK to a non-national parent and British parent (or one with settled status) but it proves difficult to evidence the child's citizenship rights because there has been a family breakdown.</p> <p>Children who arrived into the UK as dependents of EU citizens but are no longer in the care of that parent / family member.</p>
<b>IMMIGRATION CASES- LEAVE TO ENTER OR</b>	<p>Unaccompanied and Separated migrant children seeking leave to enter or leave to remain in the UK on non-asylum grounds including under the immigration</p>

<sup>90</sup> NB While Table 1.1 offers separate classifications of 'category of circumstances' and their particulars, in practice children often present across multiple categories, and across multiple particulars.

<p><b>REMAIN ON NON-ASYLUM MATTERS</b></p>	<p>rules and the non-protection elements of the European Convention on Human Rights. Including:</p> <p>Unaccompanied and Separated migrant children who have reached 17.5 and are making a non-asylum grounds application for an extension of their existing leave</p> <p>Unaccompanied and Separated migrant children granted UASC leave for 2.5 years but this leave expires before they have reached 17.5 years of age and where they are making an extension application on non-asylum grounds</p> <p>Unaccompanied and Separated migrant children appealing a decision about their leave on non-asylum grounds</p> <p>Unaccompanied and Separated migrant children seeking leave to enter or leave to remain in the UK on grounds of long residence</p>
<p><b>MIXED CASES</b></p>	<p>Unaccompanied and Separated migrant children making applications to stay in the UK on a mixed case basis (because they have an asylum / 'international protection' claim mixed with a non-asylum claim). Only the asylum/'international protection' element of the case will now be funded by legal aid.</p>
<p><b>EXCLUSIONS FROM FAMILY CASES</b></p>	<p>Separated migrant children who initially arrived into the UK with family but were not included in the asylum and/or immigration claim of their primary care giver and have since separated from their family (and do not have a claim for asylum in their own right)</p>
<p><b>CRIMINAL JUSTICE PROCESSES</b></p>	<p>Unaccompanied and Separated migrant children involved in criminal justice processes who have had their immigration status revoked as a consequence of criminal activity and who face deportation.</p>
<p><b>STATELESSNESS</b></p>	<p>Children born in the UK to non-national parents who have never regularized their own status or that of their children.</p>
<p><b>INTERNATIONAL ADOPTION</b></p>	<p>Children who arrived in the UK via an international adoption arrangement where this has broken down.</p>
<p><b>CITIZENSHIP</b></p>	<p>Children with the right to obtain British citizenship after 10 years</p> <p>Children with the right to make an application for citizenship through their parents, even though separated from them, and with the right to apply for</p>

	citizenship on the basis that their future is clearly in the UK
<b>UNRESOLVED IMMIGRATION MATTERS</b>	<p>Separated migrant children in the care system who do not appear to have a clear immigration status and this status remains unresolved</p> <p>Separated children in private fostering arrangements (e.g. in the care of an extended family member, family friend, member of community) who do not appear to have a clear immigration status and this status remains unresolved</p>

**Figure 1.1: Categories of Unaccompanied / Separated Children’s Cases Out of Scope**



### 1.7 Unaccompanied and Separated Children’s Right to Legal Aid in international law

The UK is a State Party to the United Nations Convention on the Rights of the Child (UNCRC) and therefore has an obligation to make sure that all children’s lives in the UK are grown around its framework and that the appropriate procedural guarantees are in place for children throughout all

administrative and judicial proceedings, including immigration processes.<sup>91 92</sup>  
93 94 95

The United Nations Committee on the Rights of the Child, after its ‘*Day of General Discussion on The Right of the Child to be Heard*’ (2006) recommended that, as part of their obligations to the meaningful participation of children in judicial and administrative processes, all countries that have signed the UNCRC<sup>96</sup>, should, without limitation:

*“Establish specialist legal aid support systems in order to provide children involved in administrative proceedings with qualified support and assistance.”*<sup>97</sup>

Although the discussion days of the United Nations Committee on the Rights of the Child are not binding on States, their purpose is to provide clarity on the implications of the principles and provisions of the Convention and guide States towards the better fulfilment of their obligations under the Convention on the Rights of the Child. Their recommendation provides a good foundation for thinking about which provisions of the Convention imply a duty on the UK towards the availability of legal aid for unaccompanied and separated migrant children.

There are 4 ‘General Principles’ that form the backbone of the UNCRC(1989) and each of these has a threefold character to them. They act firstly as a right for each child, secondly as a principle from which to act on and interpret all other rights, particularly where any conflicts and tensions arise between rights, and thirdly as procedural guarantees for children that are caught in the middle of legal and administrative systems and processes.<sup>98</sup> These 4 general principles are represented in figure 1.2 below and they have been highlighted within *General Comment No 6 on the Treatment of Unaccompanied and Separated Children Outside their Country of Origin* (2005) by the United Nations Committee on the Rights of the Child as fundamental to the protection and care of this group of children.

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<sup>91</sup> Bolton S (2012) Best interests: safeguarding and promoting the welfare of children in immigration law and practice. In: Bolton S, Kaur K, Luh SS, Peirce J and Yeo C. *Working with Refugee Children: Current issues in best practice*. 2nd edition. London: Immigration Law Practitioners Association

<sup>92</sup> Connolly, H (2015) see note 14 above

<sup>93</sup> Van Bueren, G (1998) *The International Law On The Rights Of The Child*. Save The Children. Martinus Nijhoff Publishers. The Hague, Boston and London

<sup>94</sup> Dorling, K and Hurrell, A (2012) see note 8 above.

<sup>95</sup> Crawley, H (2012) see note 13 above

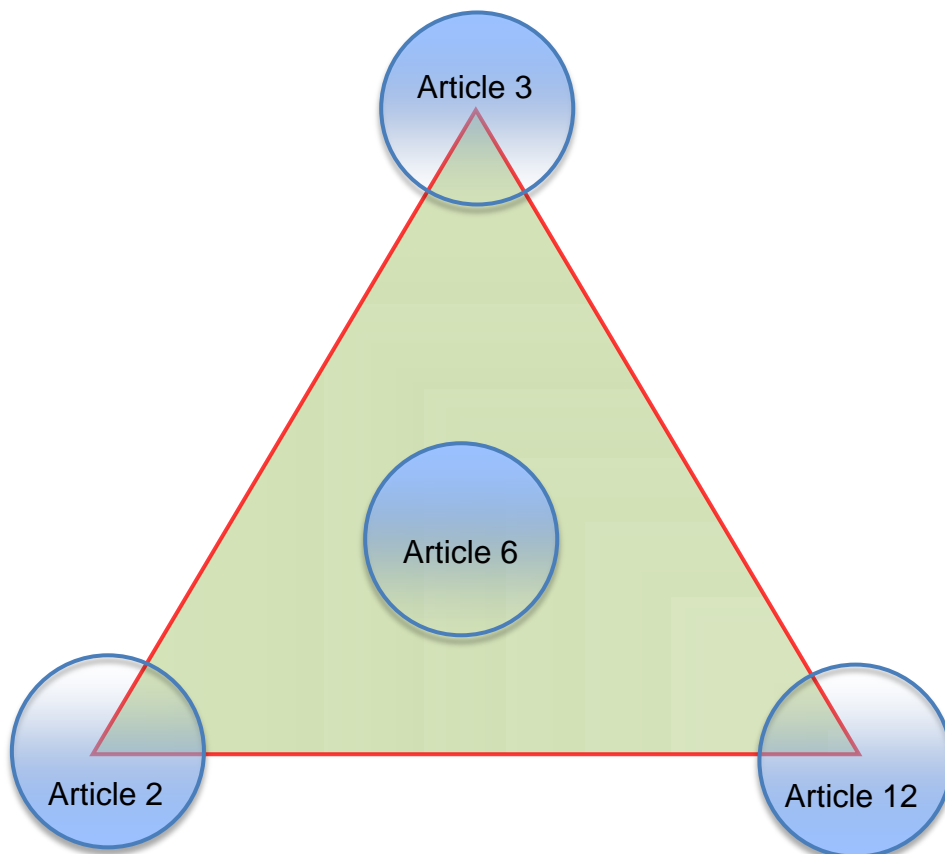
<sup>96</sup> United Nations (1989) Convention on the Rights of the Child. United Nations.

(<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>)

<sup>97</sup> United Nations Committee on the Rights of the Child Report on the 43<sup>rd</sup> Session, September 2006, Day of General Discussion, page 7

<http://www.ohchr.org/EN/HRBodies/CRC/Pages/DiscussionDays.aspx>

<sup>98</sup> United Nations Committee on the Rights of the Child (2013) General Comment No 14 on the Right of the Child to Have His or Her Best Interests Taken As A Primary Consideration



**Figure 1.2: The General Principles of the UNCRC, adapted for use from the UNHCR Guidelines on the Protection and Care of Refugee Children (1994)**

Article 3 (1) establishes the legal standard that all institutions, both public and private, and including courts, administrative authorities and legislative bodies, have a duty to give primary consideration to the best interests of the child in all actions / procedures that concern and impact upon them. It extends its obligations on States in Article 3 (2) by stating that they should further make sure that children receive the “*protection and care as is necessary for his or her well-being*” through “*appropriate legislative and administrative measures*”.

The relationship between Article 3 (1) and (2) and access to legal support for children in formal processes has been articulated in *General Comment No 14 by the United Nations Committee on the Rights of the Child* :

*“The child will need appropriate legal representation when his or her best interests are to be formally assessed and determined by courts and equivalent bodies. Where a child is referred to an administrative or judicial procedure involving the determination of his or her best interests, he or she should be provided with a legal representative.....”<sup>99</sup>*

Article 2 (1) establishes the principle that all children should enjoy the rights of the UNCRC without discrimination in respect of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, disability, birth or other status. It places an obligation on States to be proactive in measures preventing any discrimination.<sup>100</sup> There are a number of issues that flow directly from this obligation in relation to the denial of legal aid for unaccompanied and separated children. In the first instance, their status as children raises many difficulties that can occlude their access to effective legal support and sound remedies and hinder the ways in which they can assert their legal rights. Indeed legal processes are not designed with children in mind and challenges are likely to arise from their understanding of the legal situation they are in, potential and actual outcomes, the roles, methods and expectations of professionals and systems, difficulties with the technicalities of language, and the intrinsic power differentials between them and adults in formal legal systems. To exclude children from legal aid processes, therefore, has the potential to place them at a disadvantage in securing justice compared to adults.

The special vulnerabilities of unaccompanied and separated migrant children amplify the significance of these challenges and generate a double discrimination in the face of the legal aid changes of LASPO. Indeed, unaccompanied and separated migrant children are likely to have experienced loss, psychological and physical trauma, abuse and exploitation; they are without their adult caregivers to support them emotionally and practically through the legal process; they may have to negotiate cultural and linguistic barriers and in addition to all of these things, they have the added pressure of having to come face to face with the bureaucratic processes of the immigration system. These children undoubtedly require additional not fewer procedural legal safeguards to promote their safety and well-being.

Article 12 (1) and (2) of the UNCRC relate to the right of children’s participation<sup>101</sup>. They state that all children, with sufficient capacity for self-expression, should be given the opportunities to do this, particularly within circumstances where judicial and administrative procedures have the power to influence their lives. This article places a duty on States to generate favourable contexts and structures for children’s self-expression so that they can have some degree of self-determination in terms of what happens to them in formal processes. When the multiple complications that are encountered by unaccompanied and separated children within immigration processes are

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<sup>99</sup> United Nations Committee on the Rights of the Child (2013), Section 96, page 19. See note 98 above.

<sup>100</sup> UNCRC (1989) see note 96 above

<sup>101</sup> United Nations Convention on the Rights of the Child (1989) See note 96 above.



considered - both as children and as unaccompanied and separated migrants - Article 12 arguably obliges States to make systems of legal advice and representation available to this group of children to mitigate against these and to help children to say what they need to say in order to stay alive and or feel alive. This means that article 12, in relation to legal advice and representation is central to ensuring that children have real input into decisions that are fundamental not just to their security but to those that can change the course and quality of their lives.

The last point made above forms a natural bridge with Article 6 -the final General Principle of the UNCRC. This obliges states to ensure, “to the maximum extent possible”, the life, survival and development of all children. As Kohli et al (2014) suggest, this article is “*central to all considerations for the protection of children across time, entailing immediate, medium term and durable solutions.*”<sup>102</sup> This article, in conjunction with Article 3, clearly establishes a duty on States to make sure that migrant children have access to legal advice, representation, and processes that can facilitate a durable legal status for them. When this right is not given effect for migrant children, the construction of a safe life becomes difficult, seeing them forced into undocumented worlds, transitional legal statuses, and even moved onto countries that cannot offer them adequate protection and care. This article arguably places obligations on States that extend beyond childhood and into adulthood. It is therefore key not just in thinking about the impacts of the legal aid changes on children but also their impacts on young people as they transition into their adulthood.

General Comment No 6 on the Treatment of Unaccompanied and Separated Migrant Children (2005), recognises that one of the key duties States have towards unaccompanied and separated migrant children in the fulfilment of their Article 6 duties, is to protect them from violence and exploitation. The UN Committee on the Rights of the Child in this General Comment, explicitly acknowledge the link between trafficking and unaccompanied and separated migrant children, and as such suggest that States, in their realisation of Article 6, establish practical measures such as priority procedures for trafficked children.

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<sup>102</sup> Kohli, RKS, Connolly, H and Beckett, H (2014) Page 37. See note 27 above

## Chapter 2: The Methods of Work for This Research

### 2.1 Literature review

The desk research examined relevant literature in order to develop an understanding of the legal, policy and practice context of LASPO, the extent of its reach upon separated and unaccompanied children, and to identify any evidence that was beginning to accrue of the direct experiences of separated and unaccompanied children of the legal aid changes. Starting with a literature review was important for the following reasons:

- 1 To explore and ground the need for the research within a knowledge and policy context.
- 2 To use this understanding of the knowledge and policy context to inform the research questions and the approach to primary data collection and analysis.
- 3 To further use this knowledge to inform the content and relevance of the research tools.
- 4 To situate the right to legal aid for unaccompanied and separated children within an international child's rights framework
- 5 To identify potential key organisations, professions and actors to participate in the research
- 6 To highlight any potential ethical implications the research might throw up, with a particular focus on finding out if any research of this nature has been undertaken before in order to avoid involving vulnerable children in an unnecessary exercise of knowledge replication.

### 2.2 Freedom of information requests

Various Freedom of Information requests were issued to a number of public authorities with a view to gathering baseline data on:

- The numbers of unaccompanied and separated children potentially impacted by the changes. This was done with a view to extending and enhancing our original estimate based on figures for pre-LASPO cases (See figures in Section 1.3)
- The availability of fee-paying and non-fee paying immigration legal services within a pre and post LASPO context. This was done with a view to testing the suggestion from within Government that migrant children can readily find alternative support from non-fee paying law centres or pro-bono specialists.
- The numbers of unaccompanied and separated children acting as litigants in person within immigration tribunals.
- Whether local authorities are providing / procuring legal services to unaccompanied and separated children in the absence of financial support by the Legal Services Commission. This was an important area for data collection given that the Government had suggested that local authorities fill the gap left without issuing any formal statement about this.

Specifically, we sent FOIs to all local authorities in England asking them for information on:

- The numbers of unaccompanied and separated migrant children they were looking after or assisting and for a breakdown of those children with asylum and protection claims and those with other immigration applications.
- We also asked for information on how many children they were assisting or looking after that were 'out of scope' of legal aid for legal advice and representation, if they knew of any children being left without legal advice and or representation in their immigration claims,
- If their local authority were procuring or providing services for children out of scope.
- Whether or not policies had been formulated in writing on local authority safeguarding duties within this new legal context.

Requests were issued across the upper tiers of local government, unitary authorities and London Boroughs (N=152). The return rate was high and we received 121 (N= 80%) responses, although these were of variable depth, precision and levels of usefulness. Of these 121 returned, 14 declined to answer the FOI request. It was stated that this was because the cost of determining whether they held the requested information would exceed the time and cost limit or they could not answer because their search returned 'nil' results of unaccompanied and separated migrant children or that their data systems do not store information about separated children or legal provision for this group. This left us with a total of 107 FOI's to analyse (N=70% of all local authorities).

We also submitted FOI requests to the OISC (office of the Immigration Services Commissioner) asking them to provide information on the number of regulated providers of immigration advice for 2014 by organisation type, level of advice provided and region in the UK. We also asked for this same information for 2012 to represent the situation before the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) came into effect. The OISC levels range from 1-3 and represent the complexity of the immigration work to be undertaken. The levels include:

- Level 1: basic immigration advice within the Immigration Rules
- Level 2: more complex casework, including applications outside the Immigration Rules
- Level 3: appeals

A further FOI request was issued to the Ministry of Justice asking them for information on data they received from the Legal Aid Authority on the numbers and categories of unaccompanied / separated migrant children provided with legal aid in the years 2011/2012. Again, the purpose of this request was to compare with the original figures given to us by the Ministry of Justice (See section 1.3) and to also get a sense of the numbers of unaccompanied and separated children that may need to act as litigants in person. The relevant information was not returned to us for this FOI.

## 2.3 Primary data collection

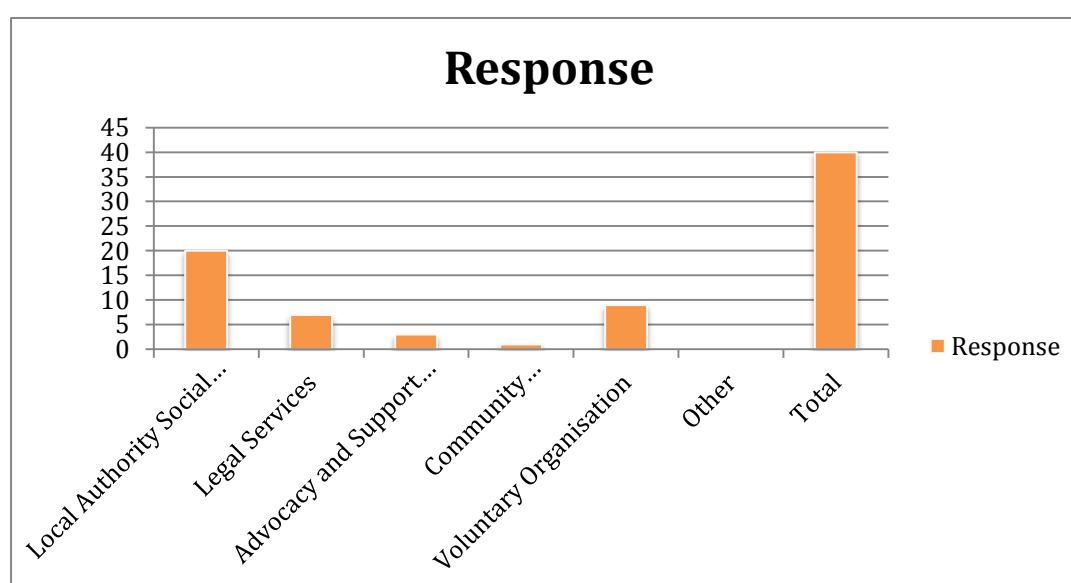
The primary data collection process involved the following stakeholders:

- Nine children and young people with experiences of going through the immigration and asylum process without any entitlement to civil legal aid. Five of our young participants were 'out of scope' of legal aid as children and 4 were young adults with unresolved immigration / asylum issues remaining from their childhood.
- Practitioners from across a range of professions and roles (see tables below) with experiences of supporting and offering services to unaccompanied and separated migrant children through the immigration and asylum process. 28 practitioners were respondents in our interviews. 40 practitioners were respondents in our online survey.

**Table 2.1: Interview Respondents**

Interview Respondents	Number = 37
The Children's Society Project Workers	8
Local authority social workers	6
Local authority social work service managers	2
Independent Reviewing Officers	1
Lawyers	4
Psychologist / counsellor	1
Advocacy and Support Organisations	6
Children and young people	9

**Table 2.2: Number of survey responses and professional role of respondents**



## 2.4 Data Collection with Children and Young People

We wanted children and young people's voices and experiences to sit at the heart of this research. Children and young people can offer us special insights into issues that might otherwise be excluded from consideration.<sup>103</sup> Furthermore, within the context of immigration processes and legal aid changes, children can be rendered powerless *vis a vis* powerful adults and processes. It was therefore felt that their participation in this research would allow them to locate and make vocal any concerns they had about their experiences and rebalance any inequality and power.

Given the sensitive nature of the research and the potential vulnerabilities of children and young people, considerable thought and consultation went into the development of the data collection tools that would be used to engage them in the research, in addition to the selection and support of participants. In this respect,

- We built on research and the established expertise and experience of The Children's Society and the researcher to explore a range of tools that would best engage young participants, be age appropriate, and not work against their best interests.
- We sought ethical review from the University of Bedfordshire, which is known for its work with vulnerable children and young people and approval from the Association of Directors of Children's Services.
- Engaged responsibly with reputable and experienced stakeholders in the identification and risk assessment of young participants.
- Worked collaboratively with professionals to make sure that children and young people had the necessary support after their participation in case of any negative emotional after effects.

## 2.5 Interview Process for Children and Young People

We developed an open-ended interview process that would allow children and young people to take the researcher through a 'narrative journey' of immigration processes and procedures. This approach was adopted because it would facilitate in-depth information gathering and prioritise the first hand knowledge of children and young people by allowing them to select and give expression to those things they considered to be most relevant. It also allowed children and young people to have a good degree of control over what they said and didn't say. This was a vital consideration in the development of the interview process in terms of ensuring that children and young people felt safe and in charge of their own stories and experiences.

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<sup>103</sup> Tisdall, E.K.M, Davis, J.M. and Gallagher, M. (2009) *Research with Children and Young People: Research design, methods and analysis*, London: Sage

Children and young people were given a choice during the interview to talk in the first person or in general and third person / hypothetical terms. Again, this was part of our commitment to ensuring the safety, agency and dignity of children and young people throughout the research. Nevertheless, all the participants shared their personal experiences and circumstances with the researcher during the interviews as part of wish to have their stories made visible and used as potential catalysts for change.

## **2.6 Data Collection with Professional Stakeholders**

An online baseline survey (using Qualtrics software) was designed to harvest information that would provide a snapshot of the following:

- How frequently professional stakeholders are encountering unaccompanied and separated migrant children out of scope
- The nature of children's immigration circumstances
- The extent to which these children are being left without legal advice and or representation
- Local authority responses / responsibilities in the face of the changes

The questions were designed with the assistance of immigration law specialists working at the frontline of these changes to make sure that they were purposeful and accurate. The survey was distributed to all key organisations implied in this territory as identified by The Children's Society, researcher contacts and snowballing. The surveys were distributed across the domains of social work, law, health and the voluntary sector. The survey was live from the period of November 2014 through to February 2015.

The same process for identifying professional stakeholders for participation in semi-structured interviews was applied and interviews took place between the months of November 2014 to April 2015. The interview questions were designed around the following 4 themes.

**Table 2.3: Professional semi-structured interviews themes**

Theme 1	Theme 2	Theme 3	Theme 4
What professionals know about the <b>reach</b> the changes have had on children	What professionals know about the <b>direct impacts</b> of the changes on unaccompanied and separated migrant	What professionals know about the <b>indirect impacts</b> of the changes on children	What professionals know about the <b>professional impacts</b> the legal aid changes have had
Numbers of children	Nature of legal outcomes.	Are the legal aid changes intersecting with existing risks and vulnerabilities	Local authority responses and obligations
Circumstances of children the changes are impacting	Access to alternative provision, private, pro-bono, voluntary sector	Are children at risk of negative emotional consequences?	Voluntary sector roles and responsibilities
Frequency encountered in their professional role	Extent to which children and young people are being left without legal advise and or representation / children as litigants in person	Are children at risk of any social consequences?	Changes to legal practices with / support of children and young people
Are there identifiable groups of children more vulnerable because of the changes	How the exceptional funding scheme is working in reality to protect children	Implications for children's futures	

## 2.7 Data Analysis

Transcribed interview material was thematically organised through a process of open coding and data reduction, beginning with a line- by- line and word- by- word analysis of the data sources. Each interview was subject to a process of open coding and patterns and incidents were identified across different participants. The codes identified within and across interviews were ranked according to frequency and those that occurred the most were assumed to be the most relevant themes.

Quotes capturing each of the main codes / themes were selected from across the coded interviews to illustrate the main themes of this research. It is these, rather than an arbitrary selection of quotes, that have been used to vivify the findings that follow in the next chapter of the report.

Given the straightforward nature of the survey, it was sufficient to largely rely on the analysis facilities of the Qualtrics software package. Occasionally, data was exported to Excel as a means of undertaking statistical procedures not available in Qualtrics. Excel was also used to systematically store and collate the results of the Freedom of Information requests that were returned.

## 2.8 Ethics Oversight

The research proposal along with all data collection tools for the research were submitted to and approved by the ethics committees of the University of Bedfordshire and the Association of Directors of Children's Services (ADCS). The research was grown around a number of ethics frameworks relating to social research more generally and research with children more specifically. The ethics of do no harm, reciprocity and voluntary and informed consent all shaped the framework of action of the research process. Written information or verbal explanations (where appropriate) about the nature, purpose and intended outcomes of the research were offered to participants and all information has been treated confidentially. Pseudonyms have been used throughout this report to protect the anonymity of participants and all place names have been removed as an additional safeguard.





## Chapter 3: The Research Findings: The Impact of Removing Legal Aid On Separated and Unaccompanied Migrant Children

### 3.1 The 'super vulnerability' of separated and unaccompanied children forced to the edges of the justice system

*Vanessa is an advocate for vulnerable children and young people. In her role she works with undocumented migrant children and young people and they make up around 40 % of her casework. Many of these children and young people are unaccompanied and separated minors. During the research interview with Vanessa, she helpfully outlined the immigration circumstances of all the unaccompanied and separated migrant children and young people she knows. One of the young people she mentioned to us was Blessing.*

*Blessing is originally from Nigeria. When she was a very young child she lost her mother. Immediately following this loss, her 'aunt' and 'uncle' organised fake documents to pretend that she was their child and moved her to the UK under this lie. The 'aunt' and 'uncle' never regularised their status or indeed that of Blessing's, and all were living under the radar of the UK authorities. For years Blessing lived as a domestic slave and suffered in silence. At the age of 17, Blessing was discarded by her aunt and uncle, made homeless and left destitute. She eventually found the advocacy organisation that Vanessa works for and they supported her through a number of processes, including immigration.*

*An experienced solicitor was found who advised Blessing to submit an Article 8 ECHR claim for leave based on the right to private and family life. This was against Vanessa's judgement. She felt that the case had too many indicators of trafficking to ignore and that an international protection claim should have been submitted instead. Because the solicitor did not acknowledge trafficking, Blessing was not entitled to legal aid to support her application for leave. In addition to this, she could not afford to pay the administrative fees for the Home Office. The Home Office refused to believe she was destitute and delayed processing her application for a year, leaving her in a dangerous legal limbo. Vanessa eventually managed to persuade the solicitor that trafficking should be raised and Blessing has now submitted an asylum claim. Blessing did not want to be referred into the NRM as she wanted to move on with her life and put the past behind her.*

In Chapter 1 of this report, the comment made by the Justice Secretary about the "straightforward" nature of most immigration cases was highlighted. Blessing's story above demonstrates the opposite, and while her story is very clearly her own, it tells a broader story about the 'super vulnerability' of many separated and unaccompanied migrant children who are no longer entitled to immigration civil legal aid yet have complex cases. Indeed this research has collected stories from children, young people and professionals that show how their lives are not "straightforward" but rather are characterised by multiple variables of vulnerability that undermine their chances of accessing various rights and protections. Many of the drivers of their vulnerability arise directly from the precarious and complex nature of their immigration circumstances

and statuses. These children, therefore, require additional support to access legal advice and representation as a way of alleviating their vulnerabilities rather than additional legal barriers that push them to the edges of justice system and heighten their vulnerabilities. While our findings on the circumstances of separated and unaccompanied migrant children that are outside the scope of legal aid resonate in many ways with the concept of '*vulnerability*' that is often discussed in the child migrant literature (see page 3 of this report), we prefer to make use of the concept of super-vulnerability in this section. This concept captures the ways in which vulnerability in one area can create and increase vulnerability in others. It therefore better conveys the severity and complexity of children's circumstances. This concept does not unnecessarily sentimentalise the children at the heart of this research but rather evokes the very real ways in which the interplay between their childhood, migration status, and situation as children without legal caregivers, works to generate a fourth vulnerability and that is their vulnerability as human rights / child rights subjects. As can be seen below, many of the circumstances suggest a heightened risk to these children of a broad range of human rights / UNCRC derogations and in particular their right to life, survival and development.

In the formative stages of this research, we mapped the categories of unaccompanied and separated migrant children that we considered to be directly affected by the legal aid changes (see chapter 1, table 1.1). The majority of these categories were subsequently reflected in the stories of the interviews. Examples of the immigration circumstances and vulnerabilities that were drawn to our attention during the course of the interviews ranged from;

- Children in cross border adoption arrangements
- Trafficked children where the NRM process had not been known / considered or where their circumstances had not been diagnosed
- Children living in private foster care with strangers, including with unscrupulous and exploitative adults
- Children separated from their families as a result of child protection concerns.
- Children left with unresolved immigration status after the death of a parent.
- Children removed from the family and joint immigration applications due to criminal activity, such as gang membership
- Children left without documents or status as a result of breakdown of family relationships
- Destitute irregular children sofa surfing,
- Children brought to the UK and abandoned by their parents shortly after arriving without any attempt to resolve their status beforehand
- EU children separated from their families,
- Independent migrant children from non-asylum sending countries living an irregular life until they can afford legal costs
- Unaccompanied asylum seeking children applying for an extension of leave based on Article 8 ECHR.

- Children who have overstayed their leave and not renewed their status
- Stateless children and young people born in the UK without having had their status regularised

Many of the immigration circumstances of unaccompanied and separated migrant children that were raised in the interviews as being out of scope of legal aid reflected those that were also identified by professionals in our survey as being the most frequently encountered sets of immigration circumstances for the children they see in their practice, i.e. those encountered 'often' or 'sometimes' as opposed to 'never' or 'rarely'. The results can be seen in table 3.1 below.

**Table 3.1: Frequency of Children's Immigration Circumstances Encountered by Survey Respondents (N=40 participants)**

Category of circumstances	Often	Sometimes	Total
A trafficked child who has not been referred to a first responder and/or the National Referral Mechanism (NRM)	5%	43 %	48%
Trafficked children who have been referred to the NRM but are waiting for a 'reasonable grounds decision'.	14%	50%	64%
Trafficked children who have been referred to the NRM but have received a negative 'reasonable grounds decision'.	9%	41%	50%
Separated migrant children in the care system who do not appear to have a clear immigration status and this status remains unresolved	46%	31%	77%
Separated children in private fostering arrangement (e.g. in the care of an extended family member, family friend, member of community) who do not appear to have a clear immigration status and this status remains unresolved	5%	31%	36%
Children who arrived into the UK as dependents of EU citizens but are no longer in the care of that parent / family member.	5%	33%	38%
Separated children who have come to the UK at an earlier age but have since been abandoned by or separated from their parents and/primary care giver (e.g. due to child protection issues, domestic violence, death, family breakdown)	8%	44%	52%
Children born in the UK to non-national parents who have never regularized their own status or that of their children	26%	34%	60%
Children born in the UK to a non-national parent and British parent (or one with settled status) but it proves difficult to evidence the child's citizenship rights because there has	16%	32%	48%

been a family breakdown.			
Unaccompanied and Separated migrant children seeking leave to enter or leave to remain in the UK on non-asylum grounds including under the immigration rules and the non-protection elements of the European Convention on Human Rights. This category of children could entail;	14%	54%	68%
Unaccompanied and Separated migrant children who have reached 17.5 and are making a non-asylum grounds application for an extension of their existing leave (this may constitute a significant proportion of unaccompanied children known to services)	34	42	76%
Unaccompanied and Separated migrant children granted UASC leave for 2.5 years but this leave expires before they have reached 17.5 years of age and where they are making an extension application on non-asylum grounds	26%	28%	54%
Unaccompanied and Separated migrant children appealing a decision about their leave on non-asylum grounds	36%	33%	69%
Unaccompanied and Separated migrant children seeking leave to enter or leave to remain in the UK on grounds of long residence	32%	22%	54%
Unaccompanied and Separated migrant children making applications to stay in the UK on a mixed case basis (because they have an asylum / 'international protection' claim mixed with a non-asylum claim). Only the asylum/'international protection' element of the case will now be funded by legal aid.	24%	32%	56%
Separated migrant children who initially arrived into the UK with family but were not included in the asylum claim of their primary care giver and have since separated from their family (and do not have a claim for protection in their own right)	0%	27%	27%
Unaccompanied and Separated migrant children who have been age-disputed and placed in immigration detention	11%	27%	38%
Unaccompanied and Separated migrant children involved in criminal justice processes who have had their leave revoked as a consequence of criminal activity and who face deportation.	5%	14%	19%

### 3.2 Out of Scope: Out of Sight

*Florence lived in the UK as an undocumented child for many years. She arrived in the UK as a very young child with her mother allegedly to visit a family friend. Her mother left her in the care of the 'friend' who was a stranger to Florence and told her that she would return to collect her. She never did. The woman she had been left with was disabled and Florence was responsible for her physical care and the housework. She was neglected, was often without food, and at times locked out of the house with nowhere else to go. An 'uncle' would regularly visit the house. He was a known criminal with a volatile personality and Florence would often be witness to physical arguments between the man and woman. Florence became very ill as a result of the violence, neglect, and all the responsibilities she felt she had towards the care of the woman and her home.*

*Florence sometimes went to school, and her teachers, upon noticing her underweight and careworn appearance, made a referral to social services. Social services sat on the referral for years, not doing very much with it, only occasionally visiting Florence and not doing anything about her undocumented status. The woman that Florence lived with was also undocumented and she had made an arrangement with friends with status to pretend they were Florence's carers. Florence would have to go to their house whenever social services wanted to visit and was also forced into the pretence of calling them 'mum' and 'dad' and doing as she was told. When Florence was 16, the woman decided that she did not want her around anymore. She was left homeless but with the support of an advocacy organisation, became a looked after child. During all this time, Florence had always assumed that her stay in the UK was unproblematic and did not know that she was undocumented.*

The above case study demonstrates many themes and issues that are relevant to this research. We use it here to illustrate the point that many unaccompanied and separated migrant children who have been placed out of scope of legal aid support are invisible to legal services that can assist them to regularise or enhance their status, as well as to welfare services that are supposed to have an interest in securing status for children as a way of protecting their best interests.

#### 3.2.1 Invisibility

This research identified two kinds of invisibility experienced by unaccompanied and separated children. The first is where children and young people are hidden and living various underground lives 'out of the orbit' of formal services. They either do not want to resolve their status or do not know they need to. This scenario is demonstrated in the quote below:

*"Some young people don't actually realise, particularly some of the ones that were born here, don't actually realise that they don't have status until they get to 16 or 18, when they are applying for university or sometimes like medical bills or other things that make them realise that actually they don't have status, so it was never done before because they weren't really aware of it, or*

*they might have known when they were younger but they were too young to understand what any possible way they would try* **(Charlotte, Service Manager, Migrant Children and Young People's Support Project)**

Furthermore, as a consequence of the legal aid changes, evidence from this research has indicated that many children cannot afford to secure legal support for themselves and are therefore avoiding the legal problem and support altogether. The quote below highlights these points:

*"I don't think it is right. It means that people that need help don't come out. They think of the consequences of what they would have to do.....I know a lot of people who have given up, people in my situation. They leave it, no matter how hard it is. They haven't got money for that and they can't do anything. Money is a big issue. It shouldn't be like this. We are still kids."*  
**(Abiola, 18, talking about her experiences of the immigration process at as a child out of scope at the age of 16)**

Other children are not 'out of the orbit' of formal services as such but are not presenting to legal services because the formal services that they are involved with are either failing to identify or are ignoring / delaying their immigration needs. Interview respondents gave a number of examples of local authorities not addressing children and young people's immigration issues. In one example we were given, a boy of 8 years old, with a full care order, was issued with a removal order to the Democratic Republic of Congo because the local authority had failed to address the extension of his discretionary leave on non-asylum grounds. The solicitor described this issue as "urgent" and "outrageous."

In another example, we were told about a 17 year old boy from Vietnam. He arrived in the UK at the age of 11 years old to stay with his cousin. This arrangement broke down after a couple of weeks and he was taken into care after presenting at a police station. His advocate stated that the local authority had "*sat on it for years*" and it remained unresolved at the point where he was just about to exit the care system. This phenomenon is also highlighted by an advocate in a project working with undocumented children and young people when she says the following about immigration status:

*"For looked- after children, often it's just not explored or not identified so they might not realise."* **(Cara, advocate for an undocumented children and young people's project)**

This is a particularly problematic finding. Identifying and supporting a child with their immigration status is central to finding a durable immigration solution for them that is in their best interests and that can be incorporated into their care plan. The Statutory Guidance for Local Authorities on the Care and Protection of Unaccompanied and Trafficked Children highlights this as a key responsibility for all local authorities in their care and support of

unaccompanied and separated children.<sup>104</sup> When this does not happen, children and young people risk being placed into precarious and potentially dangerous conditions either in the UK or elsewhere. It is especially important to make sure that young people exit the care system with an immigration status that has been resolved given that they are at a heightened risk of social isolation upon leaving care and will have limited or no financial psychological means to help themselves through costly and complex immigration processes.

### **3.2.2 Transitional crisis points: Legal aid, age and policy transitions**

Our interviews found that while all age groups of separated and unaccompanied migrant children out of scope are vulnerable to the impacts of these new civil legal aid changes, for all the reasons outlined above, the most visible impacts are upon older children standing at the threshold of their majority between the ages of 16-18. Indeed, as has been suggested in Charlotte's quote on the previous page, there are significant legal, social and bureaucratic transitions that happen at this time in a child / young person's life. These generate transitional crises and it is these that either propel children and young people into having to regularise their status or to even finding out that they have an irregular immigration status in the first place. The key transition points that were identified by professionals and young people as prompting their immigration claims included:

- Making applications to higher education institutions.
- Entry into adulthood where immigration status impacts entitlements to public services such as healthcare
- The submission of fresh asylum and / or human rights applications in conjunction with extensions of leave for unaccompanied asylum seeking young people.
- Applications for citizenship for stateless children and young people / applications based on length of time spent in the UK
- Dissolution of informal care arrangements for those approaching adulthood because of their age
- Dissolution of abusive informal care arrangements / trafficking where the young person ceases to be a child.
- Homelessness for older children where there has been a breakdown of family relationships and where families are no longer obliged to accommodate their children.

Practitioners and young people identified that young people aging out of their childhood are especially vulnerable as a result of the legal aid changes and also highlighted the effects of this vulnerability. Their experiences have shown that blocking access to legal advice and or representation at this transitional point in children and young people's lives certainly hinders the resolution of their legal status before they turn 18. Unaccompanied and separated migrant children experience time-limited rights, entitlements and protections as part of

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<sup>104</sup> Department for Education. Section 14 and Section 35  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/330787/Care\\_of\\_unaccompanied\\_and\\_trafficked\\_children.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330787/Care_of_unaccompanied_and_trafficked_children.pdf)



their status as children. If their immigration circumstances are not sorted out at this critical juncture, their future, well-being and security, therefore become threatened.<sup>105 106 107</sup> The evidence collected for this research has shown that the barriers to legal advice and representation created by the legal aid changes have seen a number of serious adverse consequences for young people as they enter into their adulthood having not resolved or enhanced their legal status.

At 'best', the changes have left these young people stagnant, with the pathways towards their educational and occupational goals closed. The majority of children and young people we interviewed or heard about in our interviews could not, despite having the entrance qualifications, take-up their places at university. Their status issues had either not been resolved or extended in time and they were not entitled to access student finance and were expected to pay international fees. As such, they could not afford to pay for higher education. Examples of the courses young people had been stopped from studying included law, engineering, nursing, social work and international business. This finding is represented in the quotes below:

*"It was getting to the point where I wanted to go to University. I knew what I wanted to do and I knew what I wanted to study and wanted a career and I thought I would be able to go to Uni, but I couldn't."* **(Alyssa, aged 20, 18 when first tried to extend her legal status and out of scope)**

*"Teenagers here have a bright future but for some people like me, we have to take a longer route. I wanted to study law. Why do I have to understand what it is to struggle?"* **(Abiola, aged 18, but out of scope at 16)**

At worst, the barriers to accessing legal support brought about by the changes place young people at an elevated risk of removal to countries that they have little, if any, connection to and that undermine their actual or perceived safety. This is because as soon as they enter into adulthood they are generally left without frameworks of protection to stop their removal. This is demonstrated in the quote below:

*"When I turned 18 I had the company responsible for deportations calling me, texting me constantly saying 'you have broken the law, you have committed a serious offence and we need to know when you are going to leave'. It was so frustrating. Right now I don't feel like an adult and the way they handled me was just not right. They told me I was a criminal. I said to them 'excuse me you are not talking to me in the right manner, why are you talking to me like I am a criminal?' They said to me 'well madam, you are 18 now, you are an*

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<sup>105</sup> Chase, E and Allsopp, J (2013) "Future Citizens of the World?" The Contested Futures of Independent Young Migrants In Europe. Refugee Studies Working Paper, Series No. 97. Barnett Papers In Social Research. Working Paper 13-05. Department of Social Policy and Intervention and Refugee Studies Centre, Oxford University. <http://www.rsc.ox.ac.uk/files/publications/working-paper-series/wp97-future-citizens-of-the-world-2013.pdf>

<sup>106</sup> Chatty, D (2014) Becoming 'Adult'. Conceptions of Futures and Well-Being Among Young People Subject to Immigration Control in the UK. Refugee Studies Centre, Oxford University. <http://www.rsc.ox.ac.uk/research/becoming-adult-conceptions-of-futures-and-wellbeing-among-young-people-subject-to-immigration-control-in-the-uk>

<sup>107</sup> Kohli, RKS and Connolly, H (2009) See note 12 above.

*adult and this is your issue, you have broken a serious offence'. So at this point, I was very scared, thinking 'oh my God, what am I going to do if I get deported?'" (Yemi, recently turned 18 but 17 when making immigration application out of scope)*

Many of our participants highlighted that, for young people out of scope who had failed to resolve their immigration issues before turning 18, living with the pervasive fear of being returned at this point, was exposing them to higher risks of severe mental health and existential crises. The severe consequences of this are compellingly demonstrated in the quote below by a social worker. The young person she was referring to is an 18-year-old care leaver who had experienced a family crisis as a teenager. He was taken into care, applied for an extension of leave on his family visa at 18, was denied, appealed, then denied again.

*"He was isolated in his flat and this young man's mental health has deteriorated very fast and he ended up being sectioned under the Mental Health Act for 28 days with psychosis. He continued to be supported by the leaving care team who are now saying that while his mental health is stable, it has been very, very difficult to get him to go back and see his solicitor. At this moment in time this lad is not entitled to legal aid and so we have been struggling because of his mental health status." (Kathy, Social Worker)*

Many participants addressed the ways in which a delayed resolution of children's immigration status could negatively impact upon their entitlements to public funds. This feature of the findings is best shown in the quote below from an independent reviewing officer (IRO). He highlighted to us the desperate circumstances of a 17-year-old trafficked girl with a long term and serious illness. Her indicators of trafficking were not originally identified and she sought to regularise her status through non-asylum immigration proceedings as an out of scope child. The IRO spoke of how they had fought for the young person's health care as part of their safeguarding duties but about how this would become more difficult, if not impossible, for the young person upon them turning 18.

*"This girl came to us when she was 17 with nowhere to live. And then she went into foster care. She has got a very serious condition and we had to actually fight for her to get free health services. It is a very serious condition and so we managed to get the health service to agree for all her treatment but if she requires any other treatment she will have to pay for it. So this is very serious." (James, Independent Reviewing Officer)*

Other participants highlighted the dangers of destitution for young people turning 18 whose immigration applications have been put on hold as a result of barriers caused by the legal aid changes. Their destitution is highlighted by the quote from 18 year old Yemi below:

*"I can't work and I cannot do anything now that I am out of college so this organisation they help me in terms of vouchers, bus passes and they have even given me therapy because this has affected me mentally." (Yemi, 18)*

The professionals that took part in our research raised concerns about the additional risks faced by destitute young people to exploitation, serious harm and criminality. These were not imagined consequences that were suggested to us but rather were evidence-based observations based on their work with young adults who have been rendered destitute as a result of these age and policy transitions. Indeed, we heard of young people, just out of their childhood and vulnerable, being forced to sofa surf, sleep on night buses, or in parks as a result of this awkward transition. In situations like these, it is hard to imagine that separated and unaccompanied young people will safely be able to find the funds to seek legal support to regularise their status. It is therefore imperative that they have access to legal aid and legal support to resolve their immigration circumstances before they age out of their childhood and are forced to face destitution with all the material and psychological hardships that this brings. Indeed, the quote below demonstrates the significance of this:

*“The third young person, she approached the local authority when she was 17 and they hummed and hawed about it and refused and accepted, refused and accepted. By the time they actually said they had a duty to her she was 13 weeks away from turning 18. Because they didn’t look after her for more than 13 weeks they had no on-going duties to her. If you read her files from social services, it would make your blood boil. She was sectioned at one point, She was so unwell. So she stayed with a friend for a bit. She was outstaying her welcome so if a bloke took a shine to her she would stay with him for a bit. There were things that she would not have done otherwise if she didn’t need food and somewhere to stay. So there was a long period when she was taking risks with her behaviour and she was raped at a point when she was sleeping in the park because she hadn’t got anywhere to go that night.” (Angela, Solicitor, Law Centre)*

Denying children access to legal aid to support them with their immigration claims, therefore, heightens their risk of destitution as they age out of childhood because of the barriers it creates to accessing legal support. The poverty and hardship they face when destitute, also heightens the risk, thereafter, of them never being able to regularise their status or taking grave chances with their safety to do so.

### 3.3 Children Out of their Depth

*Yemi, introduced above, was 9 years old when she came to the UK to stay with an aunt. She was told by her mum that her visit was a holiday. Yemi’s aunt was not a stranger to her. Her aunt had been to Nigeria a couple of times before and she and Yemi had spent some time together. Yemi did not travel to the UK with her mum but rather was given instructions to follow an unknown man on and off the aeroplane. Shortly after her arrival in the UK, Yemi was told that her mum had gone missing. Yemi is 18 now and has had no contact with her mum since. She has been well looked after by her aunt and has enjoyed growing her new life in the UK. She has always thought that*

*she was British and only recently found out, at the age of 17, when applying for university, that she wasn't. Anxious about her lack of status, she immediately set about trying to secure legal support to help her regularise her status.*

*She relied upon a friend in a similar situation to recommend lawyers to her. Yemi knew that the stakes were high and she feared removal to a country that she no longer knew. She needed legal advice to support her through her application for leave.. She explained to us that she became terrified all the time. She was not only fearful of her application being rejected, but also about raising the funds to pay for her lawyer which totalled £3,000.. In the end her application was rejected and she was faced with the prospect of the uncertainty of further costs to appeal the refusal. She felt out of her depth. Preparing the paperwork and raising the funds for her original application had been difficult enough but now she was faced with a process that was even more complex, intimidating and unrealistic in terms of costs. There was no way she could carry the burden of continued and escalated costs. Throughout this process, Yemi was a child and at college. Her college attendance and work were severely impacted and she could find no escape from or peace with her situation. In addition to all these burdens, as soon as she turned 18, she was sent letters and texts from Capita warning of her impending return and emphasising her 'illegal' stay in the UK.*

### **3.3.1 Complexity of cases**

The majority of children's cases that were brought to our attention during the course of this research were either severe or complex in nature and process. Few were simple. They therefore emphasise the need for separated migrant children to have reliable and knowledgeable legal professionals to assist in the investigation, analysis, diagnosis and preparation of their cases. But this research shows that instead, children and young people encounter many obstacles to accessing legal support, and end up out of their depth in trying to overcome and avoid these. Children addressing their immigration claims on their own are at an automatic disadvantage in so far as the laws, processes and systems governing their circumstances are profoundly complex. Indeed, so much so that the Government has made it illegal for those that are not qualified by the OISC<sup>108</sup> to disseminate immigration advice. Within this context it seems paradoxical that vulnerable migrant children are being cut adrift from legal services to support them with their immigration applications. Many of the non-legal professionals from this research, including those with considerable immigration law experience, suggested that many of the laws, rules and processes of the immigration apparatus are so specialised that they are challenging enough for them to access, let alone for separated migrant children. The framework of this thinking can be seen in the quote below from an advocate working in an organisation supporting undocumented and separated children:

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<sup>108</sup> Office of the Immigration Services Commissioner  
<https://www.gov.uk/government/organisations/office-of-the-immigration-services-commissioner>

*“The importance of getting immigration advice is clear in the case of Abiola. EU law is such a specialist area in terms of what applicants are entitled to. It was hard enough for me to access advice about it, let alone for Abiola to access it.”***(Cara, advocate for an undocumented children and young people’s project)**

It is also evident in the following quote by a solicitor who was asked to take on a case of a separated child because a local authority had misdiagnosed the child’s legal needs and appropriate route for regularisation.

*“I have one child, for instance, where her father had raped her. This was her father. She was 15 and she was brought to the UK when she was 6 and has no status. It is those types of things. We are getting severe and sensitive cases. Nothing has been done on? her case. The only reason why she was brought to the attention of the authority is because she was raped by her father who was settled. He is now in prison. She has no status. Again, she was referred for citizenship. However, this is not a citizenship matter. This is an immigration matter. We are working towards immigration and we are investigating the citizenship, but clearly the immigration needs to be sorted before we can do citizenship stuff..... They are the complex cases, the majority. Not all of them. There are simple cases that should be done by OISC level 1 and 2 but many of the organisations are getting nervous that even they think that the simple cases are not that simple perhaps and I agree it is quite difficult. The diagnosis and assessment is quite difficult.”* **(Julie, Solicitor)**

The quote also tells us that it is not only professionals from outside the legal profession that find children’s applications to be a bewildering legal maze. Even professionals who are qualified and registered to give immigration advice find the territory of children’s non-asylum immigration claims a tricky territory to get a handle on. Certainly, this is a recurring theme across our interviews and is further demonstrated in occasional accounts of immigration legal practitioners incorrectly appraising children’s immigration circumstances and channelling them through the incorrect immigration pathway, such as excluding trafficked children from the international protection route. Again, all this evidence counteracts the assumption that was made during the making of LASPO that children’s immigration cases are “*straightforward*”.

*“I don’t know why they didn’t accept trafficking. We’d received a very experienced solicitor and I’d sort of been going, “I do think there is definitely other elements here” but they didn’t want to go down that route and you know, it’s been an ongoing disaster.....They eventually recognised it and put in an asylum claim and that is going to court”* **(Vanessa, advocate for children and young people)**

### **3.3.2 Children and the Use of Private Solicitors**

The complexity of children’s cases, as Yemi’s story at the beginning of this section highlights, arises not just from the nature of their immigration circumstances, but also very clearly from the problems that can arise for children from having to use private legal advisers / representatives. As in



Yemi's story, and in others we heard about, the overall costs of paying for private solicitors can be high, uncertain and prolonged. In Yemi's case these costs were derived from having to pursue an appeal. This places children at a significant risk of either avoiding the resolution of their cases, limiting their choices in terms of who they can afford to advise / represent them with possible implications for legal quality and outcomes, and forcing them into impossible decisions around what legal costs to prioritise and exclude. Indeed, some children and young people face an array of costs ranging from the legal advice and or representation itself, application fees, disbursements and, at times, the costs of instructing expert witnesses.

### 3.3.3 Going it alone

It is not only the nature of children's immigration circumstances that are complicated but professionals and young people also told us of the ways in which proving entitlement to their claim is arduous and burdensome. Indeed, children and young people have demonstrated across the interviews just how difficult it is to give linear and confident answers to some of the questions that are asked of them in the paperwork. This point comes alive in the quote below by Josephine who was introduced at the beginning of this report. She was adopted into the UK and got confused in the application form about the meaning of 'parents' in the law.

*"I had to fill out the form and they will ask you the date of birth of your parents and for my adopted parents I had to leave it, it was hard to fill it and nobody can help me apart from me. I have sent my application and I haven't heard back from my solicitor. I am worried because of that part. I left my adopted parents last year. It is more complicated. It is not possible for proof. It will be so hard. It is stressful"* **(Josephine, age 17)**

In many immigration applications for regularisation, the expectation is that the applications submitted build a solid and coherent picture of the child's life, relationships and achievements in the UK. One of the professionals that we interviewed spoke of how, within the context of the legal aid changes, this has forced children and young people into being their own "*mini solicitors*". She spoke of children making judgements about who to ask for evidence, what to include, and even at times children and young people having to make sure the accuracy of the information submitted in immigration forms.

The children and young people that took part in this research, illuminated just how draining and difficult the whole process of evidence gathering is and in addition to this, how isolating it can be, even when they have managed to source legal support, either privately or through the voluntary sector. In these circumstances, the onus still remains very much on children to source and accumulate evidence of their identity and right to remain in the UK. We return to Yemi and a section of her story to illustrate this and also to 18 year old Doris, reflecting on what it had been like as a child to collect the evidence:

*"At this point, I guess I was only 17 but I was handled like I was an adult. I lived with my aunt, she was my guardian and they didn't even ask any questions to my guardian, it was more, 'no, this is Yemi doing this'. During this*

*process it was very hard and it was very difficult for me to get my point across, because they kept making loads of mistakes, So, I came here when I was 9 and because I was talking with them online, they didn't really understand my story, so mistakes were made like 'you were 3'. Silly mistakes they kept making and so it was difficult just going back and forth and back and forth. I had no one helping me and I had to find all the information, this was down to me. I had no one advising me on anything."* (Yemi, now 18 but 17 at the point of making her first application)

*"You had to collect all the evidence. You had to go to friends and to school, primary school. I had to get documents back from Nigeria like birth certificates. It was so stressful. I had my GCSE's and AS levels and sometimes I felt embarrassed about asking and going back to my primary school for them to write a letter because maybe they knew what I needed it for."* (Doris, now 18 but 16 when making the claim)

Professionals also raised concerns about the huge expectations that were being placed on children and young people to effectively substantiate their own existence in the UK amidst complicated family and migration circumstances. This is evidenced in the quote below by an immigration solicitor in a voluntary sector legal centre:

*"Now they all have complex cases where we have then got a child with 8 or more years residence in the UK under 18 but no family to help them get evidence and a chaotic upbringing because they have been abandoned. They have been sofa surfing. They haven't registered with GP's. They haven't necessarily attended school all the time. So they have got to piece together evidence of their presence in the UK. To make an immigration application you are going to have to show long residence."* (Angela, law centre solicitor)

Our research also demonstrates the problems children and young people have in independently identifying solicitors that are suitably qualified and grounded in immigration law, processes and outcomes. Whilst we acknowledge that separated migrant children were often responsible for finding their own solicitors even when legal aid was available to them, this problem is likely to have amplified because of LASPO, and a likely increase in the use of private solicitors by children. With legal aid, legal and quality controls built in that help show that using private solicitors is more risky in terms of quality. Furthermore, legal aid solicitors providing immigration advice are subject to additional regulation and accreditation as well as peer review of their files. Yemi's quote below demonstrates the difficulties around accessing private solicitors:

*"I didn't know [whether] I trusted them?" The only thing that was on my mind was getting my immigration sorted out. I didn't care how or who the right people were to go to, it was just getting it sorted out and just getting the weight off my chest, so that was how it was done."*

This same articulation of desperation is further addressed in the quote below, about a 17-year-old Nigerian girl who, not knowing where to look for good

legal advice to resolve her case, sought unqualified and anecdotal advice from within her community:

*“She didn’t have status. She came in on a tourist visa which had lapsed for many years. So at the time when I left her case before she’d got to 18, we advised her about solicitors but instead of going to see a solicitor, she’d go and see Nigerian people in the street and stuff who’d say ‘oh no, that’s bad advice, go here’ and so time ran out and ran out and we eventually got the Refugee Council involved and in the final review from the Refugee Council, who seemed to know a lot about the law, said, ‘okay, I’m dealing with this as a trafficking case.’” (James, independent Reviewing Officer)*

An emerging concern within the interview data related to the impact of the changes upon those children who did manage to secure legal support from voluntary sector legal organisations, either through their own volition or the support of an advocacy organisation. In this respect, therefore, the Government’s suggestion that those out of scope can find good enough support from the voluntary sector or elsewhere is not as simple as it may appear. Indeed, it was suggested to us that children are still remaining out of their depth in these circumstances owing to the post-LASPO context and the limited capacity of these places to support them as much as children may need or indeed like. The availability of voluntary legal support is discussed further in section 3.5 Lucked In and Out of Justice.

One practitioner, who had worked in this field for a considerable period of time, noted that children with legal advisors were now even having to write, and largely support themselves through, their own application forms, whereas legal aid solicitors had previously supported children with this. As is probably very clear throughout the course of this research, many separated children have endured harm, violence, abuse and exploitation at the hands of their carers or those close to them. In these circumstances, it may be punishing and harmful to expect a child to gather evidence. This research has therefore shown that the advantage for children when they do have access to pro-bono or voluntary sector solicitors is therefore limited and usually relates not to shifting the burden of evidence gathering from children onto adult experts, but in having a legally qualified person to give the application the seal of approval before its submission. Given the overstretched nature of services within a post-LASPO environment, we would suggest that whilst we cannot state that this is something that is solely characteristic of LASPO, it will undoubtedly have become more common an experience for children than before.

We also met a child who had directly come face to face with the Home Office alone. He was a 17 year old boy whose claim for asylum did not meet the legal aid merits test and he was forced to represent himself before an immigration judge and a Home Office lawyer. Whilst the exclusion of his case from legal aid support was not a consequence of LASPO, his experiences of the process do highlight some relevant points given that non-asylum immigration circumstances are also heard before tribunals and entail a similar process. The issues raised by him included being in an intimidating environment, being compelled to contort his answers to the agenda, the



power of the state and not being able to convey the bigger picture about his need / wishes to remain in the UK.

*“The first time I see the judge, I see a king. Everybody get up. This is not my humanity, yes he study and is educated but in the end he same as me, me the same as him. We are all the same. It was very horrible. He ask me some questions and every question he gives you the answers. In 10 minutes he gives me the answers about my case and I had not answered everything. I was not talking, saying ‘yes, yes, yes.’ (Brahim, Age 17)*

#### **3.3.4 Risks and exploitation**

All participant groups raised very serious concerns around the grim safety implications of expecting children to source the expensive funds that are required for the payment of legal fees in addition to the administration costs of immigration applications. Indeed, all participants, including children and young people highlighted the ways in which this renders them vulnerable to all sorts of dangerous people and environments. Practitioners working in this territory are entirely aware of the significantly elevated risks of unaccompanied and separated children to exploitation and harm at the hands of powerful adults who are more than willing to take advantage of their structural marginalisation and powerlessness. This has always happened and, drawing from their knowledge of this, it was suggested by all professionals we interviewed that these risks have now grown within a post-LASPO context. From their experiences of working in this territory, they highlighted the risks to children of trying to accrue legal fees through exploitative work and relationships, such as working in the loosely controlled construction industry, relationships characterised by sexual exploitation and violence, and their vulnerability to criminal networks. These fears are expressed below:

*“The brothers from India. So, the older one, who is 20 now, has been working as a builder for a long time. I think to pay rent, so it is private accommodation, and look after the younger brother and also pay for the fees. He worked as a child to do that.” (Nadia, Advocate from a support project working with unaccompanied and separated migrant children)*

*“We have seen young people – it wasn't to do with legal aid, it was just to do with being at the end of an asylum claim and being very desperate and throwing herself at the mercy of various immigration solicitors, one of whom sexually assaulted her, you know, so there is that kind of very risky...” (Charlotte, service manager, migrant children and young people’s support project)*

The consequences of children and young people feeling so out of their depth in immigration systems and processes are not hard to imagine, and this research has also uncovered emerging evidence that children might be avoiding their legal problems, by either remaining or entering into underground worlds, as a way of avoiding confusion, anxiety and immigration outcomes they fear will be compromised through their lack of access to legal support and that ultimately will not match their own hopes and expectations of their futures and well-being. Again, while we cannot claim that this is a

phenomenon that is entirely unique to the legal aid changes, the practitioners that participated in our research emphasised the increased likelihood of this.

### 3.4 No Peace Without Justice

*Abiola is 18. As a young child she and her family migrated from Nigeria to Sweden. When Abiola was 13, the family moved again and this time came to the UK. Abiola had a Swedish passport. The relationship between Abiola and her mother was up and down and at the age of 16, Abiola was made homeless. It was at this point that her immigration circumstances became problematic. Abiola needed to secure accommodation in a hostel for young people and she tried to apply for a job to support herself. For both these things, she was required to show her passport as proof of her identity. Her mother had her passport and there was no way Abiola was going to get it in her possession. In addition to the passport requirements, EU law required for her to demonstrate her connection with her mother as a way of obtaining benefits. Any evidence she did have about her identity was not sufficient, such as her mum's national insurance number or proof that her mum was claiming allowances. These issues were compounded by the fact that in Swedish law she could not apply for a Swedish passport independently until the age of 18.*

*Abiola was in a position where she could not find a place to live or work. Instead she relied upon friends, sofa surfing from one day to the next. She eventually got in touch with Connections who then put her in touch with a specialist project for undocumented migrant children who set about trying to resolve her legal status. This was a complex area of EU law and Abiola was not entitled to legal aid to assist her with this. The separation from her mum, in conjunction with the rejection from support services, places of work and legal aid, all conspired against her and she felt isolated and unrooted. Not being able to access legal aid was the final straw for her in terms of the financial burden to add to all the others she had. Her self-worth and identity was negatively impacted and she could not begin to find peace with her circumstances until her was able to source and secure good legal advice and support for her. Given the changes to legal aid entitlement and the nuance of EU law this process took some time, placing Abiola in both an emotional and legal limbo.*

An emerging theme from this research was the way that the law, or more specifically, exclusion from legal aid support, was not only causing negative experiences of the legal process for children and young people, but also a negative sense of their own identities. Indeed, Abiola, during her interview highlighted that being denied access to justice in this way:

*“forces you to grow up because you have no choice. Your life depends on the money and you need the money to move forward (with your case). All you have in your head is sorting out your life. It is so much to save up for a solicitor that you can't concentrate, you have so much in your head. It is the last thought you have at night and when you wake up. They (the Government) know we are coming so they make it difficult intentionally. It makes me feel not wanted.”*

This sentiment was echoed by Josephine who we have mentioned a couple of times throughout this report. She pointed out that her exclusion from legal aid, and the difficulties she faced in having to navigate these, made her feel different:

*“They are making people suffer, you feel ‘out of place’. You have to pay and even although you pay you are not even sure because it is so, so hard. You might not even get all the papers they want and they will deny it. We are human. They have to help young people. To me, it is all about identity. For me to be British I will be having more freedom to go and come.”*

In addition to evoking feelings of displacement and difference in children and young people, the emotional impact of having to take charge of their immigration circumstances with no or limited support, was identified by children, young people and practitioners as leaking into their experiences of everyday living to undermine their achievements and experiences of schools, friendships and social events.

*“I think it gets in the way of her school because she is having to collect all the papers at the moment and it is probably quite stressful near the exams as well and all the studies and essays and because she is using a free legal service, they are getting her to do a lot of the work.”* (**Vanessa, advocate for children and young people**)

*“A lot of times in lessons I would be crying and asking ‘Sir, can I take time off?’ Or maybe lie to my teachers and say I needed to go home where really I had to go to the Learning Resources Centre to get in contact with these immigration people before 5.30pm. That was the time they closed and I had to get everything sorted as soon as possible. Or I would have to ask my friends, ‘can I use your phone?’ It was so expensive for me to phone and I had to pay 10 pence per minute and I didn’t have money for that. It really affected me.”* (**Yemi**)

### 3.5 Lucked ‘in’ and ‘out’ of justice

The role of chance is well-established in the children’s asylum literature in terms of levels of legal support, legal outcomes and welfare provision.<sup>109110111112113114</sup> Yet less is known about the role it plays in the systems, processes and relationships that govern separated children’s experiences of immigration processes outside the asylum system. In part, that is because the non-immigration circumstances of unaccompanied and separated children have been of peripheral concern within policy, academic and practice contexts. This section of the findings shines a light on the role

<sup>109</sup> Connolly, H (2015) see note 14 above

<sup>110</sup> The Children’s Society (2007). See note 11 above

<sup>111</sup> Joint Committee on Human Rights (2007) The Treatment of Asylum Seekers. Tenth Report of Session, 2006-2007. Vol 1. Report and Formal Minutes.

<sup>112</sup> Stanley, K (2002) Cold Comfort: The Lottery of Care for Young Separated Refugees in England. London. Save the Children

<sup>113</sup> Kohli RKS (2002) See note 5 above

<sup>114</sup> Smith, T and Brownlees, L (2011) See note 15 above

that the new legal aid landscape has had in making this a significant element of children's immigration experiences and the way it is determining which children and young people get 'lucked in' to legal support and advice or 'lucked out' from it.

In the methodology section of the report we outlined the process and rationale behind a number of Freedom of Information requests that we sent out to public authorities. One of these requests was sent to the OISC asking them to provide information on the numbers, nature and location of regulated providers. We also sought information on the numbers of private and non-fee paying OISC providers. We sought this information for the years preceding (2012) and following (2014) the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act (2012). We did this in order to ascertain:

- To what extent there is sufficient provision around to support unaccompanied and separated migrant children with their immigration claims with a particular focus on free provision,
- The availability of immigration provision across the country and whether some areas have more supply
- The impact of LASPO on the availability of both fee-paying and non-fee paying services

As noted in the methodology section, there are three OISC levels, each representing the different levels of complexity when it comes to supporting clients' immigration applications. For ease of reading, we will reiterate what has already been established in the methodology section in terms of what each level permits:

- Level 1: basic immigration advice within the Immigration Rules
- Level 2: more complex casework, including applications outside the Immigration Rules
- Level 3: Appeals

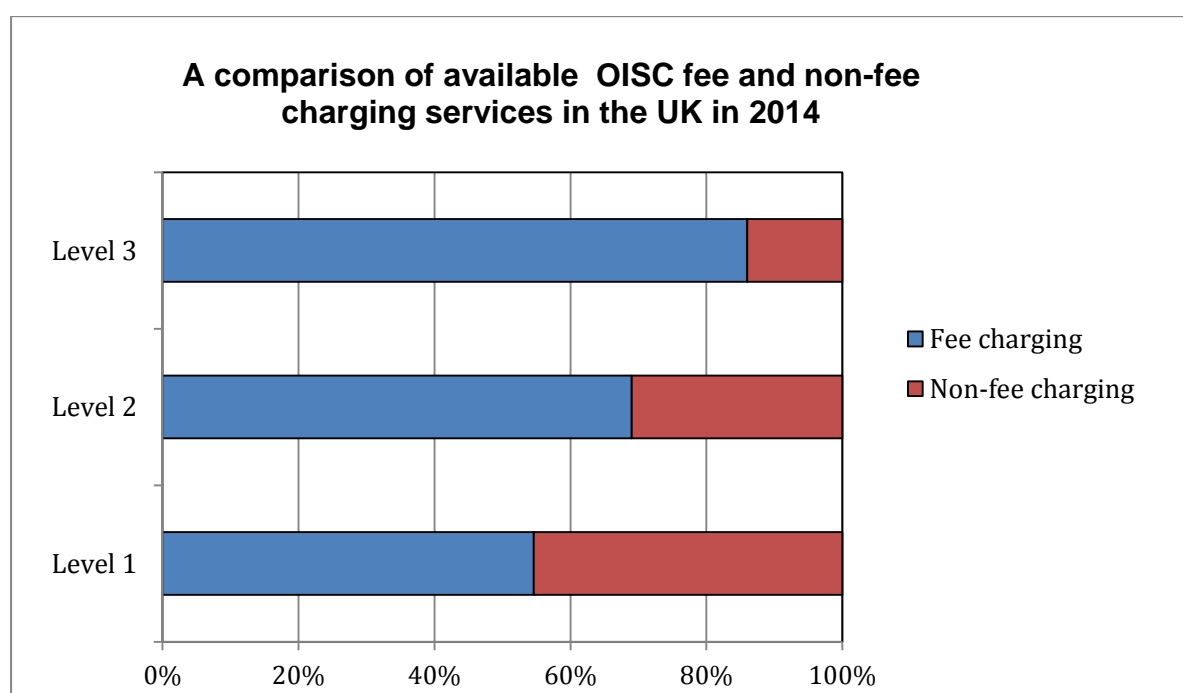
Overall, the information provided to us by the OISC demonstrated that:

- There are currently nearly twice the amount of fee-charging OISC services than non-fee-charging
- Non-fee charging OISC services across the UK are more readily available at level 1 and decrease in number as work gets more complex toward level 3
- Level 1 non-fee charging services are more readily available in London, Scotland and the South East.
- OISC services have reduced by at least 30% among both fee and non-fee charging since the introduction of LASPO.
- The highest rate of cuts at almost 50% have been experienced in level 3 non-fee charging OISC services

### 3.5.1: Data for 2014 on Types and Availability of Immigration Legal Service Providers

Data for 2014 was broken down by OISC into service providers charging fees and those not charging fees and analysed both in terms of the national and local picture. This data revealed that:

- There are nearly double the amount of fee-charging OISC services available across the UK than there are free services – 1,330 (64 % of all provision) compared with 738 (36%)
- Level 2 and level 3 non-fee charging services make up only 31% and 14% of available services, respectively.



#### ***Types of service providers***

##### Fee charging:

- Level 1: The majority of fee-charging services at level 1 are being offered by immigration solicitors. Many local authorities also appear to be charging for level 1 services but this was primarily due to nationality check services (NCS) and not the provision of immigration advice.
- Level 2 and 3: The majority of the fee charging services at both levels are being offered by specialist immigration solicitors and law centres.

##### Non-Fee charging:

- Level 1: The majority of these services are being provided by charities (mainly Citizens Advice), a significant number are also being offered by community and church groups.

- Level 2: The main providers of non-fee charging level 2 services across the country include the Welsh, Scottish and British Refugee Councils as well as community groups and Citizens Advice.
- Level 3: Non-fee charging level 3 services are almost exclusively provided by law centres.

The following tables demonstrate the regional variations in OISC provision between levels and fee and non-fee paying provision.

**Table 3.2: OISC Regulated Non-Fee Charging Services in 2014:**

	Level 1	Level 2	Level 3	Total
<b>TOTAL</b>	621	56	79	<b>756</b>
<b>London</b>	116	17	35	168
<b>East Midlands</b>	32	3	1	36
<b>East of England</b>	58	4	0	62
<b>North East</b>	18	4	1	23
<b>North West</b>	50	1	5	56
<b>NI</b>	19	0	2	21
<b>Scotland</b>	99	2	1	102
<b>South East</b>	79	5	6	93
<b>South West</b>	38	1	4	43
<b>Wales</b>	27	0	2	29
<b>West Midlands</b>	38	5	5	48
<b>Yorkshire</b>	32	12	15	59
<b>Other (Channel &amp; Overseas)</b>	2	0	0	2

**Table 3.3: OISC Regulated Fee Charging Services in 2014:**

	Level 1	Level 2	Level 3	Total
<b>TOTAL</b>	748	125	502	<b>1375</b>
<b>London</b>	375	81	270	726
<b>East Midlands</b>	21	5	19	45
<b>East of England</b>	34	1	24	59
<b>North East</b>	16	1	7	24
<b>North West</b>	64	6	48	118
<b>NI</b>	4	1	0	5
<b>Scotland</b>	28	1	11	40
<b>South East</b>	75	7	31	113
<b>South West</b>	16	3	5	24
<b>Wales</b>	13	1	5	19
<b>West Midlands</b>	40	8	33	81
<b>Yorkshire</b>	30	6	40	76
<b>Other (Channel &amp; Overseas)</b>	2	0	0	2

The data above tells an interesting story about the role of luck in the availability, and moreover, the free availability of immigration legal advice for children. In the first instance, and on the surface, children that are 'lucky' enough to have 'less complex' immigration cases, i.e. level 1 OISC, are theoretically more likely to be able to access legal support and advice than others and get 'lucked into' the immigration justice system. But this will not apply to most children and young people, particularly where their cases are likely to be considered more complex. Certainly, as noted in the findings previously, often cases that are considered to be 'less complex' on the surface unfold to reveal complexities that lower level OISC practitioners have been referring on to those with higher-level qualifications.

As can be seen, there is a consistent large discrepancy across all regions between the supply of fee paying and non-fee paying provision. While it has been evidenced earlier in this report that the majority of unaccompanied and separated migrant children cannot afford to pay for their legal / administrative fees for immigration, some of these children, i.e. those with more social capital, such as extended family, community, friends, advocacy organisations, will be marginally less impacted by the changes than those that are arguably more socially isolated and inherently vulnerable as a result of their separated status. The latter group are therefore more likely to be 'lucked out' of immigration support because of the role of chance in where they ended up living in the UK.

In addition to the above discriminations, the variations in OISC provision that exist between regions will also generate differences between the experiences of certain groups of unaccompanied and separated children. In London, the South East and the North West of England, there are more fee-paying services than non-fee, and in the South West and the Welsh regions, the reverse is true. Separated children arriving in the former regions are therefore less likely to be able to access legal support and advice than those arriving in the latter.

The data returned to us by the OISC illustrated that there had indeed been changes to the level of the supply of immigration legal provision since LASPO. More generally, this reflects broader policy and practice concerns around the ways in which the Act has jeopardised the sector and created 'advice deserts' for migrant children. In particular, the biggest impact seems to be highest at level 2 and 3, again placing at a disadvantage those children whose claims have higher levels of complexity relative to those entailed in level 1. This is not to suggest that those immigration circumstances covered by level 1 are simple. Indeed, as our findings have already illustrated, all children's cases are complex and require specialist advice and support, not appropriately covered by level 1 provision. Given that level 1 is, by definition 'basic immigration advice within the immigration rules', we would argue that it is generally not appropriate for children to be advised by level 1 advisors.



**Table 3.4: Percentage cut in OISC providers post-LASPO for fee and non-fee charging services**

	Fee Charging	Non-fee charging
<b>Level 1</b>	30%	35%
<b>Level 2</b>	45%	31%
<b>Level 3</b>	28%	47%

The limited landscape of free legal advice is also a theme that appears in the interviews, with practitioners and children highlighting the phenomena of being turned away and of having to wait for significant periods of time before they could even begin to address their immigration status with qualified practitioners.

*“It is really tough, and it is getting worse. Like you know, for a while, you have got an opening and you know, they are sort of at capacity and over capacity, so then you are sort of scrabbling around trying to find someone else. It is not easy and it has changed the whole way that I have to work in order to fill that gap for my clients. It is so time consuming. For example, I have recently got a client with an Article 8 claim just before their 18<sup>th</sup> birthday and the solicitor can’t see them for a month. They are the one with criminal convictions.”*  
**(Vanessa, advocate for children and young people)**

### 3.5.2 The complex relationship between local authority policy and practice and LASPO (2012)

The theme of certain groups, or indeed, even of individual unaccompanied and separated migrant children, being either “lucked out” or “lucked in” to legal support can also be illustrated in relation to local authority policy and practice within the context of the gaps that have been created by LASPO. In our practitioner survey, we asked respondents to identify to what extent they considered local authorities to be paying for the legal advice and support of unaccompanied and separated migrant children (non-asylum) either in their care or receiving support. 14 % of practitioners thought that this was often the case, 31 % thought this was sometimes the case, 28 % thought that this was rarely the case and a further 28 % thought that this was never the case. This was not a hypothetical question and practitioners were asked to answer on the basis of their experience. These findings clearly demonstrate that there is significant variability in local authority practice, which will impact on the experiences of children. Again, this shows the role of chance in shaping their experiences due to where they live and who they are supported or looked after by.

The findings from the freedom of information requests we sent to local authorities further compounds this notion of luck in terms of the different ways in which local authorities are engaging with the gaps that have been left by LASPO. Indeed, out of the 121 responses we received back, only 1 Local Authority had developed an explicit policy that they were piloting. We interviewed the service manager from this local authority who shared the details of the policy. As an example of good practice, they have established



an agreement with a reputable private firm to assess the immigration circumstances of all unaccompanied and separated children and young people in their care. The immigration lawyers then advise on what needs to be funded by the local authority based on their legal expertise and the immigration needs of the child. This helpfully takes what are effectively legal decisions out of the hands of social care managers and practitioner. This is not to suggest that all of the other local authorities were ambivalent or unresponsive to the legal needs of separated and unaccompanied children. Indeed, while this local authority were the only one to have formalised this into a policy, a small number (N=8) reported that by way of customary practice, they also involve solicitors / legal advisors to decide which children should / should not be funded for their immigration applications. A similarly small number (N=9) reported always funding legal services as part of their corporate parent responsibilities and others (N=4) suggested that establishing a formal policy around the legal aid changes and their duties towards separated and unaccompanied children was a priority policy area under development. The most common response from local authorities, however, was that they did not have any criteria to assess children's need for legal support (N=29) or indeed did not think having something like that was relevant to them (N=14). Often, these were the local authorities who either did not work with unaccompanied and separated children or indeed worked only with unaccompanied asylum seeking children who are still largely entitled to legal aid support.

Another common response was that local authorities (N=20) were working within the framework of existing legislations and policies when assessing and identifying the needs of separated and unaccompanied children, such as The Children Act 1989, Human Rights Act 1998. Yet, the majority of these same local authorities identified that they did not have any formal or particular criteria for assessing the legal interests of the child or when they would fund legal services for them. Many local authorities (N=25) highlighted to us that decisions about funding for legal support were being made on a case-by case basis but again did not identify any specific criteria used to guide these decisions. Finally, a small number of local authorities (N=7) told us that the decisions to fund legal services for separated children are made only by the local authority, with one or two highlighting that these decisions are subject either to independent review or review by the head of services.

The majority of the remaining local authorities did not respond to our question in the FOI on how decisions are made to fund the legal services of separated and unaccompanied children. Finally, a very small number suggested that they 'signpost' children to legal support or ask them to draw on the support of family and friends. There are clearly disparities of practice across local authorities.

Where formal policies are in place, or indeed where legal advisors make decisions and advise local authorities, the process will be less subject to the individual discretion of social workers and social work managers. Indeed, the dangers of local authorities having to effectively make legal need decisions

and decisions around what cases are and are not legally deserving to be funded by them cannot be overstated.

Whilst the evidence shows the potential for unfair practices, it also shows that local authorities have been placed in a very difficult position by the removal of legal aid and the transfer of costs from the Ministry of Justice to their departments, particularly within the context of austerity and cuts to public service funding. This is less of an issue when cases are less complex but more significant for local authorities when cases are complex, severe and protracted.

*“We are struggling policy wise to know how to deal with it for children that are no longer eligible for legal aid for Article 8 claims but we are able to pay for paper applications which are more ‘straightforward’ the cost is known. The difficulty comes when you come to appeal stages and particularly then when you are looking to apply merits test or [the Legal Aid Agency] will. How does the local authority actually manage that with cases with very open costs that are on-going? It feels like an impossible policy scenario. There are a number of papers...pressure groups which suggest that because we are seen as corporate parents then we should do as a ‘good parent’ does and cover the costs. But as I say that is very difficult to cater for because sometimes we don’t know what the costs are going to be. Budgets are finite and it feels impossible. The right way to go forward is to do as you are doing and provide evidence of the disadvantage on young people.”* (Richard, Social Work Manager)

The worry with this scenario is that those children with less complex cases may indeed end up with more support for the procurement of legal services than those with complex cases. This can be illustrated in an example that was given to us involving twins, aged 17, from Sierra Leone. Both were in the care of a local authority after being abandoned by their father who subsequently died. Both were seeking an extension of their leave. One of the twins had a criminal record and the local authority made the decision, on that basis, not to fund the case for him but to go ahead and fund the other twin. He was therefore left without legal support until his case was referred by an advocacy organisation to a voluntary sector solicitor who said this:

*“The twins were referred to me by an advocacy organisation. I saw them and then I got this email from social services saying ‘what are you doing? We have already instructed a lawyer for these kids.’ Then I looked at the case and I thought ‘fantastic, just for one of them’. The other one has criminal offences, ‘so we are not going to pay’. I said ‘okay, I will keep the bad kid.’ I then asked ‘will you pay the fee?’ They said ‘we have been told that he has no case’. I said “I think that is challengeable, we deal with complex cases. I think it is 60/40. Will you pay the fee’? Okay then”.* (Julie, Law Centre Solicitor)

### 3.5.3 Children outside of local authority care

The section above highlights the interface between the legal aid changes and local authority practice. Not all unaccompanied and separated children, however, will be known to or supported by local authorities. In these

circumstances, children and young people, in addition to advocacy organisations and legal practitioners, still demonstrated to us the role of luck in children securing legal advice that was both free and of a good enough quality to support them towards a durable status., i.e. an immigration solution that supports the long term safety and interests of the child.

In the first instance, 'word of mouth' was seen to be important, particularly in relation to peer groups advising each other on where they could turn to for legal help. Children and practitioners considered it to be a breach of children's rights for the Government to leave it up to children themselves to be supporting each other with this. Children spoke about the complications of this process, such as feeling far too ashamed of their immigration circumstances to even raise it with their friends, as well as others, such as teachers. This is demonstrated in the words of 18 year old Doris below.

*"On my results day for GCSE I got a letter saying I would be deported. This had been going on for two years. It was so messy. I couldn't talk to anyone about it because I didn't want to be judged."*(Doris, 18, Nigeria)

Secondly, it was also considered that those children with more solid and safer social networks are at a relative advantage over those that do not have these kinds of roots established. This has serious implications for those that are or have been in abusive and hidden arrangements, with limited, if any positive adults, in their lives to support them with their legal claims.

The story of Doris below demonstrates the role that luck played in securing good legal support.

*Doris is 18 years old. She has lived in the UK for 11 years, after arriving at the age of 7 from Nigeria to live with family friends in a private foster care arrangement. The friends she lived with were kind and caring and she was happy and excited to be in a new country. When Doris was 14 she heard that her father, whom she didn't know at all, was in the UK. He had been arrested by the Home Office and detained. Her world fell apart at this point as she realised she did not have status. Her father, in a bid to remain in the UK, informed the authorities of the whereabouts of his daughter and of their need to be together.*

*The family friends she had been living with then all pulled together to find a lawyer to help them and support an immigration appeal. Various lawyers gave different advice around whether Doris, who had been living as a separated child, should submit an independent immigration claim. In the end, she was advised to submit a joint application with her father and this was refused. She had never lived with her father and yet was sent a deportation order because their joint application had been unsuccessful. Concerns were then raised by the Home Office around the identity of her father and her circumstances were investigated for trafficking. The local MP canvassed the Home Office to consider Doris's best interests in the immigration application only to be told by the Home Office that a third person could not get involved.*

*Doris's family friends paid for the advice of 2 solicitors and she considers herself 'lucky' to have had them to galvanise and pay for all the legal support she received. However, none of the solicitors had helped her to resolve her case and, again, with the support of her family friends, they found a third solicitor who took the case on for free, advised that she submit an independent application, and it was successful. She described this scenario as 'getting lucky'.*

### **3.6 Children In Exceptional Circumstances Without Exceptional Funding**

One of the most striking findings of this research is the lack of engagement by solicitors with the exceptional funding scheme. Not one participant across the participant groups spoke about knowing children that had been assisted through this. When exceptional funding was raised during the interviews, it was highlighted as an elusive opportunity rather than the safety net that it was designed to be. It was noted by some participants that lawyers did not see the point in submitting an exceptional funding application given the poor quality decision making of the process in conjunction with the long and complex process of putting an application together. It was not considered a good use of time and practitioners considered it more time efficient to secure pro-bono work. One practitioner did highlight to us the complications she saw with an 18 year old young man going through the process. Indeed, it turned out to be too complicated for him to navigate even with the full support of his lawyer that in the end he abandoned the process altogether:

*"The lawyer tried it once...just seems like it is almost impossible to get. I don't know enough about it but there seems to be a lot of things that the young person needed to provide or we were supporting him to provide and he needed to meet the criteria. In the end, he said 'I just can't be bothered, I am going to get my own solicitor.'" (Rose, advocacy and support worker)*

## Chapter 4: Conclusion and Recommendations

1 This report is a response to the exclusion of unaccompanied and separated migrant children from legal aid in matters of immigration as a result of the Legal Aid Sentencing and Punishment of Offenders Act (2012). Through the stories of children and young people and the professionals that support them, the report has demonstrated that the Act has impacted one of the most vulnerable groups of children in society. Whilst the term 'unaccompanied and separated migrant children' implies a very diverse group of children and circumstances, this report has shown that many of these children have 'super vulnerabilities' that are not accounted for in their exclusion from legal aid support. It has shown that trafficked children, children in private foster care, children in the UK on international adoption arrangements, children with experiences of forced migration, domestic violence, stateless children, and those with many other exceptional circumstances, are being placed at risk by a justice system that does not consider their circumstances serious enough to warrant legal aid support.

2 While we have demonstrated the severity of the changes in relation to what we know about children's circumstances, we have also evidenced the severity in relation to numbers. Indeed, our desk-based research has indicated that thousands of separated and unaccompanied children are likely being affected by the exclusion of immigration from legal aid support and would urge the Government, based on the combination of what we know about the circumstances and numbers of these children, to reinstate legal aid for them.

3 Complex legal immigration needs often go hand-in-hand with the super-vulnerabilities of these children. Such complex legal needs have been well-demonstrated throughout this report as very powerful counterpoints to the Ministry of Justice's assumptions that the majority of immigration applications are '*straightforward*'. In particular, we have drawn attention to the complications and errors that are made in diagnosing children's immigration needs, particularly, it would seem, where establishing trafficking is concerned. As we have illustrated, to place more of the burden on children when it comes to processes of regularisation undoubtedly increases the chances of them, at best, going down the wrong pathway to regularisation and, at worst, missing grounds for international protection claims or being removed / deported. There are a number of core UNCRC rights that fail to be applied when this happens. In the first instance, Article 3 and the standard of the best interests of the child in decision-making is not realised. It also serves to actively undermine Article 12 and the ways in which children can effectively participate in the immigration process, and ultimately, may work against children's right to life, survival and development that is established in Article 6.

4 We have also shown that it might not be children's entitlement to regularise or enhance the nature of their immigration status that is problematic as such, but rather the process of proving this entitlement through the correct identification and application of the law, evidence gathering and production. Indeed, the migration circumstances of unaccompanied and separated

migrant children can often be chaotic and non-linear, and evidencing their identity, relationships and connections to the UK can bring many practical and child protection difficulties, especially where child protection issues have led to their separated status. In addition to these, the report has also drawn attention to the additional challenges that emerge as a result of children being part of such a complex bureaucratic process that is alienating and difficult for professionals to understand, let alone children themselves. All these things together evidence the need for unaccompanied and separated children to have more legal support as opposed to less. When the profound consequences of things going wrong in children's claims are added to the mix, such as removal, children moving into undocumented lives or into protracted and uncertain legal statuses, then the case for heightened rather than diminished legal support is unequivocal. For children not to have adequate legal support in this context is a breach of Articles 3, 6 and 12 of the UNCRC.

5 The report has brought to life the various ways in which this legislation has effectively stacked the odds against these children, undermining their chances of finding a durable legal solution to their immigration circumstances. Indeed, it has been shown that the gaps left by this new landscape are impossible to fill. Indeed, we have demonstrated that the exceptional funding 'safety net' is 'exceptionally elusive' for children. We have shown that solicitors are avoiding this route in light of what is known about its complexity, decision-making and time-intensive nature in addition to the extra-burden that it might place on children and young people through an already stressful immigration process.

6 It has been further evidenced that while the Government had anticipated, rhetorically at least, that the voluntary sector, pro-bono legal work or social work support, could all serve as an additional safety net protecting children's legal interests, this was not evidenced at the time the changes were introduced and is not what is happening in reality. Indeed, in relation to voluntary sector provision, our research has shown that this forms such a small portion of the immigration legal sector that it cannot realistically be expected to respond to the volume of demand that has been generated by the legal aid changes. Further, the level of input that voluntary sector advisors can offer can at times be insufficient as a result of the increased level of demand they are facing to support migrant children within the context of LASPO.

7 While we have evidenced the challenges children face in even finding free legal provision to support them with their immigration applications, we have also found data that shows that even children who are 'lucky' enough to find voluntary sector solicitors are facing real difficulties. Indeed as a consequence of the changes, those voluntary sector legal providers that do assist with children's claims are overloaded and unable to provide the level of support that children either want or need and they are still being left to carry many of the responsibilities of gathering and documenting their migration evidence. Additionally, there is emerging evidence to show that children, because of the lack of capacity of voluntary sector legal providers, are being forced to wait in a queue before their immigration needs can be addressed. This is significant in the sense that it keeps children stuck in a legal limbo,

suspending their chances of obtaining a durable legal status. It has significant consequences for those children aging out of their minority where prompt legal support is crucial to them resolving their status issues before they become adults.

8 In addition to this, the expectation that local authorities would 'mind the gaps' has also proved to be a lot more tricky than perhaps was anticipated when the legal aid changes were created. In the first instance, many children have been identified as either being physically 'out of the orbit' of children's services or when known to them, their immigration needs remain undiscovered or avoided. In the second instance, not all local authorities have acted equally in light of these changes, and only a few have been proactive in addressing the changes and their associated responsibilities. There is evidence of local authorities making decisions around legal support that they are unqualified to make and very real concerns that they have been contorted into taking responsibility for an area of children's lives that has never been expressly established in any policy or safeguarding guidance, and that sees them taking on uncertain costs transferred from the Ministry of Justice. Alarm bells have also been raised that it is perhaps children with the most complex cases and heightened legal needs that are most impacted by local authorities making unqualified legal judgements. Local authorities are bewildered by this new policy landscape and profoundly concerned about the ways in which this turns their duties as a corporate parent have been turned upside down.

10 Where these gaps exist, children are inevitably shouldering the responsibility themselves. In doing this, children have reported being financially and emotionally 'out of their depth', unable to enjoy the '*ordinary plenty*'<sup>115</sup> of everyday life, people and places, such as school and friendships, and worrying in profound ways about what they can do to stabilise their lives in the UK. Ultimately, they are stopped from finding a place to belong to and a place that belongs in them. Practitioners, children and young people all expressed a fear around the increased vulnerability to exploitation in these circumstances.

11 Our research has very clearly revealed that in between the gaps left by the legal aid changes, the role of luck was crucial in establishing who did and did not find legal support for their immigration claims. A system that relies on luck is inherently discriminatory and as such, undermines the Government's commitment to the UNCRC. In particular, it undermines Article 2 and children's right to non-discrimination in administrative processes. Children and practitioners highlighted the unacceptable role of 'word of mouth' in whether or not children were or were not able to find free legal provision. They also drew attention to the situation whereby those children with no social capital were most at risk from the changes as they did not have any other people to rely on to help them secure and pay for legal services. The kinds of children

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<sup>115</sup> Kavanagh, P, cited in Gilligan, R (2006) Creating a Warm Place Where Children Can Blossom. Paper Based on A Keynote Address to the 10<sup>th</sup> Australasian Conference on Child Abuse and Neglect, Wellington, 14-16 February, 2006.

that have been left in these situations are arguably the most vulnerable of all unaccompanied and separated children, i.e. children that have been trafficked, abused, estranged from friends and family, etc. This highlights how the removal of immigration from legal aid undermines the government's efforts to improve protection for trafficked children through the Modern Slavery Act 2015 and recent changes to the National Referral Mechanism.

12 While we have demonstrated that all ages of unaccompanied and separated children are at risk from the changes, we noticed that its most visible impacts are upon older children standing at the crossroads of the intersection between childhood and adulthood. This happens because of a range of transitional crisis points that either reveal to them for the first time their immigration status or force them into having to resolve it. This general pattern makes accessing legal advice and representation even more pressing in the sense that if children's status remains unresolved into their adulthood then fewer protections and safeguards exist to promote their safety and well-being in the UK or indeed elsewhere. Again, this brings into sharp relief the UK's duties under the UNCRC, in particular Article 6 and the responsibility to promote the life, survival and maximum development of children.

## Recommendations

1. **In order to fulfil its obligations under the UNCRC, the Government should reinstate legal aid for all unaccompanied and separated migrant children in matters of immigration by bringing it back within 'scope' under the Legal Aid, Sentencing and Punishment of Offenders Act 2012.** Separated and unaccompanied children are already vulnerable in legal proceedings in respect of their lack of legal capacity and their lone status. Creating another significant barrier to the resolution of their legal status hinders the realisation of their best interests (Article 3) and participation (Article 12). Children face the significant risk of removal from the UK as adults when they do not have access to opportunities to resolve their status. In this respect, the child's right to life, survival and development has been placed in jeopardy as a result of the legal aid changes. We have demonstrated that the legal aid changes run the risk of forcing children to avoid the resolution of their legal status and sees them waiting for some time before they can access a solicitor. Both these scenarios place them at a heightened risk of destitution with no recourse to public funds and amounts to a breach of the child's right to life, survival and development under Article 6. The same breach applies when their status remains unresolved into their adulthood given the focus in Article 6 on the development of the child. Article 2 is undermined in the ways that the legal aid changes are impacting different groups of unaccompanied children. Because the legal aid changes have made it more difficult for unaccompanied and separated migrant children to regularise their status, they will be even less likely than before to enforce their rights in the same way as



other children in the UK and this again, which also amounts to a breach of Article 2.

**2. At the very least, the Government should undertake an evidence-led review of the exceptional funding scheme to examine how it is or is not working for the legal needs of unaccompanied and separated migrant children.** This is an important consideration given that this system was designed as a safety net to protect vulnerable people through legal processes. Yet the evidence from our research has shown that it is not being used by solicitors to support children in their immigration applications. In addition, other research has shown that only 3 children in total have benefited from the scheme. A review should take a whole systems approach to understanding the scheme, addressing the knowledge and perceptions of legal practitioners, the mechanics of the decision-making processes, the experience and expectations of children in addition to the advocacy and care professionals that support them.

**3. Alternatively to 1 but in addition to 2, the Government should formalise the role of local authorities and their role in relation to legal aid for separated children given the ambiguity that has been created around whether or not a local authority is under any obligation to provide legal services to a separated or unaccompanied child that it is either 'looking after' or 'assisting.'** This would avoid any confusion on the part of local authorities who have been pushed into tricky and uncertain territory with this. It would offer further clarity for other professionals involved in the care and support of unaccompanied and separated children around what they are or are not entitled to. It is unhelpfully ambiguous as it stands.

**4. All children suspected of being trafficked, whether they have been referred into the National Referral Mechanism or not, should have access to legal aid either by being brought within 'scope' under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 or by clear exceptional funding guidance.** Given the numbers of trafficked children that we either met or heard about throughout the course of this research that were excluded from legal aid, we would recommend that the Government change the current restrictions on legal aid for children – which require that a positive reasonable or conclusive grounds decision has been made under the NRM – so that legal aid becomes available if a solicitor or the Legal Aid Agency is satisfied there is a reasonable suspicion that the child has been trafficked. The nature of this gap, also illustrate the significance of guardians for all unaccompanied and separated migrant children.

**5. Until legal aid is reinstated, local authorities should develop written policies that offer clarity on the nature and scope of their responsibilities in relation to legal aid for separated children.** The evidence demonstrated that at times local authority social workers / managers were being pulled into making legal appraisals on the nature and predicted outcomes of children's immigration cases with a view to determining whether or not to fund legal advice and representation. These kinds of judgements compete with safeguarding and corporate parenting duties and we

recommend that, if the Ministry of Justice do not reinstate legal aid for unaccompanied and separated children, that all local authorities, where a child cannot afford to pay for legal advice and or representation, provide them with free legal advice and assistance by a solicitor / barrister with the relevant qualifications and expertise. We recognise the difficulties for local authorities in accepting the transfer of costs for legal aid for migrant children either in their care or that they are assisting and would prefer for the Ministry of Justice to re-establish their responsibility.

**6. Local authorities should ensure the systematic collection of data for separated children with non-asylum immigration claims.** During our investigations, we noted that local authorities, unlike with unaccompanied asylum seeking children, are not required to gather statistics on unaccompanied and separated migrant children (non-asylum). The systematic collection of data is key to the development of effective policies and practices that can best protect the best interests of this vulnerable group of children about whom little information is often known.

**7. Until legal aid is reinstated, local authorities should train social workers and independent reviewing officers in the identification of children that are out of scope and how to best support their legal needs within this new and complex territory.**

**8. Outreach work should be undertaken in schools and colleges to inform children and young people about immigration and the law, routes to regularisation and their importance.** This is based on our findings, which suggest that many unaccompanied and separated children do not discover their irregular status until they are older, or indeed do not realise the significance of their status until they are older.

**9. The Government should commission external independent research into the existing capacity and level of 'specialism' in children's immigration law cases.** This is based on our research findings which suggest that the legal aid changes appear to have reduced the availability of immigration legal advice - both fee paying and non-fee paying.

**10. The Government should waive application fees and the health surcharge for unaccompanied and separated migrant children and young people up to the age of 25 in their immigration applications.** In addition to legal fees, children also have to pay the administrative fees for their immigration applications and the health surcharge brought in under the Immigration Act 2014. These additional fees cause unnecessary anxiety for children who cannot afford to pay them.

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