Not just a temporary fix

The search for durable solutions for separated migrant children

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1. Definitions

**Separated children**: Individuals under 18 years old who are outside their country of origin and 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.

**Unaccompanied children**: Individuals under 18 years old who are outside their country of origin and 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.

**Trafficked children**: Individuals under 18 years old who are ‘recruited, transported, transferred, harboured or received for the purpose of exploitation’. This movement of a child can be across borders or within national borders. Family members, including parents, can be identified under this definition as ‘traffickers’. It is internationally accepted that a child cannot consent to his or her own exploitation and therefore it is irrelevant to the definition of trafficking if the child consented to travel, work or participate in any activity.

**Undocumented children**: Individuals under the age of 18 who do not have a regular immigration status, in that they do not have permission to enter or remain in the UK. This may include children who do not have documentation when they arrive, or they have overstayed a visa, or they were born in the UK but have not acquired immigration status. Undocumented migrants are sometimes referred to as ‘irregular’ or ‘illegal’ migrants.

**Best interests assessment (BIA)**: A simple, ongoing procedure for making decisions about what immediate actions are in an individual child’s best interests for example, protection and care interventions.

**Best interests determination (BID)**: A formal procedure for making significant decisions that will have a fundamental impact on a child’s future development. Due to the magnitude of the decision, BIDs require in-depth information accumulated in the course of the best interests process about the child, and involve higher degrees of scrutiny and independence.

**Leave to remain**: The permission given by the Home Office to enter or remain in the UK. Leave to remain can be limited to time and may contain various prohibitions (on working or claiming ‘public funds’). Time limited leave to remain may also explicitly allow the recipient to work or claim benefits in the case of children refused asylum and granted a limited form of leave known as ‘UASC-leave’.

**Leaving care support**: Refers to support where a child who is aged 16+ and has been looked after for more than 13 weeks since the age of 14 (who is or has spent time in the care of the local authority) reaches 18 and the authority responsible for their care must provide continuing support and assistance.

**Welfare benefits**: Mainstream national social security benefits, such as ‘Job Seekers Allowance’, a benefit for people who are not in full time employment, are capable of working and are looking for a job, or ‘housing benefit’ which helps with housing costs including rent for those on low incomes.

**National Referral Mechanism (NRM)**: The system for identifying and assessing whether someone is a victim of human trafficking. The system is currently under review which includes who makes these decisions and a new system is being piloted by the Home Office.

‘**Looked after**’**: A provision made under the Children’s Act 1989 whereby a local authority has obligations to provide for, or share, the care of a child or young person up to the age of 18 years old where parent(s) or guardian(s) for whatever reason are prevented from providing them with a suitable accommodation or care. A child is ‘looked after’ if he or she is provided with accommodation under Section 20 of the Act or taken into care through a care order (Section 31) if the child has suffered or is suffering significant harm.

**Care-leaver**: A person who has been looked after by a local authority for a period of, or periods amounting to, at least 13 weeks since the age of 14 and who was in care on their 16th birthday and is either an eligible, relevant or
former relevant child as defined by the Children Act 1989.

**Private fostering arrangement**: An arrangement that is made without the involvement of a local authority for the care of a child under the age of 16 (under 18, if disabled) by someone other than a parent or close relative with the intention that it should last for 28 days or more. Private foster carers may be from the extended family, such as a cousin or great aunt.

**Voluntary return**: The return of persons without a legal basis for remaining in the host state who have made an informed choice and have freely consented to repatriate.

**Forced return**: The return of persons who have not given their consent and therefore may be subject to sanctions or the use of force in order to effect their removal.
2. Introduction

This report explores the process, system and concept of identifying a 'durable solution’ for separated children in England, looking at what exists in practice and what should improve. Based on existing guidance and research, this project has taken the definition of ‘durable solution' to mean:

"A long-term and sustainable solution which ensures that the separated child is able to develop into adulthood in an environment which will meet his or her needs as well as fulfil his or her rights, not putting the child at risk of persecution or harm whilst also taking into account their views in accordance with their capacity'.

The European Commission has highlighted ‘the identification of a durable solution’ as one of the key areas of importance to help achieve a European-wide approach to the care of separated migrant children. The particular vulnerabilities of a separated migrant child mean that making sure they are provided with a durable solution is particularly important to make sure that these children’s needs, wishes and best interests are carefully considered and planned for as they develop into adults.

Separated Children

Separated children, like adults, leave their countries for a number of reasons. Some travel to join their families who have previously migrated. Others flee war, civil unrest, natural disaster or persecution. Some migrate in search of work, opportunity, education or an improved standard of living. Additionally, children may migrate unaccompanied to escape a difficult family or social environment. This can involve sexual or physical maltreatment or the prospect of forced marriage. Certain forms of persecution are specific to children and female children especially. Others may migrate to escape female genital mutilation, child marriage or conscription into formal or informal armed forces. Some separated children are also sent by their parents to pursue a better life, both for the child and their family.

There is a significant body of research which highlights the specific vulnerability of separated children arguing that separation from persons responsible for the child’s protection and physical and emotional well-being can be traumatic for children and thus increase their vulnerability. This means that separated children are at a high risk of experiencing:

- Sexual exploitation and abuse including early/forced marriage and human trafficking
- Military recruitment
- Child labour including forced domestic labour
- Detention
- Discrimination
- Neglect
- Violence

Separated children, once in the country of arrival, are still particularly vulnerable because they lack essential adult care and the traditional support systems of parents and family. It is for this reason that the European Commission and others argue that a durable solution for separated children must be found as a matter of priority.

International and European Law and Guidance

‘Durable solutions’, in the context of separated children, appears in a number of comments, reports and guidelines. This includes the European Commission, UNHCR, Separated Children in Europe Programme (SCEP), the Committee on the Rights of the Child, the European Commission’s Life Projects, UNICEF’s Child Notices, the Core Standards for Separated Children in Europe, the Fundamental Rights Agency as well as European legislation.

The aim of a durable solution is to identify an outcome which addresses all of a child’s protection needs, considers the child’s own view and, wherever possible, leads to overcoming the situation of a child being unaccompanied or separated, including through exploring the possibility of family reunification in the country of arrival, third country or in their home country. The purpose of considering these factors is to develop the capacities and potential of each child, to support the
development of independence, responsibility and resilience, to enable each young person to become an active member of society whether they remain in the host country or return to the country of origin. It is argued that a durable solution must be ‘lasting’\textsuperscript{16} for both member states and the children themselves\textsuperscript{17} and therefore that it must also make sure that the child’s rights are secured into the future.\textsuperscript{18}

The UN Convention on the Rights of the Child (UNCRC) outlines the whole spectrum of children’s rights and offers substantial support for a comprehensive approach to a durable solution, one which embraces the whole spectrum of children’s rights including the broad range of children’s development needs\textsuperscript{19}. It also importantly endorses the basic principle of the best interests of the child, Article 3(1) of the UNCRC states that:

\textquote{In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.}

European law requires that a determination of a child’s best interests should take into account the child’s nationality, upbringing, ethnic, cultural and linguistic background,\textsuperscript{20} particular vulnerabilities and protection needs and also the child’s views in accordance with their age and maturity,\textsuperscript{21} including when determining their accommodation arrangements.\textsuperscript{22} By offering a total approach to the protection and development of the child, the UNCRC makes clear that the commitment to the realisation of these goals is a continuing and dynamic process and that the best interests of the child must be determined in both the short and long term. There is no moment, for example, at which a separated child suddenly becomes ready for a durable solution; but as a child will not postpone his or her growth or development, the need to implement elements of a durable solution is immediate\textsuperscript{23}.

In addition, the UNCRC highlights the need to prevent separation from parents or guardians, to promote alternative care arrangements where necessary, to trace family members and arrange family reunion, and to involve children in decisions about their future. But despite this assistance in understanding what a durable solution should entail, the Convention offers no specific solutions.

On a practical level, determining a child’s best interests and the development of a durable solution for separated therefore children poses a complex problem requiring government agencies to find new ways of working together in innovative ways. Various legislation and case law in the domestic sphere in England help frame thinking on the development of a durable solution. The UK has opted into the EU Anti-Trafficking Directive which makes a causal link between the determination of a child’s best interests, how this links to the fulfilment of the established rights of the child as laid out in the UNCRC and therefore a possible durable solution\textsuperscript{24}. Furthermore, the Children Act 1989, a key piece of UK domestic legislation pertaining to child protection and welfare incorporates some elements of best interests in domestic legislation stating that in the upbringing of a child, the child’s welfare shall be the court’s paramount consideration\textsuperscript{25}.

This research seeks to establish what the term ‘durable solution’ might mean in England and to find proactive and innovative examples of, or suggestions for, best practice.
3. National Methodology
An advisory group of 13 experts was appointed to help in the development of this report. This included NGOs, UN agencies, academics, lawyers, the Children’s Commissioner, local authorities and central government departments. They provided input into a number of drafts of the report and recommended groups and individuals to interview.

Desk research
Desk research was initially undertaken to understand frameworks for the term ‘durable solution’ in caring for separated children in Europe. This was done by reviewing existing conceptualisations of the term at the European and international level including in the UNCRC, UN Committee on the Rights of the Child General Comment No. 6 and the relevant Council Directives. A review of the existing academic literature, policy papers and case law in England was also undertaken to better understand policy and practice at the national level.

Consultation with young people
A focus group was held with eight separated young people living across England from countries of origin including Eritrea, Uganda, Albania and Afghanistan and ranging in age from 16-20 years old. This group were not meant to be representative of the population of separated children and young people in England but all participants had been supported by The Children’s Society services and crucially reflected individuals transitioning into adulthood.

The focus group used a number of methods to attempt to broadly address the following questions:

- Is it important for you to have a ‘durable solution’?
- If yes, what would a ‘durable solution’ look like for a young person like you?
- How should a ‘durable solution’ be decided?

The focus group involved two exercises. The first exercise presented participants with a hypothetical scenario of a boy arriving in England as a separated child and used characters to tell the story which was revealed in stages. The story provided enough context and information for the young people to have an understanding of the scenario being depicted, but needed to be vague in ways that compel the young people to ‘fill in’ detail using their own knowledge and experiences. The young people could then respond to a series of open-ended questions about the story. The method allowed them to think about the situations they may have found themselves in but without having to talk directly about their own personal experiences if they didn’t want to.

The second exercise placed a series of actors involved in these young people’s lives around the room who might be involved in the process of designing and implementing a durable solution including social workers, immigration officials and teachers. The list was not designed to be exhaustive but to give a flavour of these young people’s thoughts and feelings about these different people. We asked each young person to write to these actors by giving answers to the following questions:

- What could these people do to make your future more certain?
- What should they do to make sure you can achieve what you want in your life?

Consultation with service providers
A total of 18 stakeholders were interviewed through a combination of focus groups and individual one-to-one interviews. This included NGO practitioners from a variety of organisations ranging from agencies running frontline services in England for migrants to campaigning organisations lobbying for change on immigration policy, legal practitioners including solicitors working with young people through the court process and judges responsible for decision-making on immigration and asylum claims, local authority representatives including social workers and independent reviewing officers, foster care agencies responsible for finding placements for separated children and academics undertaking longitudinal studies into separated children’s welfare. The Home Office were unavailable for interview.
4. Country information on England

This report will cover policy and practice relating to separated children according to the definition used at the beginning of this report. 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. Therefore throughout the report, we generally refer to the term ‘separated’ except where the term ‘unaccompanied’ is used to denote the group of children captured in a specific data set where no other data is available.

This report is limited to policy and practice relating to separated children in England. The situation for separated children in Wales, Scotland and Northern Ireland is somewhat different due to the diversity of care and judicial systems. However, where there are useful and relevant key elements from these other contexts they are referenced where appropriate. Some statistics will only be available for the whole of the UK rather than just England and where this is the case, this is clearly referenced.

Statistics on separated children

It is a difficult task to quantify with any certainty the numbers of separated migrant children living in the UK but 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. Existing literature highlights that the principle of finding a durable solution applies to all separated migrant children, regardless of whether they apply for asylum or not. With this in mind, there are a number of datasets available of relevance to this project. This includes three groups of separated children; those seeking asylum, those who have been trafficked and those who are undocumented. These are discussed below.

1. Separated children with an asylum application

The number of ‘unaccompanied’ children seeking asylum in the UK as recorded by the Home Office was 1,515 in 2010 and has increased to 1,861 in 2014 as shown in graph 1. However, there was a temporary reduction in numbers recorded from 2011-2013. One of the only identifiable factors highlighted as possibly contributing to this, is the change in methodology used by the Home Office to record the data on unaccompanied children claiming asylum. The number of asylum seeking children in the care of local authorities has decreased across the same period from 3,480 in 2010 to 1,970 in 2014. This number is higher than the number of asylum applicants because it is the total number of asylum seeking children in local authority care regardless of the year in which they applied rather than the number applying in a particular year. It is worth noting that these figures do not provide a comprehensive figure on the number of separated migrant children in the care system. For example, our report ‘Cut Off From Justice’ on the impact of legal aid changes, revealed that according to responses from local authorities to our Freedom of Information (FOI) request, there were 3,612 unaccompanied and separated migrant children in the care of 107 local authorities that responded. The discrepancy between this figure and government statistics needs further investigation but suggests that a significant number of separated migrant children may not be captured by the national data set on unaccompanied asylum-seeking children.
Albania is now the most common country of origin for ‘unaccompanied’ children with 28% of all applications in 2014, as indicated by graph 2. 68% of all applications in 2014 were from 6 countries including Afghanistan, Eritrea, Syria, Albania, Iran and Vietnam. The number of applications from Afghanistan has declined sharply in recent years. Conversely, 2014 saw significant increases in children arriving from Eritrea and Syria. Statistics from the last 5 years show that the majority of these children applying for asylum in the UK are 16 or 17 years old. For example in 2014 62% were in this older age group, 27% were 14-15 years old and just 6% were under 14 years old. The vast majority are also male, 88% of applicants in 2014, a similar percentage to earlier years.
2. **Separated children who are undocumented**

Some separated children may be undocumented children. They may have been brought into the country by a parent or guardian, or through a private fostering arrangement, or may have entered legally but then overstayed their leave or may have been born here but never acquired any leave to remain. Some of these children may become ‘looked after’ if their previous care arrangements have broken down due to circumstances such as domestic violence or the death of a parent or carer. It is estimated that there are 120,000 undocumented children in the UK. This figure relates to all undocumented children, including those within families, so it is unknown what proportion are separated children. Other organisations have estimated that between 9,300 and 12,400 migrant children may well be living in private foster care arrangements.

Many of these undocumented children may have never claimed asylum or made any kind of immigration claim. Often the child and therefore the local authority is unaware that they do not have a defined immigration status. This may be because restrictions on services including access to education, is protected by the status of being a child, or at least until age 16, so the child will never have had to consider their status prior to adulthood. When a child approaches adulthood and wishes to attend university or start working sometimes this is the point at which their lack of immigration status presents a barrier and therefore becomes obvious.

Many undocumented children are thought to have been born in the UK, others have spent their formative years here so the UK is the only ‘home’ they know. Many will not identify with or have any memory of or speak the language of their country of origin or heritage. Many will already be at risk of destitution, exploitation and social exclusion because their lack of immigration status severely limits their access to public services and the labour market. This will in turn have an impact on their ability to resolve their immigration status as they may be unable to pay the fees for any immigration applications.

3. **Separated children who are trafficked**

Separated children can also be victims of trafficking. The government recommends that trafficked children can be referred to the National Referral Mechanism (NRM), a process set up by the government to identify and assess whether someone is a victim of trafficking in the UK. 627 children were referred to the NRM in 2014. However, the number of trafficked children is widely thought to be higher as many children are not referred to the NRM. For example, a study by the UK Human Trafficking Centre found that 65% of victims, including children weren’t referred to the NRM. This is due to poor awareness of the indicators of trafficking and the NRM itself amongst social workers, the police and professionals in the criminal justice system, as well as a lack of clarity about the benefit of the NRM for children. There is also concern about the conflict of interest between the Home Office’s dual role in the NRM as the primary decision maker on children’s cases from outside the EU whilst simultaneously having a role in determining children’s asylum cases. However, the government are currently piloting a new form of the NRM which seeks to address these concerns after an independent review in 2014.

**Care arrangements for separated children**

A robust legal framework, which places the child firmly at the centre, is essential to determining a durable solution, in addition to policies that actively support these legislative measures. The UK has a well-developed child protection system. This section describes the system for looked after children and how elements of it may be able to contribute to the process of developing a durable solution for separated children. The limitations of the looked after system in helping develop a durable solution for separated children are also later explored.
Duties owed to separated children by local authorities
Support and accommodation must be provided to separated children by children’s services in the local authority where their needs are identified. Section 20 of the Children Act 1989 requires a local authority to accommodate any child where there is no one with parental responsibility for them, because they are lost or have been abandoned, or because the person who has been caring for them is prevented from providing them with care.

This includes separated children who have been trafficked. However if there is evidence that they will suffer significant harm, for example, if found by the trafficker, local authorities will also have a duty under section 47 of the Children Act 1989 to investigate and make inquiries into their circumstances and decide what action, if any, it may need to take to safeguard and promote the child’s welfare. This will take the form of a comprehensive assessment of the nature of the child’s needs.

Under section 31 of the Children Act 1989, the local authority or any authorised person can apply to the court for a child or young person to become the subject of a care order. It is rare for care orders to be made under section 31 of the Children Act 1989 in relation to separated migrant children; though there are no statistics available on this. In order to obtain a care order, the local authority would have to show that the care given by a parent to a child has caused significant harm. This is only likely to occur when the child has been abandoned here or trafficked into the UK but a parent is still in the UK. There is also no power to make a care order when a child has reached the age of 16 and has been married or has reached the age of 17 and is unmarried. However, if there is concern about the likelihood of significant harm such as abuse or neglect, separated migrant children living with other family members or friends local authorities are required to investigate and take action to protect the child concerned.

The Children Act 1989 requires that local authorities perform these duties for all children up to 18 years old, regardless of their immigration status, nationality or documentation. Children accommodated under section 20 should be assessed and supported by an allocated social worker, have a care plan and regular statutory reviews, and may be subsequently entitled to support as a “care leaver”, if they are accommodated for more than 13 weeks. No definition of ‘accommodation’ is provided in section 20, although it is taken that it must be ‘suitable accommodation’ – i.e. it must, so far as is practicable, meet the needs of the child, and take their wishes into account. It is normally the case that children under the age of 16 are placed in foster care and often older children will be placed in semi-independent accommodation with limited support (although there is no legal barrier or policy requirement preventing local authorities from placing a child aged 16-17 in foster care). The latest figures show that of the unaccompanied asylum-seeking children in care in 2014, 61% were in foster placements, 25% were living independently in other accommodation in the community and 11% in children’s homes and hostels. However, our research and other evidence has shown that separated children often receive a lower standard of supervision and accommodation than other looked children.

Assessment of needs, the care planning and review process
Care planning and the assessment, planning, intervention and review cycles underpin how social workers care for the welfare of looked after children. The assessment framework provides a structure for the assessment of need across three domains – the child’s development needs, parenting capacity and family and environmental factors. This will underpin the care plan and the outcomes for the child should be specific to each development need. However, this research will outline that for many separated migrant children, this framework is not sufficiently adapted to support the welfare of separated children or in principle lead to a durable solution.

Recent guidance published by the Department for Education on the care of ‘unaccompanied and trafficked children’ states that the care plan should include a
description of how the child’s needs in relation to their unique situation of being without parents in the country will be met. This is to make sure that everyone involved in providing the child’s care is aware of their circumstances and enables them to provide for any needs resulting from it. It also states that “as for any looked after child, a health plan and a personal education plan should be produced as part of the overall care plan”.

Local authorities have a statutory duty to review the case of a looked after child, including children looked after under section 20. This is an ongoing process of monitoring and assessment to review whether the child’s needs and care plan is being met. The child’s first review must take place within 20 working days and the second within 3 months. A looked after child should have a team around them to support them through their time in the care system including a social worker, an independent reviewing officer and other relevant professionals who might include teachers and NGO case workers or advocates working with the child. This team will be involved in reviews of their care plan. The guidance on unaccompanied children states that a child’s needs, including their protection needs, will change over time and should be kept under regular review as should plans for the child to make the transition to adulthood, including for their future accommodation and support. The guidance only states that care and pathway plans should include contingencies for durable and best interest plans for unaccompanied children who are likely to have to return to their country of origin. Furthermore, the terms ‘durable solutions’ and ‘best interests’ are not mentioned elsewhere in the guidance in relation to other potential outcomes for the child.

An important part of the assessment and review is consulting the child so they have the opportunity to make their wishes and feelings known. The guidance on the care of unaccompanied and trafficked children states that all looked after children must be made aware of their entitlement to independent advocacy support. The local authority should facilitate this access where required. It highlights that for unaccompanied and trafficked children support from an independent advocate could help overcome cultural or language barriers so that they can express their wishes and feelings. Previous research we have conducted highlights that local authorities are not fulfilling their duty to provide this for all looked after children. This is also exacerbated by the lack of a formal Best Interests Assessment and Determination procedure within the care planning process for separated children which would take the child’s views more fully into account.

Transition, pathway and permanence planning
One of the key functions of the care plan is to ensure that each child has a plan for permanence by the time of their second review, as set out in the statutory guidance to the 2002 Adoption and Children Act. Permanence is the framework of emotional, physical and legal permanence which gives a child a sense of security, continuity commitment and identity. The objective of planning for permanence is therefore to make sure that children have a secure, stable and loving family to support them through childhood and beyond. Permanence is one key feature of a durable solution which may be arrived at for any child in the looked after system.

The Government has taken a number of steps to improve permanence for looked after children including taking steps to improve the quality of care and the stability of placements for looked-after children in both foster and residential care homes. Most notably they have changed the law to offer children in foster care the option of remaining in their placements until they are 21, where all parties agree. These important reforms however are unlikely to benefit separated children because their limited leave to remain or ‘temporary’ immigration status often affects their entitlements at 18 and adoption is very rarely pursued for these children or young people.

A range of options for planning for permanence exist for children in the looked after system, including how they will
transition into adulthood when they become a care-leaver known as ‘pathway planning’\textsuperscript{53}. The Children Act 1989 requires that a pathway plan must be prepared for all looked after children and children leaving care aged 16 - 21. Each young person’s pathway plan will be based on and include their care plan and will set out the actions that must be taken by the responsible authority, the young person, their parents, their carers and the full range of agencies, so that each young person is provided with the services they need to enable them to achieve their aspirations and make a successful transition to adulthood, key to achieving a lasting durable solution.\textsuperscript{54}

The guidance on unaccompanied and trafficked children states that:

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"Planning for transition to adulthood for unaccompanied children is a particularly complex process that needs to address their care needs in the context of wider asylum and immigration legislation and how these needs change over time. Pathway planning to support an unaccompanied child’s transition to adulthood should cover all areas that would be addressed within all care leaver’s plans as well as any additional needs arising from their specific immigration issues."
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Challenges and issues facing any care leaver would include education or preparing for independent living. However, the guidance also states that “planning may have to be based around short-term achievable goals whilst entitlement to remain in the UK is being determined.” This makes it difficult to plan or find a durable solution for the child. However, the guidance goes on to set out that transition planning should “initially take a dual or triple planning perspective for the majority of unaccompanied children who do not have permanent immigration status”. This sets out a range of potential future options for the child and is particularly relevant where children are unable to return to their birth families. The guidance states, “this should be refined over time as the young person’s immigration status is resolved and that planning cannot pre-empt the outcome of any immigration decision”.

The guidance also warns that ‘unaccompanied asylum-seeking’ children can be at particular risk of becoming isolated on leaving care and that when planning for transition, the local authority must therefore ensure that language or cultural factors are taken into account to reduce this risk\textsuperscript{55}. Whilst the permanence framework in the looked after system is one part of a possible framework for helping separated children achieve a durable solution, the immigration system has conflicting objectives and timeframes which means that it is more difficult to plan in the long term which compromises future planning for a separated children.
5. Who is responsible for determining a durable solution in England?

There is no official or formal process in England for developing a durable solution. However, there are many different actors who are responsible for contributing to the care, protection and long-term development of separated children in England who could be part of this process if it were in place. An overview of these actors is listed below:

**Social workers**

Every separated child accommodated by the local authority must be allocated a social worker who will assess their needs to develop a care plan and meet and support him or her on a regular basis. Social workers should be involved in finding a solicitor for a child as well as undertaking age assessments if the child’s age is disputed. Social workers could play a key role in finding a durable solution for separated children because of their role in undertaking permanency and pathway planning for children in care.

**Foster carers**

According to the latest statistics from the Department for Education, 61% of unaccompanied asylum seeking children were placed in foster care in 2014. Foster carers look after children in their own homes on behalf of the responsible local authority that has accommodated the child. They will usually have had basic training provided by a local authority or independent fostering agency. Some of them will also have been given advice or attended specialist training for foster carers working with migrant children and/or children who are victims of human trafficking. Fosters carers can make a significant contribution to the stability and permanence of looked after children by providing a loving and stable home life. Some foster carers also play a role in planning for the child or are called upon to give evidence in court for their immigration case.

**Independent Reviewing Officers (IRO)**

The primary task of the IRO is to ensure that the care plan for a looked after child fully reflects the child’s current needs and that the actions set out in the plan are consistent with the local authority’s legal responsibilities towards the child. The functions of the IRO include chairing the child’s review; ensuring that the child understands their entitlements to advocacy and representation; and monitoring the child’s case on an ongoing basis. These elements are crucial in ensuring that the care plan takes the child’s wishes and feelings into account and could be a vital element of any durable solution. The IRO also has a duty to monitor the performance of a local authority as a corporate parent and to identify any patterns of concern in relation to the experience of looked after children. However, doubts have consistently been raised about whether IROs can be ‘truly independent’ if appointed by the local authority and if this enables them to fulfil their role effectively, leading to calls for their role to be taken out of council control.

**Appropriate adult and responsible adult**

When a separated child goes through an age assessment, it is generally accepted that they should have the opportunity to have an appropriate adult present during the assessment. Their role is to ensure the child understands their rights and what is happening, to assist with communication with other actors and to observe processes the child is involved in. Any independent adult known to the child can act as an appropriate adult as long as the child agrees to them acting in that capacity. This may be an advocate, either provided through the local authority or through a voluntary sector organisation. In some local authorities, the local authority provides an independent adult.

Responsible adult is the name for the adult that must be present through a separated child’s mandatory substantive asylum interview. Home Office guidance states that social workers, Local Authority key workers, relatives, or foster carers are suitable people to perform this role. However, other people/persons who are independent of the Secretary of State and have responsibility for the child could also assume this role, such as a doctor, priest, vicar, teacher, charity worker. Their role is primarily to ensure
that the welfare of the child is paramount in the process. Home Office policy states that a legal representative can also play the role of a responsible adult. However, the presence of both a legal representative AND a separate responsible adult is necessary as their roles are different.\

**Personal Advisors (PA)**

A PA is there to act as a focal point to ensure a care-leaver is provided with the correct level of support. It could be that the local authority employs a team of people specially to do this job, or a PA could sometimes be someone already involved in the young person’s care. The young person should have a choice of PA and their wishes should be carefully considered. However, the final decision will be made by the LA, which must make sure that whoever it is has the right skills and experience to respond to the needs of the young person concerned. A Personal Advisor’s role is to provide advice and support to the young person, to co-ordinate the provision of services and take reasonable steps so that the young person can make use of services and crucially is the main point of contact in any matters relating to the Pathway Plan. This role could be critical for contributing to a durable solution because a PA provides support and advice at the child’s crucial transition point into adulthood.

**Legal practitioners**

Legal practitioners are necessary for preparing a child’s case and representing them in court where necessary. The quality and support given by these practitioners can be crucial in determining the outcome of a child’s immigration case which will have an impact on the development of a durable solution. A separated child may have two or more lawyers involved in his or her case. The first may be a solicitor who takes instructions, prepares the case, and is responsible for applications and correspondence. If the case goes to court the solicitor may then instruct a barrister to represent the child in the court or tribunal and also to give further legal advice if the case is a complex one. If there is an age dispute or inadequate local authority support, the child may also need a community care solicitor and possibly a criminal solicitor if trafficking issues are identified. All solicitors are regulated by the Solicitors Regulatory Authority and are required to have a legal qualification and professional training and experience. Barristers are required to hold a professional legal qualification and are regulated by the Bar Standards Board.

Advisers registered by the Office of Immigration Services Commissioner (OISC) can also give immigration advice and many law centres and voluntary organisations offer this service. Individuals can be registered at three OISC levels ranging from level 1 which enables a practitioner to undertake certain regulated activities, including for example notifying the Home Office of a change of address or assisting with an extension of Temporary Admission to level 3 where a practitioner can represent clients at certain stages of the appeal process.

**Home Office**

The Home Office is the Government department with overall responsibility for immigration, crime prevention and combating human trafficking. This department is the lead agency with regard to these children’s immigration status and any decision relating to their entry, stay in and departure from the UK. It also has responsibility to manage and process asylum and immigration claims, set immigration policies and implement immigration law. Staff making decisions in immigration cases in the UK Visas and Immigration department, which is part of the Home Office, are responsible for considering applications from separated children for asylum and other forms of international protection. They have a key role in making a decision on a child’s protection case and should be one of the actors who assess their best interests as part of this.

**Practitioners in non-governmental organisations**

A small number of voluntary organisations specialise in supporting separated children and provide advocacy to help a child or young person access their rights and entitlements in accommodation and subsistence support, the health service, education and legal advice. These are all
key areas in protecting children from harm and supporting them to achieve more permanence and stability and therefore contributing to finding a durable solution.

**Red Cross Family Tracing Service**
Preserving a child’s family environment and maintaining or restoring a relationship with their family can be one route to finding a durable solution. Family tracing is one mechanism for gaining information about a child and their family. The International Family Tracing (IFT) service of the British Red Cross works to restore contact between family members who have been separated by conflict, disaster or other migration. Through this service, the British Red Cross has regular contact with separated children who wish to find their family overseas. The British Red Cross makes it clear that they will not trace a child’s family for the government for immigration purposes but will only offer assistance if the child wishes to trace their family and approaches them directly. The Red Cross does not undertake any home study reports to confirm whether it would be in a child’s best interests to be returned to their family.

**Department for Education**
The Department of Education is the government department with overall responsibility for policies relating to children in care and children leaving care and is therefore a key actor in overseeing policy in a number of areas affecting a child’s route to finding a durable solution. The department works closely with national and local agencies who look after children, with local authorities, and with the professionals who work in schools, children’s services and health services. However this department is not responsible for immigration policy, which is the responsibility of the Home Office.

**Children’s Commissioner for England**
The role of the Children's Commissioner was created by the Children Act 2004. The Commissioner has statutory powers to promote and protect children's rights up until they are 18 years old, or 25 years if they have been in care, are care leavers or have a disability. The Commissioner's work involves bringing children and young people's views to the attention of parliament, local government and others. The commissioner has done much work in the area of immigration and asylum particularly relating to separated children leaving the care system and the impact of their immigration status on their future outcomes and stability.\(^62\)

**Independent Chief Inspector of Borders and Immigration**
The Chief Inspector is appointed\(^63\) to assess the efficiency and effectiveness of the UK’s border and immigration functions and reports annually to the Home Secretary. In 2013, the Chief Inspector published an inspection into the handling of asylum applications made by ‘unaccompanied’ children\(^64\).

**The United Nations High Commissioner for Refugees (UNHCR)**
Since 2004 UNHCR UK has worked with the Home Office on improving the quality of first instance decision-making and asylum procedures, this has included audits and reports on the treatment of separated children and more recently on considering the best interests of a child within families claiming asylum. In 2014 the Regional Office for Western Europe produced, ‘Safe and Sound,’ guidance on what states can do to ensure respect for unaccompanied and separated children in Europe.\(^65\)
6. When is a durable solution implemented?
There is currently no solution for separated children in England that can truly be seen as ‘durable’. Many separated migrant children are granted limited leave referred to as ‘UASC-leave’ granted for a period of 30 months or until the child is 17.5 years old, whichever is shorter. This type of leave is granted to children who are found not to be in need of international protection (they have been refused refugee and humanitarian protection) but who cannot be returned to their country of origin because there are no adequate reception arrangements in place there. 65 This type of limited leave is not a durable solution, however, there are some options in both the immigration and care systems that do allow for more permanence and stability and which could be interpreted as components that contribute to a durable solution for separated children.

Refugee Status
When someone applies for asylum in the UK, the Home Office will consider whether they should be granted international protection under the UN Convention Relating to the Status of Refugees. Being recognised as a refugee and granted asylum results in five years’ leave to remain, with the right to work and access to mainstream benefits. 66 A grant of refugee status gives a child immigration status for five years and if he or she becomes 18 years old during this 5 years they will have access to benefits and housing. It does not provide a right to family reunion. Therefore, whilst refugee status does provide more stability and permanence it is not a durable solution in itself.

Humanitarian Protection
The 2004 EU Qualification Directive sets out two forms of status - refugee status and Subsidiary Protection (SP) status for persons at real risk of serious harm as defined in Article 15. 68 The UK has implemented SP as Humanitarian Protection which is considered where there is a real risk of serious harm. 69 Being granted humanitarian protection results in five years’ leave to remain, with the right to work and access to mainstream benefits. Therefore, whilst Humanitarian Protection does provide more stability and permanence, like refugee status it does not necessarily lead to a fully permanent and lasting solution and is therefore not a durable solution in itself. In practice HP is rarely granted to children.

Grants of leave based on the right to private and family life
Article 8 of the European Convention on Human Rights protects a person's right to respect for their private and family life. This includes close family relationships, as well as their social identity within their community through their relationships with friends, involvement in education, interaction with support agencies and reliance on medical or therapeutic services. This right is incorporated into UK law by the Human Rights Act 1998.

The Article 8 right to private life may be relevant in many separated children’s cases because they may have no remaining support networks or lasting connections to their country of origin, particularly for those who have been estranged from their carers or whose families have been complicit in their exploitation. Instead these children may have built a life for themselves in the UK, formed close links with their carers, settled in the education system and developed extensive private lives. It is unlikely to have been their choice to come to the UK and they will have little memory of their country of origin and may not even speak the language. 70 Their right to respect for private life can be a crucial element in resolving their immigration status. However, the government has cut legal aid for this area of law and narrowed the interpretation of Article 8 in the Immigration Rules, making it difficult for these young people to use this route to regularise their status. 71

When a child is given limited ‘UASC-leave’ after being refused asylum or Humanitarian Protection, before their leave expires and whilst they are still a child, they must apply for an extension of their leave to remain if they wish to remain in the UK. Regardless of age (i.e. those who are adult at the end of their ‘UASC leave’) they can rely on Article 8 and also make a fresh claim for asylum based on a continuing fear of return. Separated children granted leave based on
Article 8 will get limited leave to remain for 30 months. They will have to accrue further limited leave to remain for ten years before they can apply for indefinite leave to remain. In addition, if they are still under 18 and have lived in the UK for a continuous period of at least seven years, they can apply for limited leave to remain under the Immigration Rules and then they will be entitled to limited leave to remain and then indefinite leave to remain after ten years.

**Adoption**

Whilst adoption of separated children is rare, there are a small number of cases where an adoption order has been granted\(^{72}\). In these cases, it is usually the case that a foster carer has applied to adopt a separated child instead of the child being placed by a local authority for adoption. If the child is adopted by a British citizen, he or she becomes British as soon as the adoption order is made and is, therefore, no longer subject to immigration control. As a consequence a proposed adopter must invite the Secretary of State for the Home Department to intervene in cases where a child may acquire British citizenship as the result of the adoption order.

**Voluntary Return**

Return to the child’s country of origin or place of habitual residence may be defined as one possible durable solution for some children\(^{73}\). However in the current context this can be very difficult to achieve. Voluntary return is a complex decision for any individual, and can be even more so for separated children. Children may feel pressurised to return or may have unrealistic expectations of their prospects in the UK or in their country of return. Children may be less familiar with their country of return, may not speak the language, and may have been in the UK for the majority of their lives or even born here. They may not feel connected to the culture, their family or social networks in the country of return any more. They may have experienced severe trauma and as they have significant development needs their reintegration requirements are likely to be different from adults.

For voluntary return to be a durable solution, the country of return must be able and willing to assume the responsibility of providing for the legal and physical security of the separated child. The conditions in the country of origin must be conducive to return and if a separated child has no family, children may be going back to a state with no social services departments or care system. Whether this country is safe to return to and how the country will adequately meet the child’s needs compared to the care system in England as well as any risks of exploitation within the family context need to be subject to very careful assessment.

If the child wishes to return, an application is made to the Home Office through Refugee Action, an NGO that run the Assisted Voluntary Return programme in the UK\(^{74}\). Refugee Action then refers the child for a family assessment to be carried out by CFAB (Children and Families Across Borders) the UK branch of International Social Services. These assessments look at risk to the child on return, and make a recommendation about whether return is in the child’s best interests. Because of these complexities, the numbers of separated children voluntarily returning have been very low with only 12 separated children being returned between April 2011 and February 2015.\(^{75}\)
7. Are there notable concerns or deficiencies in the approach to a durable solution?

This research has highlighted many concerns and deficiencies in the government's current approach to separated children. This section starts by outlining how separated children's best interests are currently being considered both in the immigration and care systems. The section then explores key potential outcomes of a best interests assessment, namely a child remaining in England, a third country solution or return to their country of origin. The structure of this chapter does not intend to suggest that durable solutions for separated children can and should only be framed around a geographical location (as a result of immigration leave being granted or denied). Rather, a holistic consideration of all the rights contained in the UNCRC should allow for the identification of the most suitable durable solution to the child’s situation of being separated amongst those options available in light of the applicable legal framework; a solution that will inevitably be associated with a particular geographical location.

Separated children’s best interests

The best interests principle is established in the UNCRC Article 3.1, which states:

‘In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration’

The best interests principle applies to actions affecting children as a group, such as when a state drafts legislation and policies or allocates resources, and to all actions affecting individual children. The EU Anti-trafficking Directive makes a causal link between the determination of a child’s best interests, how this links to the fulfilment of the established rights of the child as laid out in the UNCRC and therefore a possible durable solution. However, there is no procedure for making decisions about what actions are in an individual child’s best interests in England within either the immigration, care or any other systems.

Policy relating to children, safeguarding and their best interests, also including children in care and leaving care is determined by the Department for Education but the lead agency for immigration and asylum policy is the Home Office. The fact that a different department determines the immigration status of children to the one which has overall responsibility for welfare, rights and best interests poses a significant mismatch between how separated children’s cases are comprehensively considered. The lack of one lead department in facilitating greater coherence and a greater focus on the best interests of children also presents a barrier to the development of a durable solution. Currently the Home Office takes the lead in determining policy affecting this group of children. The Joint Committee on Human Rights (JCHR) has urged the Government to examine whether there should be a greater role for the Department for Education, as the department responsible for safeguarding children and young people, in overseeing support for these children.

Best interests within the asylum and immigration process

In 2008, the Government lifted its immigration reservation to the UNCRC. As a result, Section 55 of the Borders, Citizenship and Immigration Act 2009 was introduced which places a duty on the Secretary of State to make arrangements for ensuring that immigration, asylum, nationality and customs functions are discharged having regard to the need to safeguard and promote the welfare of children in the UK. The government’s ‘Every Child Matters’ guidance now clearly states that ‘every child matters even if they are someone subject to immigration control’.

However, the JCHR inquiry into the UK’s compliance with the UNCRC stated that:

‘The Home Office seems still to prioritise the need to control immigration over the best interests of the child. This is unsatisfactory. The Government must ensure that the best interests of the child are
paramount in the UK’s compliance with the UN Convention on the Rights of the Child in immigration matters and work with other departments to ensure that the needs such children are met and their rights safeguarded’.80

Case law has made clear that treating the best interests of a child as a primary consideration involves first determining what course of action would be in the child’s best interests and then considering whether those best interests would be outweighed by any countervailing considerations. The countervailing considerations need to be of significant weight to displace the best interests of the child. In the case of HH81 Lord Kerr said that ‘no factor must be given greater weight than the interests of the child’. In short, any decision by the Home Office will need to exhibit a detailed assessment of best interests and demonstrate very significant justification if the best interests of the child are to be overridden. Furthermore, in the case of Zoumbas82 the Supreme Court summarised the principles derived from those cases namely that the best interests of a child must be a primary consideration, that although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant and that it is important to have a clear idea of a child’s circumstances and of what is in a child’s best interests before one considers whether those interests are outweighed by the force of other considerations.

Assessment of best interests within the asylum and immigration process

Despite the developed case law highlighted, there is little evidence to show that children’s best interests are systematically and comprehensively assessed within the asylum and immigration decision-making process.

This research indicates that the current asylum process does not take sufficient account of children’s rights, their wishes, evolving capacities and unique protection needs. It reveals that separated children are subjected to a ‘culture of disbelief’ and suspicion within the immigration system:

‘The starting point for everything a child says seems to be ‘disbelief’ unless there is case law….even if you made the best environment it would still be dismissed. For example the fact in a case when a child says they were forcibly recruited, if the country evidence says that doesn’t happen, that’s considered the fact no matter what the child says’

Social Worker

Research from our services in 201283 echoes these points and also suggests that young people are not getting the information they need about the asylum process in a format that is accessible to them. Children also told us they find it difficult to complain about the treatment they receive because there are no clear channels through which they can do this and they are anxious that any complaints they make will have a negative impact on their asylum claim. These issues leave them feeling powerless and insecure about vital decisions that affect their lives and their futures. This impacts on their ability to have a role in finding a durable solution as well as taking control of their lives and immigration and asylum decision maker’s ability to make an assessment about their best interests84.

Research carried out by the Greater Manchester Immigration Aid Unit into ‘unaccompanied’ children’s asylum cases found that in 24 of 34 cases analysed, the Home Office failed to carry out any determination of the child’s best interests at all85. Kent Law Clinic86 also found that in only five of the 20 cases examined were the best interests of the child mentioned in the refusal of their asylum claim. Interviews for this research corroborate these findings:

‘It’s all become so fraught really…all the factors that go into the best interest’s pot are not put in there. Its quite common that there is a failure to take into account relationships with family members, failure to take into account child wishes or feelings or a failure give any weight to them….if you were for example satisfied a child could go safely back home but not taking into account that they have exams that year and what a
difference finishing their exams could make to their future, or if they have medical treatment that needs to be finished, or not looking thoroughly enough about what a child might face on return’.

Retired Upper Tribunal Immigration Judge

‘The amount of appeal determinations I read where it seems like either the judge or the case worker all they have to do is reference section 55 and they can continue not to give them the benefit of the doubt. Its almost like they have to mention it, by mentioning it they can then discard it’

NGO case worker

The Joint Committee on Human Rights\(^87\) has highlighted similar concerns stating that:

“On the balance of evidence we received, we are not persuaded that best interests are being considered adequately at present. Immigration concerns are too often being given too much weight, which must change”.

The Committee has also recommended that the government should evaluate the case for the establishment of a formal Best Interests Determination process. In the light of the Committee’s comments the government agreed\(^88\) to consider the case for establishing a Best Interests Determination process in the context of the existing immigration and asylum process\(^69\) but so far have made very limited progress in taking steps towards achieving this.

Current Home Office guidance on best interests

The Home Office instruction on processing an asylum application from a child\(^90\) states that best interests are not the sole consideration in every decision affecting the child and these have to be balanced against the need to provide effective immigration control. It also states that:

‘This guidance must be read with this principle clearly in mind and the understanding that Best Interests is a continuous assessment that starts from the moment the child is encountered and continues until such time as a durable solution has been reached.’\(^\text{67}\)

Whist this is welcome, NGOs have raised concerns that the way the rest of the instruction is drafted does not effectively reflect the weight and importance given to the concept by the courts and that any decision by the Home Office should exhibit a detailed assessment of best interests and demonstrate very significant justification if the best interests of the child are to be overridden. Concerns about how this is not always happening were highlighted in our interviews:

‘I think in the asylum process, a child’s needs are nowhere because it is all about risk on return and there is very little thinking about what that young person needs in this process’

Solicitor

Guidance sets out that Home Office decision-makers are instructed to encourage social workers to fill out a best interests pro forma. However, our research indicates it is unclear when these forms should be filled in, whether this is being done in every case, what point in the life of the case, how any assessments around best interests are being conducted and how much weight is given to them.

‘It’s not clear what best interests means. They [Home Office] use the phrase ‘primary consideration’ but don’t really say how it’s been applied. If you do write something in the best interests proforma along the lines of what they want, if that gets to court in an appeal its all anecdotal its not facts, the judge would want this from expert witnesses really so it looks a bit shoddy almost because its just opinion. You are asked on day one for a view, to do it properly it’s a big piece of work, its not statutory so we don’t have to do it. I haven’t done one for a long time and also they were quite retrospective because they were catching up with people making in-time applications or someone coming in saying I haven’t got one’

Social worker
‘The use of the best interests pro-forma is really ad hoc, I just don’t think people are prompting us to do it. We don’t have it in our internal policies to say it must be completed so it seems like there are a load of cases where they are not being filled in at all’

Social worker

A best practice document on best interests published by UNHCR and UNICEF called Safe & Sound details a non-exhaustive list of elements to be taken into account when assessing and determining a child’s best interests is provided. These include the need to take into account the child’s views, as well as important other factors such as the child’s identity, preservation of family environment, care, protection and safety and right to health and education. The breadth of the list of elements emphasises the importance of assessing a child’s best interests from a broad and holistic perspective, one that is informed by a variety of sources of information and is contributed to by actors other than those involved in deciding on the child’s immigration status.

However, in the absence of full and comprehensive information on best interests from social workers and other relevant actors involved in the child’s life, the main sources of guidance to Home Office staff making decisions on a separated child’s best interests are only the statutory section 55 guidance and the asylum instruction on processing an asylum application for a child. Current statutory guidance is insufficient as it does not make clear the need for the views of multiple actors including those outside the immigration system to be considered, as well as how these multiple views will be synthesised when considering a children’s best interests. The lack of any other guidance also gives the impression that best interests of the child should be placed only within the asylum and immigration process and therefore does not seek to view a child’s best interests as broad and holistic.

Assessment of best interests within the care system

Finding a long term durable solution is intricately linked to ensuring and protecting children’s welfare which should also inform and drive the decision making of a Best Interests Determination. In UK domestic law, public authorities are under a legal obligation to safeguard all children and promote their welfare. The Children Act 1989 incorporates some elements of best interests in domestic legislation stating that in the upbringing of a child the child’s welfare shall be the court’s paramount consideration. Section 11 of the Children Act 2004 also places a duty on key persons and bodies to make sure they have regard to the need to safeguard and promote the welfare of children.

The guidance on ‘unaccompanied’ children makes clear that care and pathway plans should include contingencies for what could be seen as contributing to best interest plans for ‘unaccompanied’ children through dual and triple planning, the permanence framework and ensuring that the voice of the young person should be at the centre of the process. However, there is no formal Best Interests Assessment or Determination within the care planning framework and this research highlights that information about the child’s immigration claim is frequently not considered as part of the care planning and pathway process and information about the child’s welfare needs are not considered as part of their immigration status. This means agencies cannot make an informed, holistic assessment or determination in the child’s best interests.

An independent legal advocate or guardian was also highlighted by participants as being crucial in helping the child articulate their wishes and feelings throughout the care. Separated children often find it more difficult to trust adults, particularly those in authority, due to the trauma or persecution they may have suffered in their country of origin at the hands of such individuals. Independent legal advocates are currently set out in an enabling provision for trafficked children in the Modern Slavery Act 2015 subject to the success of an independent evaluation terminating in September 2015.

A key right under the UNCRC is participation. It states that children’s views should be sought in all matters affecting their lives and should be given due consideration in accordance with their age and maturity.
This right was central in the case of ZH (Tanzania) where the supreme court held that when deciding what is in the best interests of the child, ascertaining the child’s own views was an important part of the process. It stated that “immigration authorities must be prepared to at least consider hearing directly from a child who wishes to express a view and is old enough to do so. Whilst their interests may be the same as their parents this should not be taken for granted in every case”.

The current lack of an independent legal advocate or guardian whose role is to look out for separated child’s best interests was also highlighted by participants in our research. This is exacerbated by the fact that many separated migrant young people have limited support from social workers or key workers because the majority are 16-17 years old and are living in semi-independent accommodation. Participants highlighted the importance of the advocate having the legal powers to be able to instruct a solicitor in the child’s best interests. This is particularly important when a trafficked child is unable to recognise they have been exploited and need an adult to act in their best interests.

'I have clients who are not able to articulate what has happened, it’s too much, they are too distressed or they can’t bear to think about it. As a lawyer you need somebody to tell you ‘yes or no’ and that’s a lot to put on a young person in those situations…you can see why somebody independent who is skilled and will understand the pros and cons and will be able to say, ok if you can’t make that decision I will make it for you. It would be hugely beneficial.’

Solicitor

Effective participation requires decision-makers to put in place procedures that enable the wishes and feelings of children to be considered. This includes ensuring that children are informed and aware of the decisions that are being made, in a way that they can understand.

The care planning process states that an important part of the assessment and review is consulting the child so they have the opportunity to make their wishes and feelings known, however the ability to do this successfully is limited without any form of advocate or legal guardian or advocate. It is critical that this forms part of a best interests assessment. Only when the child’s wishes and feelings are taken into account through this process, can a truly durable solution be found.

Remaining in England

Temporary immigration status the norm

Graph 3 illustrates that until 2014 the majority of decisions on asylum applications received by ‘unaccompanied children’ under the age of 18 were grants of temporary or ‘limited’ leave as previously mentioned in section 6. UASC leave can only be granted after a refusal of asylum or humanitarian protection. Separated children who are unsuccessful in obtaining asylum or humanitarian protection may be granted ‘UASC Leave’ for a period of 30 months or until the child is 17½ years of age whichever is shorter where there are no adequate reception arrangements for a child if they were to be returned to their country of origin.

A grant of ‘UASC-leave’ does not represent a durable solution. It is a temporary form of leave which is a less secure form of leave than refugee status and humanitarian protection, and has a huge impact on a child’s future immigration applications and entitlements to services. In 2014, the number of grants of refugee status for this group of children significantly increased and were slightly higher than the number of grants of UASC or discretionary leave at 42% compared with 41%. Graph 3 also shows that Humanitarian Protection is very rarely granted to this group of children, in under 1% of cases. There are no statistics available on the outcomes of appeals made by these children.
Overall, the proportion of cases in which asylum is granted to children on initial decisions instead of limited leave (either Discretionary Leave or UASC leave) slowly increased between 2010 and 2013 and then jumped significantly in 2014. Its unknown why this jump has occurred, but it is unclear whether it can be attributed to any systemic change in decision-making. It may more likely be the result of changes in the types of nationalities applying for asylum in 2014 with increases in Syrians and Eritreans, as well as an overall decrease in the number of decisions made in this year. The grant rate varies considerably by country of origin. Below are the grant rates for the top 5 countries of origin for ‘unaccompanied’ children’s asylum applications in 2014. Children from Eritrea and Syria for example, are much more likely to be granted asylum than children from Albania or Afghanistan.

<table>
<thead>
<tr>
<th>Country</th>
<th>Grant Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Syria</td>
<td>59%</td>
</tr>
<tr>
<td>Albania</td>
<td>&lt;1%</td>
</tr>
<tr>
<td>Afghanistan</td>
<td>15%</td>
</tr>
<tr>
<td>Eritrea</td>
<td>95%</td>
</tr>
<tr>
<td>Vietnam</td>
<td>26%</td>
</tr>
</tbody>
</table>

Source: Home Office Immigration Statistics

The Home Office policy of granting short periods of leave to children in immigration cases has been legally challenged and was held to be unlawful because it failed to consider the welfare and best interests of the child before deciding the period of time for which leave to remain should be granted. The High Court recognised that successive grants of short periods of leave to remain can leave children in limbo and may be contrary to their welfare. In deciding this case, the High Court applied case law relating to best interests. It was made clear that children’s best interests must be a primary consideration in all decision-making about them or affecting them. The Home Office altered their policy as a result of this case in 2013. The asylum policy instruction on discretionary leave makes clear that the best interests of the child must inform the length of leave granted. Whilst this case referred to migrant children in families and not separated children, the case is relevant to durable solutions because it acknowledges that in certain circumstances longer periods of leave should be granted if this would be in a child’s best interests.

The Joint Committee on Human Rights has also highlighted the shortcomings of grants of limited leave (Discretionary Leave at the time) stating that:
‘Discretionary leave to remain is used too readily at the expense of properly considering other options, such as asylum, which hinders access to further education and to the labour market in adulthood. The Government should ensure that all unaccompanied migrant children have asylum claims evaluated fully, have decisions made about their future on robust evidence as early as possible’.

However, the government said in response that they believe the decision making process was “robust and thorough” and enabled children “to approach adulthood knowing what their immigration status is”. This, it said, represented the “durable solution that is required to enable the child to plan for their future”, upholding the best interests of children. The Home Office were unable to give their policy position on a durable solution for this report stating that they did not have one. The Home Office have suggested the approach of granting short periods of discretionary leave is adopted in order to prevent more parents sending their children to the UK. When asked by the chair of the JCHR about providing indefinite leave to remain for these children as a more permanent, durable solution the Minister said: ‘I do not believe that any responsible Government would allow such a step given the clear risk that it will drive up intake levels by creating extra incentives for parents to send their children to the United Kingdom for the economic benefits’. They also stated that ‘a modest risk in intake would be very expensive’ including after 18 and that ‘the proposal was misconceived for financial and welfare reasons’.

Appealing ‘UASC leave’
Separated children who are refused asylum and granted limited or ‘temporary’ ‘UASC-leave’ should be advised to consider appealing their original refusal. However, an appeal of a child’s original asylum claim often does not take place. Our interviews indicate this happens for a number of reasons which include:

- poor training and advice given by solicitors and social workers in understanding migrants entitlements

so that they are unaware of the need for young people to make this application in-time:

‘The social worker needs good knowledge of how the immigration system works because it changes so much. If they are not up to date with it they might mess up someone’s life. If you don’t apply for the right application form, the child can’t do it for themselves; it might come back as a problem in the future’.

Former separated child

- a lack of willingness by these professionals to explain the situation clearly to children

‘When people describe limited leave to children – a lot of people are uncomfortable about being honest with children about the situation they are in, they will say things like, don’t worry you have got a visa now. We see this a lot from social services and solicitors – they find it too uncomfortable to sit down with a child. If you speak to care-leavers now who are appeal rights exhausted they would have liked someone to sit down with them and explain’.

NGO case worker

The young people interviewed explained that they don’t often know much about the ‘limited’ immigration status they were given and don’t have this explained to them so they found out as they were getting older:

‘At 14 when I got my visa, I didn’t know the effect it would have at 18’

Former separated child

- a reluctance by solicitors and legal representatives to appeal the refusal of asylum when limited leave is initially granted early on in the immigration process

‘I see quite a lot of cases where we might pick a case up on the new application for further leave and the first question is, did you appeal and why not? Maybe 50% can’t answer that question….I often see young people where they have been told there are
no merits to appeal, but with children I would be surprised if this was the case’

Solicitor

‘Solicitors try to close these young people’s cases to gain their earnings from legal aid by saying why don’t you appeal when your leave to remain expires but…you can’t appeal at the end, then you are appealing the decision not to extend rather than the appeal of the actual asylum claim, this has less weight and is detrimental in the long-term’

Senior Personal Advisor, Local Authority

When children do not appeal their refusal of asylum they must make a further application for asylum or other form of leave in a different category before their existing ‘UASC-leave’ expires at 17.5 years old. If they apply whilst their existing leave is still current, the conditions of their leave remain the same while their application is pending, including throughout any appeals. This means they can continue in education and receive support from the local authority, work or apply to the mainstream benefits system. However, even if a child’s leave is automatically extended by section 3C of the Immigration Act 1971, pending a decision on an application for further leave or an appeal, he or she will not be given a letter or a stamp in any passport. As a consequence,

‘Many employers, colleagues, universities don’t understand that a young person is still here lawfully, the letters acknowledging the application don’t say that. The Home Office needs to be sending updates for that young person every 6 months if it’s going to take over 2 years to get a decision, so the young person can be clear about what they are entitled to. We spend a lot of time ringing people to explain the situation. It’s so dispiriting for the young person’.

Solicitor

If young people do not apply in time for further leave it means that on turning 18 these young people become ‘aged out’ and are classed as ‘persons unlawfully in the UK’. The young people we talked to for this research described this situation as making them feel ‘angry, frustrated and insecure’.

One interviewee described his experience of how these young people feel:

‘Their situation is an ongoing anxiety it’s with them the whole time, it’s always in the back of their mind, what’s going to happen…what’s going to happen…what’s going to happen’.

Independent Reviewing Officer

Conflict between the immigration and care systems

The differing timescales and objectives of the care and immigration system can also hamper the assessment and determination of a durable solution for a separated child. For example the creation of a pathway plan or the review of a care plan takes three months, but a decision on a child’s immigration status can happen very quickly and have huge consequences for steps set out in their care or pathway plan. Guidance for looked after and unaccompanied children makes clear that care and pathway plans should include contingencies through dual and triple planning and that the voice of the young person should be at the centre of the pathway planning process. If done effectively as part of a multi-agency assessment, these steps could be part be part of contributing to a durable solution and best interest plan for separated children. However, our research has shown that this does not always happen.

Our research highlights the difficulties faced in making effective pathway plans for separated children, including how limited leave to remain hinders this process and means decisions are not made in their best interests:

‘We can’t make a permanent plan for children because the overriding factor is immigration status. So we can try our best with making a plan but at the end of the day it is interrupted by the immigration system... We do some triple planning but really it’s about explaining what people’s entitlements and what will happen it’s not about actually planning for them because we can’t.’

Social Worker, Local Authority
Some authorities do dual and triple planning based on possible outcomes but it is incredibly varied both on the desire to do it well and the possible options.

Therapeutic worker in an NGO

‘Pathway plans are for 6 months, we do this as much as possible but there is nothing for the young people, it’s an exercise we do so we have a plan on the system and so no one can accuse us of not providing the right support to the young people. But for the young people there is nothing there’

Senior Personal Advisor, local authority

These findings are corroborated by other research which suggests that some young people are not aware that they have a pathway plan or the purpose of such a plan or how this links with their immigration status. Furthermore, research by the Who Cares Trust found that only 50% of young people said that they had received a pathway plan and of these young people, views were mixed about whether or not the plan was accurate or reflected their views, plans and ambitions.

The Government has announced that it wants to improve permanence for looked after children and intends to take forward proposals concerned with strengthening the team around the child and improving the quality of care and the stability of placements for long-term foster care. The government has also agreed that more needs to be done in planning and consulting with young people as they transition into independence. But there is no mention in either of these government reports about the particular and unique needs of separated children and how their immigration status will affect their permanency planning and the instability of their future.

Varied experiences in the care system

Research, including by the Joint Committee on Human Rights has indicated that the experience of separated children in the care system varies considerably which greatly impacts on their ability to effectively transition and be supported into adulthood. The Government acknowledged that there was an “issue with local authority consistency” in relation to separated children in evidence to the JCHR inquiry into unaccompanied children. Our research highlighted that in general, local authorities aim to provide separated children with the same level of support as all other children whilst they are under 18 but that this was not the case in all authorities. One participant reported that their entire team made an escalation to the Director of Social Services about the second class standard of service across the board that separated children were receiving:

‘They were getting lower allowances, they tended to be thrown straight into semi-independence when some of their needs would better suited to foster care, they got no say in their placement choices. Their voices weren’t being listened to at all. We managed to get this policy completely changed – so they could stay in foster placements if they wanted to so they got a say about where they stay like indigenous children and the allowances became exactly the same as indigenous children and they get proper key work hours now’

Independent Reviewing Officer

The young people interviewed continuously raised concerns about their experience of social workers, describing some of them as active but in the majority of cases they expressed that social workers often do not give them the support they need and don’t know what is going on in their case or they have low levels of supervision.

‘Some social workers are so difficult, some are really active. A lot of them don’t listen to what you are saying and they don’t do the right things or maybe they don’t have the right information to help you’.

Former separated child

‘I’ve had a social worker since 2008 and until now she hasn’t done anything for me. I take care of myself, I do whatever I do, I know she is not going to do it, she doesn’t take me seriously’.

Former separated child

Local authorities in England have suffered huge cuts to their budgets which are having an impact on the services they deliver and
has exacerbated already high thresholds for support, tight budgets and resources.\textsuperscript{116} As a result interviewees also talked about feeling pressured to defend services to separated children compared to other children, particularly because they were seen as not staying in the country long or were regarded as being ‘illegal’. One social worker stated:

\textbf{‘My manager has to defend the services we give to unaccompanied minors to councillors and lead members because they sometimes don’t think we should provide a service to people they regard as illegal migrants – with all the budget cuts that’s another barrier we face’}.  

\textit{Social Worker}

The majority of separated children are placed in foster care (61\%), with 25\% of separated children living independently in ‘other placements in the community’ which for example include in flats, lodgings, bedsits, B&Bs or with friends, with or without formal support. Another 11\% are in hostels. Very few separated children are placed in secure children’s homes. Separated children aged under 16 years old are more likely to be placed in foster care although there is no stated policy which prevents local authorities from placing 16 and 17 year olds in foster care. Young people interviewed highlighted their strong connections with their foster carers and the positive impact this had on their long-term future and stability.

\textbf{‘My family treat me like I am their own son; they treat me with love and respect. They are like a real mum and dad. I can talk to them and I can share my ideas and future goals with them’}.  

\textit{Former separated child}

‘Other placements in the community’ are not subject to Children’s Homes Regulations and regulated and inspected by Ofsted. These children do not necessarily receive support as part of the accommodation so often have intermittent or no supervision. Statutory guidance states that local authorities should always ensure that these settings are safe and suitable\textsuperscript{117}. However, recent research by The Children’s Society has documented safeguarding concerns and risks of exploitation experienced by many young people living in these types of accommodation\textsuperscript{118}. Our interviews and own experience has also found that limitations on placement resources have resulted in older children being made to stay in hotels and Bed and Breakfast accommodation, a practice for which local authorities have also been publicly criticised by the Education Select Committee.\textsuperscript{119}

\textbf{‘During my work in a local authority I once dropped off a migrant young person at a Bed and Breakfast, they knew no one, I felt devastated but it was what I was ordered to do...for migrant young people who were over 16, it was implied that I had to fast-track them into independence so our costs were reduced, eventually this type of practice made me leave my job’}

\textit{Supervising Social Worker in independent fostering agency}

Many of the young people we interviewed reported having a positive relationship with their foster carers which they felt helped improve the process of achieving permanence and stability. However, many expressed disappointment at having to leave their foster families at 16 or 18 and that only poor quality housing was available to them after leaving their foster carers. The government recently changed the law to allow children to stay with their foster families if they wish after they turn 18.\textsuperscript{120} Whilst this is an important development, in practice it will depend on the age at which the child entered care and where they were placed –whether they would have been in a foster placement long enough to have developed a strong enough relationship that they wanted to stay put and whether they would even be in a foster placement at all if they entered the system at an older age. It is also unlikely to apply to separated children who mostly have a temporary immigration status which negatively affects their entitlements as care leavers. Furthermore the majority of separated children arrive in England aged 16 – 17 which can hamper their ability to develop a long-term trusting relationship with their foster carers.

Whilst the quality of accommodation available to 16 and 17 year olds should
improve, allowing this extension of accommodation provision to children accommodated in other arrangements would help create greater stability for these children who experience very infrequent supervision compared to other types of accommodation. Some civil society organisations have also argued these measures should be taken further and the leaving care age should be raised to 25 for all young people as has happened in Scotland. This could assist in better supporting children’s development and transition into adulthood and ability to find an appropriate durable solution regardless of their immigration status. The Education Select Committee inquiry into post 16 options states that current legislation around this is unclear which results in too many young people having much needed support terminated at the age of 18. They recommend that the Department for Education issue explicit guidance on young people’s right to stay in ‘other arrangements’ until they are 21.

**Age assessments**

A significant number of migrant arrive in England either not knowing how old they are or claiming to be children but without documentation to prove their age. Many have their age disputed by either the Home Office, or the local authority when they are seeking support. The process of assessing age has the capability to vastly alter the well-being and stability for children both whilst they are in the care system and as care-leavers and therefore has implications for their ability to find and be supported to find a durable solution.

Research has highlighted that separated children are being regularly disbelieved about how old they are and facing harmful, protracted disputes. In the year ending March 2014, 318 asylum applicants had their age disputed and there were 418 recorded as having completed an age assessment. The only means of challenging an age assessment is through judicial review, which is expensive for local authorities and stressful for children and young people whose lives are left in limbo as they wait for a decision. An appropriate adult should be present at any interviews which are part of the age assessment process, but in our experience this does not always happen. Some limited progress has been made in improving the age assessment process with practice guidance for social workers on how to undertake age assessments soon to be published by the Association of Directors of Children’s Services (ADCS).

The age of a child has great importance in determining how an individual will be treated both in the immigration and asylum process and also in relation to the care and support they receive. If a child is wrongly believed to be an adult, they may miss being supported by children’s services; miss access to education or college; they may be dispersed to a different part of the country and might be accommodated or detained with adults. Age also determines how their asylum or immigration application is processed. For example, in a child’s asylum claim there are specific procedural safeguards and separate policy determining how a child’s evidence and credibility should be assessed. Research has indicated that minor discrepancies between what the child said in their asylum screening interview or full asylum interview and what they said in their age assessment interview are sometimes given substantial weight. These issues were highlighted in our interviews:

> ‘If we are determining a young person’s age, the age we assess them to be has a big impact on their asylum claim and their credibility as the Home Office see what they say as a lie and additionally the support they get as a child is obviously different to if they are assessed as an adult so it has a big impact on them in the long run’

**Social Worker**

The exact age of a child, not just if they are over 18 or not can have huge budgetary implications for local authorities and is therefore an area of further dispute. Whether a child is assessed as under or over 16 also has repercussions for the assessment of the child’s needs, under the Children Act 1989. One example of this is most children under the age of 16 will be placed in foster care, and older children are likely to be placed in semi-independent accommodation with more limited support.
**Transition into adulthood**

There is an absence of literature on the experiences of young migrants who transition into adulthood with attention having fallen to child migrants under 18 instead. Research by academics as well as the documented lived experiences of young migrants themselves demonstrates that for young separated migrants a sense of well-being is derived not just from feeling in control of current and past aspects of their lives, but from looking forward and having a firm feeling of belonging linked to their future as adults. Current policy in England tends to impose a set of extremely narrow future options for independent migrant young people as they transition into adulthood in part because the ‘best interests of the child’ and children’s rights frameworks becomes largely redundant at the age of 18. In England, changes to leaving care support after separated children turn 18 is a prime example of this and demonstrates the impact on young people when their best interests are not being assessed and a durable solution is not being found.

**Inadequate leaving care support**

Although the immigration status of a separated child does not affect their entitlements while they are accommodated by the local authority, a young person’s entitlements after 18 will depend on their immigration status. This leaves former separated children caught falling through the gap between immigration regulations designed with adults in mind, and legislation to support care leavers. Barriers preventing their return to their country of origin include a failure of the country to cooperate or provide travel documents as well as a fear of what awaits them in their country of origin. This drives young people to disengage with their local authorities and remain in the UK with undetermined legal status, exposing them to abuse and exploitation. The Refugee Children’s Consortium estimates that there are several thousand young people in this position in the UK. The young people interviewed for this research highlighted that growing older and having to leave the care system was a very difficult time for them because of their status and the lack of available support and services. They expressed feelings of being stuck and in limbo, feelings of frustration, anger and anxiety. They repeatedly talked about being unable to work leaving them feeling powerless:

> ‘At age 16 you can start working if you have the right papers with you. If I had the right papers I could go out and support myself, I could work I wouldn’t need a social worker, I wouldn’t need anyone…. At the moment when a decision is being made, they say you aren’t allowed to do anything’.

**Former separated child**

Several of the young people in the focus group were in the process of having their support from the local authority terminated and highlighted the impact on their mental health:

> ‘We start to have depression problems, then you can’t do anything, you never know what is going to happen to you…if you tell me something now I may forget – I have really bad short-term memory’.

**Former separated child**

Graph 4 shows the outcomes of asylum application for ‘unaccompanied’ children who apply for asylum while they are under 18 but do not receive a decision on their claim until after they have turned 18. For these children the refusal rate is high at over 75% in 2014. If an asylum application is processed whilst the separated child is still under 18 there are specific procedural safeguards and policy to protect the child. When applications are processed after 18, these safeguards for the young person are lost. Our research highlighted delays in decision-making:

> ‘We see children who arrive at 16.5 and 17 not having their claims heard, not even the substantive interview until after they turn 18’.

**Social Worker**

> ‘Decisions are being made about people’s status after 18 so these young people are then no longer in my care. Once they are coming up to 18 whilst these young people are still in the care system the Home Office needs to make their decision quickly about their cases so the Local Authority can plan’

**Independent Reviewing Officer**
Case law\(^{132}\) has made it clear that a young person in this situation should not be moved onto support provided by the Home Office for refused asylum seekers\(^{133}\) but continue to be supported by the local authority. Support should not be withdrawn if this would breach an individual’s human rights and in some local authorities, human rights assessments are undertaken to determine whether support should continue. In practice, research has shown\(^{134}\) there is wide variation in the way different local authorities interpret their statutory duties towards these young people. Some will continue to provide minimal support rather than a complete withdrawal; others will not withdraw support immediately but will apply their own cut-off point, such as turning 21, or leaving education. Our interviews for this project reflect the same variation in practice:

“For me, there needs to be consistency around how you work with appeal rights exhausted care-leavers because we are seeing such inconsistency in local authorities. Most of my clients are destitute…a lot have had their support terminated. I often find that no Human Rights Assessment has been undertaken by the Local authority and no triple planning has been done – they sometimes send a message by email and change the locks, really dark stuff”

**NGO worker**

The new Department for Education statutory guidance for Local Authorities\(^{135}\) highlights local authorities’ obligations in planning for separated children’s transition into adulthood. This includes assisting the young person in submitting an application in-time for further leave to remain before they reach 18 as well as assistance in continuing their education and preparing them for independent living. But the choice to continue to support to these young people is at the local authority’s own expense and risk, because they are no longer reimbursed fully by the Home Office for the cost of supporting young people, as is the case with under 18s. In 2011/2012 the Home Office provided £15.3 million to local authorities as a contribution towards these young people’s support costs\(^{136}\). Kent Council have argued that it costs them £2 million annually to support young people in this position owing to “conflicting legislation” but would be at risk of legal challenge if they were to stop\(^{137}\). In response to a letter to the chair of the JCHR asking the government to provide an assessment of the cost of granting indefinite leave to all unaccompanied children, the government response is that this policy...
would result in these young people being entitled to care-leaving support and that the costs would therefore be prohibitive whilst highlighting that the current costs of these children is already too high. Our research indicates that the situation faced by local authorities has resulted in some social workers feeling a conflict between how they feel they should treat a young person to whom they have been acting as a corporate parent, and the constraints placed on them with regards to their local authority’s budget.

‘I have very regular discussions with my managers about funding – it seems to me for under 18s the funding is not far off the costs but it’s a serious issue with funding post-18…the expectation that a Local Authority will support 25 young people over 18 with hardly any funding nowhere near meets the cost, it is becoming a serious problem particularly in light of drastic budget cuts’

Leaving Care Manager, Social Work team in local authority

A recent inquiry into the ‘rights of unaccompanied migrant children and young people’ by the Joint Committee on Human Rights considered evidence in relation to support for care leavers who had exhausted their appeal rights. They recommended:

“Unaccompanied migrant children must be properly supported in the transition to adulthood. The Government should ensure that children receive bespoke and comprehensive plans that focus on educational goals, reintegration and rehabilitation. Such plans should give proper consideration to all possible outcomes for the child, including family reunification and reintegration whether in the home country, the UK or a third country. Care plans should take full account of the wishes of the child, and remain applicable up to the age of 21, or 25 if the young person remains in education, to enable children to realise their maximum potential.”

The government’s response to this inquiry acknowledged that local authority responses to this group of young people are inconsistent and some are not providing the necessary support. However, the response fails to detail specific actions to improve this situation. The Department for Education’s recent review of their care leaver’s strategy made no mention of young care leavers subject to immigration control and the restrictions placed on their care due to their immigration status or the inter-departmental roles of the Department for Education and Home Office in liaising on this topic. Similarly a recent report by the Education Select Committee omitted evidence from the voluntary sector about this vulnerable group of young people whilst a range of government departments are included in the strategy but the Home Office is missing, despite their crucial role in the support needed for this group of care-leavers.

Quality of legal advice and representation

Separated children with an asylum claim qualify for legal aid, but in our experience many separated children struggle to access high quality, child sensitive, free legal advice and representation in order to understand and access the support and protection to which they are entitled. Acting for separated children requires specialist knowledge but research indicates that not all solicitors representing children have this specialist knowledge and have a lack of experience in interviewing children and a lack of understanding of child-specific persecution. There is no mandatory training or qualification for representing separated children and research has found that the quality of legal representation received by separated children is extremely varied with an insufficient number of representatives with sufficient knowledge of relevant law and policy, and skills in working with children.

This situation has been exacerbated by the introduction of the Legal Aid Sentencing and Punishment of Offenders Act (2012) which came into effect on 1 April 2013. Children’s cases since 2009-10 in immigration and asylum have subsequently fallen by 68% in just 3 years. While asylum or protection under Article 3 of the European Convention on Human Rights (ECHR) remains within its scope, individuals with non-asylum
immigration applications no longer get legal aid. This particularly affects applicants with claims made under the Convention’s Article 8 - the right to family and private life. Our research indicates that changes to legal aid may be encouraging some children to apply for asylum where in fact their international protection needs may not be asylum-related. When their asylum claim is then refused, it gives the impression of a poor claim leaving decision-makers to grant 'UASC-leave' when in fact the child has needs that might better be recognised as an immigration claim:

‘Sometimes now when these young people are claiming asylum you know they [Home Office] are going to throw the case out and they should be using human rights legislation but legal aid cuts have blocked this off’

Independent Reviewing Officer

Where children have cases involving asylum grounds as well as Article 8 ‘right to private and family life’ grounds and welfare grounds based on the Section 55 safeguarding duty, as mentioned previously, the latter two grounds would now not be covered by legal aid. This means that important information and evidence about the child’s welfare and best interests may not be communicated to the Home Office or the courts and will therefore not be considered.

‘If you don’t do it pro bono there is no possible way that anyone in my view can properly represent themselves on the Article 8 issue. Because it is not straight forward… people almost think Article 8 is not important, but it’s really important, it’s about development, security and well-being, things that in any other jurisdiction would be carefully safeguarded for children’

Solicitor

This situation has particular implications for children as they transition into adulthood with young adults’ immigration and asylum cases having fallen by 58% since restrictions on legal aid came into force. Under LASPO, children turning 17½ whose limited leave has run out and who are not applying for further leave on asylum grounds now do not qualify for legal aid to get legal advice and representation to make this application. Our research also indicates that this situation is placing young people at great risk:

‘When our clients come to a point when they make an appeal on the refusal of the extension of leave they are mostly confronted by solicitors who say sorry this is not covered by legal aid….so then unscrupulous solicitors say - give me this much money and I will apply for you. Our clients don’t know the immigration system at all, so when the solicitors say I can help you they trust them and so they save the money by starving themselves and they pay a huge amount of money to the solicitor who only does a fresh application for asylum which is usually refused and they don’t have an appeal right. This generates the opportunity for judicial review, then they say give me an extra £1200 because your application has gone one step ahead, but it hasn’t gone one step ahead it has just become more challenging and difficult’

Senior Personal Advisor, local authority

The 2014 Department for Education guidance on ‘unaccompanied and trafficked children’ mentioned previously, states that advice should be sought to ensure a child’s international protection and human rights issues are fully explored by a registered specialist advisor experienced in working with children. Anecdotal evidence suggests that some local authorities are stepping in to pay the costs of legal advice and representation previously covered by the Legal Aid Agency. However, our interviews indicate that this isn’t a full solution and separated young people will be unable to access legal aid at all necessary points meaning resolving their situation will become even harder:

‘[As a council] we have agreed that we will fund paper applications, so those applying for leave to remain prior to 18th birthday where they are not covered by legal aid. But we will come to a point where a young person needs to appeal against a negative decision and then we are into a different ball game because we can define say £750 for a paper application and but then it is a potentially open ended cost
attached to an appeal which could go onto upper tribunal....the test around legal aid to determine if legal aid is granted, how we as a Local Authority will determine that test is fraught with difficulties’.

Leaving Care Manager, Social Work team, local authority

The government is also currently attempting to introduce a ‘residence test’ to further restrict access to legal aid based on the need for a person to be lawfully resident for a continuous period of 12 months. The test has been ruled unlawful but the government is appealing this decision. The cross-party parliamentary Justice Select Committee’s recent report into the impact of changes to civil legal aid recommended that the Ministry of Justice review the impact on children’s rights of the legal aid changes and consider how to ensure separated children in particular are able to access legal assistance.

Shortcomings in trafficking arrangements

There is a lack of ‘durable solutions’ for separated children who are victims of trafficking. Despite Article 16.2 of the EU Directive on preventing and combating trafficking in human beings and protecting its victims explicitly stating that ‘Member States shall take the necessary measures with a view to finding a durable solution [for unaccompanied child victims of trafficking] based on an individual assessment of the best interests of the child’, the Government has not put any such measures in place. In addition, when a child is recognised as having been trafficked under the National Referral Mechanism they are not even granted a residence permit in recognition of this status as may be required by the Directive. Instead, they are granted limited ‘UASC’ leave until they are 17.5 years old in the same way as other separated children, despite their additional protection needs.

A recital from the Directive also states that:

‘A decision on the future of each unaccompanied child victim should be taken within the shortest possible period of time with a view to finding durable solutions based on an individual assessment of the best interests of the child, which should be a primary consideration. A durable solution could be return and reintegration into the country of origin or the country of return, integration into the host society, granting of international protection status or granting of other status in accordance with national law of the Member States.’

Government guidance on processing an asylum application from a child states: ‘Some victims of trafficking may be able to establish a 1951 Convention reason or child-specific forms of persecutions and that among the factors to consider is the risk of him or her being re-trafficked and therefore the risk of future harm through exploitation and abuse.’ In practice, some trafficked children have been granted refugee status which involves substantial work from lawyers as it is necessary to show that the child would be re-trafficked or face punishment or retaliation if removed to his or her country of residence not just that he or she had been trafficked in the past.

The asylum instruction for processing an asylum application from a child states that ‘If an individual is cooperating with an ongoing police investigation in relation to their trafficking case and their presence is required for this purpose it may be appropriate to grant leave.’ This is an acknowledgment of the obligations which arise from Article 14 of the European Convention. The Government also has a concurrent duty under Article 16.2 of the EU Directive to undertake a best interests assessment leading to a durable solution for the child. It is not yet fulfilling this duty and as a result, is not providing vulnerable child victims of trafficking with the permanence and security that they need to support their rehabilitation from abuse and trauma, promote their learning and development or facilitate their transition into adulthood. In practice it means that many children are left in limbo, unable to plan for the future and progress in education or employment, and may be left without a regular immigration status and at risk of detention, destitution and removal as they turn 18 despite being acknowledged as a victim of trafficking. The EU Directive also states that ‘the necessary measures to ensure that the specific actions
to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child’s views, needs and concerns with a view to finding a durable solution for the child.’ The Government is also not complying with this duty.

The challenges facing trafficked children trying to assert their rights to assistance is further compounded following cuts to immigration legal. Whilst LASPO exempted trafficked persons from legal aid cuts, this exemption only applied to those who have received a positive ‘Reasonable Grounds’ decision from the NRM,(that they are a suspected victim of trafficking). This may be problematic because it is often only with the support of a legal representative that a trafficked person is referred to the NRM in the first place.

**Limited multi-agency working**

The particular needs of separated children means they are likely to interact with a large number of professionals across both welfare and immigration spheres and many studies argue for a multidisciplinary approach to determining best interests, durable solutions and making other decisions and there is a growing recognition that a child is more likely to be better safeguarded and experience improvements to their welfare and development when agencies work in an all-inclusive, co-ordinated and consistent way.

Multi-agency Safeguarding Hubs, which act as a point of coordination to assess and support children and adults, have been established or are in the process of being established in many local authority areas in England and Wales. They co-locate key child and vulnerable adult protection actors such as social and health care workers, police officers and youth offending teams, either in person or virtually. Representatives from education, probation services, housing and NGOs from specialist services may also be part of the MASH dependent on the priorities and needs of each local areas.

MASHs are a way of working; all the professionals involved are still accountable to their parent organisation. MASHs have been found to reduce duplication of process across agencies, improve efficiency, decision making, accountability, information sharing. Crucially this can lead to earlier identification of risk which can lead to improved and earlier intervention.

Local Safeguarding Children Boards (LSCBs) are the key system in every locality of the country for organisations to come together to agree on how they will cooperate with one another to safeguard and promote the welfare of children. LSCBs across England have also developed multi-agency subgroups which meet to discuss particular case audits, issues and trends, scrutinise the work of partners and make recommendations to the main board on certain subjects. In the London Boroughs of Hillingdon and in Kent for example, Local Safeguarding Children Boards have established trafficking sub-groups at both an operational and strategic level which have led to a significant reduction in the number of trafficked children who are not identified or who go missing from local authority care.

Our research highlighted similar examples where multi-agency working had resulted in positive outcomes for children’s welfare but these were often found to have developed reactively and in isolated pockets, whilst not always seen consistently as part of the wider child protection system:

‘In our area, a trafficking and unaccompanied children’s sub-group has been formed which includes health, education, legal, social services to serve as an information exchange ...it was created in the last 6 months only because of a serious case review and it has been led by the voluntary sector. It has created a recognition that not all children need to be age assessed and that the social workers role is not to pick up the phone and talk to the Home Office, it has been really positive. This process was led by two proactive individuals, not because of new processes implemented systematically’

Operations Manager, legal advice charity
However, multi-agency subgroups have mostly developed across England in relation to child sexual exploitation and trafficking due to an increase in the identification of victims. As far as we are aware, there are none that focus on the particular needs of separated children which would be particularly vital for leadership in areas where there are high numbers of separated children. This was recommended by several interview participants, however, our research and experience from being involved in subgroups across the country suggest that the commitment for subgroups across local authorities from different agencies can vary depending on who sets them up, oversees them or the funding they receive.

Our research highlighted that relationships between local authorities and the Home Office involving information sharing, age disputes, and financial reimbursements have created conflicts that work against the welfare of the child and good social work practice. Recent cuts made to Home Office staff regionally were found to impact on the lives of these young people because good local relationships which have been built up were lost:

‘Generally conversations with the Home Office have been difficult but when the case working was devolved to local immigration teams we were able to meet the local teams and have regular conversations. So I had direct contacts with the manager and it felt like we were moving to a much better place…we were able to find out intentions, timescales of removal activities. We could communicate with the young people better we could be clear about what was happening and what timescales might be, we could say look this person is fragile emotionally and could we treat decisions on this case as a priority. We could flag up welfare issues and they would be recognised and acted upon. But since then the home office staff has shrunk and this relationship has gone’

Leaving Care Manager, local authority

Many of the practitioners and social workers interviewed also expressed concern about the diminishing specialist knowledge that was often present in separated children’s social work teams. These teams were deemed particularly important by some because they host social workers who have a particular interest and expertise in these children and young people which takes into account the complex needs of this group in addition to their looked after needs:

‘We are disbanding our specialist team. There is no longer a UASC team; it has been brought together with the indigenous young people. The impact is that social workers do not have the speciality and will not be able to effectively defend what has happened. If you have 300 indigenous and 300 migrant children, if something new comes up you will have to accept it as you will not have the specialism to scrutinise new policy and challenge it if necessary. Sometimes now we have to tell our clients to complain about us through advocacy services so that this triggers a series of events to help them’.

Senior Personal Advisor, Local Authority

Guardians for separated children
Several reports argue that to ensure a legal framework sufficient to ensure a durable solution is found for separated children, there must be provision for the appointment of representatives responsible for separated children as well as the allocation of legal authority to the representative to determine the child’s best interests. A system of independent legal guardianship or advocates for all separated children in England to help facilitate relationships between multi-agency actors in the best interests of the child has long been recommended by civil society. This would mean there would be one consistent individual to oversee and coordinate the agencies, services and processes which the child needs to navigate, support them through language and cultural barriers to know and access their rights. Studies have shown that relationship building is a critical component of determining the best interests of children. Care planning with separated children and on their behalf is enhanced if it is happening in the context of a positive relationship, based on trust. Many of the interviewees for this project highlighted that a guardian would help separated children navigate all
the different actors involved in their lives. They also suggested that often the only way to force local authorities to adequately support separated children is litigation or the threat of this. Some said that an advocate or guardian with the powers to ensure the local authority acts is therefore vital to ensure they are correctly assessed and get the services they are entitled to.

The benefits of a similar system have been demonstrated in Scotland\(^{164}\) and the Northern Ireland Assembly has also recently bought in a law giving all separated children at risk legal advocates\(^{165}\). The UK has made some notable progress in this regard through the Modern Slavery Act 2015 which includes an enabling provision for the introduction of child trafficking advocates with legal powers. Public authorities will have pay due regard to the functions of the advocates. However, this will only apply to children where there is a suspicion of trafficking, and therefore will not help protect all separated children.

**Restrictions on access to services**
Separated children in England often face limits on their access to services because of their unresolved immigration status, vulnerability, confusion and discrimination. This can have a profound impact on their ability to find permanence and stability, inhibiting their personal development and well-being.

**Right to health**
Separated children face significant barriers to accessing these services; despite having age-specific health needs as children as well as needs related to their experiences of persecution and forced migration\(^{166}\). These barriers are generated by confusion around their entitlements as well as discrimination when accessing services:

I took a client to a GP and the GP said ‘he is making it up because he wants to help his asylum claim’ – he had very racist views. I reported him but nothing happened because the whole surgery were like that and that’s when I was with him – imagine how it would be if I wasn’t there’

*Senior practitioner, NGO*

Various systematic reviews estimate that 19% to 54% of separated children suffer from symptoms of post-traumatic stress disorder compared to 0.4%-10% of other children in the UK\(^{167}\) based on the displacement and loss they have suffered. These problems can be exacerbated by uncertainty around their immigration status and the possibility that they will be returned to a country from which they fled. Our practitioners experience a lack of mental health services support for these young people, a view which was also reflected in our interviews:

‘There is no bereavement counselling for a lot of these young people and yet a lot of their accounts are about witnessing or hearing a siblings or a parent’s death. And a lot of time this is considered the common currency of an asylum claim but actually if you think about a parent not being there anymore, it’s harrowing’.

*Solicitor*

A charging regime was introduced in 2004 for secondary healthcare meaning that many more overseas visitors, including refused asylum seekers, became liable for hospital charges. This has meant some young undocumented migrants have been denied access, sometimes with catastrophic consequences\(^{168}\). In our experience hospital charging generates debts which young people are unable to pay off:

‘Recently one of my clients had an operation and he was sent a letter saying that as it wasn’t life threatening they would have to cancel it. Eventually he had it after some advocacy from us but he has got to pay £1800 which is really worrying because he has no way to pay this’

*Senior Personal Advisor, local authority*

The Immigration Act 2014 introduced further restrictions on healthcare by extending charging to primary care meaning that any treatment needed as a result of a GP or nurse appointment will now become chargeable if regulations when the Government introduces the necessary regulations. This potentially includes prescriptions, community care, mental health
and A&E services. Whilst the government has exempted all children in care from these charges, they have not exempted care-leavers or any other children such as undocumented children despite widespread support for this from healthcare groups during the Department of Health’s consultation as well as concern from the Joint Committee on Human Rights. This could leave many separated children who are not being accommodated by the local authority (including those in private fostering arrangements) and former separated children over 18 who are care-leavers, without any free access to both primary or secondary healthcare because most will have no means to pay.

**Right to Education**

Research has shown that once in the UK, education is a high priority for most migrant children and young people and provides stability and normality which can mitigate the negative effects of traumatic experiences and support them to overcome isolation and build resilience. Education opens up vital opportunities for integration, as well as social and economic development in later years. Young people in our focus group echoed this and highlighted the importance of education when talking about how they would define a durable solution:

‘Education helps give us a focus in life and a future, takes our mind off things and helps us concentrate instead of just worrying about papers’

Former separated child

‘We can’t get into university because we can’t get any loans…We hasn’t got enough money and haven’t got the right papers, he is wasting his time, if we could go to university and get good qualifications we can start doing good things’

Former separated child

However, research has highlighted a number of financial, practical and legal obstacles faced by migrant young people when they attempt to access further and higher education. For example, before February 2011, young people who were formerly separated children and had been given temporary ‘UASC’ leave or limited leave on Article 8 grounds, paid the same as UK citizen students for university fees and were granted access to student loans. Changes on which there was no government consultation or announcement have meant that young people with ‘UASC leave’ in the UK must now pay the same as international students and will not be able to access student loans for a higher education course in England.

A recent case found that the local authority had unlawfully failed to consider its ability and duty to fund the tuition fees of two young people formerly in local authority care and entitled to leaving care support who had discretionary leave to remain in the UK. This judgment has important implications for young people with discretionary leave who have been in the care of a local authority and want to go to university but are unable to access student finance or home fees. It may now fall to the local authority to fund their access to university, either by paying their fees or providing them with a loan. Our research indicated the importance of good pathway planning in ensuring the local authority now considers funding the young person’s education as part of their future:

‘Most Local Authorities are saying they will assess on a case by case basis so the decision whether to fund a university or higher education course will rest on whether that was part of the pathway plan, and if it will benefit the young person to study that course if further leave isn’t agreed’.

Leaving Care Manager, Social Work team in local authority

Another recent case has found that the rule preventing those with limited or discretionary leave to remain in the UK from accessing student loans could not be justified. The Department of Business, Innovation and Skills will need to change the relevant regulations but the ruling should mean that some of those who have lived in the UK for many years but have limited or discretionary leave to remain are able to access student finance in the future. It is not clear when any change will be brought in.
Third Country Solution

Returns under the Dublin Agreement

The Dublin System\textsuperscript{178} establishes a hierarchy of criteria for identifying the Member State responsible for the examination of an asylum claim in Europe. This is predominantly on the basis of family links followed by responsibility assigned on the basis of the State through which the asylum seeker first entered, or the State responsible for their entry into the territory. The aim of the Regulation is to ensure that one Member State is responsible for the examination of an asylum application, to deter multiple asylum claims and to determine as quickly as possible the responsible Member State to ensure effective access to an asylum procedure.

Relatively few separated children were returned under Dublin II. 86 ‘unaccompanied’ children between 2006 and 2010 were returned via enforced removals under Dublin II. Once the proceedings that culminated in the case of MA and Others v UK began in the UK, separated children ceased to be returned under Dublin II. Dublin III came into force in 2014 and says that “the best interests of the child” are “a main consideration” for all decisions. The UK has not updated its policy and process guidance since the introduction of Dublin II in January 2014. There is still discussion between the European Commission and the European Council on the question of whether a separated child should be returned to another state where his or her asylum claim was refused and he or she has appealed against this decision on the basis that this may lead to a quicker resolution of the claim.

Gentlemen’s Agreement with European countries

In 2012, a report by the Office of the Children’s Commissioner exposed a practice at the port at Dover where children were being returned to France and Belgium within 24 hours under a “Gentleman’s Agreement” if they did not formally apply for asylum immediately. This type of process can in no way be considered a durable solution and exemplifies poor practice and a lack of consideration for both children’s immediate welfare and long-term needs. A Freedom of Information request revealed that this agreement had been signed in Paris in 1995, and that the provisions of Dublin II had not been applied to these cases. An immediate end to the practice was put in place in 2012.

Right to the preservation of the family environment, maintaining or restoring relationships

One aspect of determining what is in the best interests of a child is the child’s right to preserve their family environment and to maintain or restore a relationship with their family. Both the Geneva Conventions and the Additional Protocols repeatedly link the protection of the child to the maintenance of family life and that families should be kept together wherever possible, and every effort made to promote the reunion of families.\textsuperscript{178} Family tracing is one mechanism for gaining information that can help facilitate a determination of which outcome or durable solution will be in the child’s best interests. Tracing may not necessarily always lead to family reunification but it serves to inform the broader decision about what the child wants, if this is in their best interests and if reuniting children with their families is even possible.

Legal obligations on family tracing

The Home Office has a legal duty under both domestic and EU legislation to endeavour to trace a child’s family as soon as possible after the child has claimed asylum, whilst also ensuring that those endeavours do not jeopardise the safety of the child and their family.\textsuperscript{180} In 2013, the Chief Inspector published an inspection into the handling of asylum applications made by ‘unaccompanied’ children which found that the Home Office’s obligation to trace the family members of unaccompanied children was not carried out in 60% of the sample.\textsuperscript{181} Additionally, recent case law has considered the Home Office’s duties in family tracing and how this has impacted on separated children’s asylum claims. In 2012, the case of KA (Afghanistan)\textsuperscript{182} looked at the Home Office’s family tracing duties in separated children’s
cases. The court found that where the failure to trace may have impacted negatively on the child’s asylum claim as well as upon whether or not the Home Office has complied with its duties under section 55 of the Borders, Citizenship and Immigration Act 2009 to safeguard and promote the welfare of children. Following this judgment the Home Office issued guidance which sets out to case owners the duty to trace family members as soon as possible after the claim for asylum is made.

Home Office guidance on family tracing

The Home Office’s current guidance for decision makers on family tracing is outlined within the Asylum Instruction on Processing Asylum Applications from Children. International law, domestic law and case law make it clear that tracing should not be undertaken if it is not in the best interests of a child and any guidance being developed must make this clear. The Home Office is currently reviewing this Instruction after consultation. However, the current draft provides very little clear guidance on when and how the best interests of a child should be assessed including how the views and wishes of the child about family tracing are taken into account, and when it might be appropriate not to trace and the Home Office has published country specific guidance on tracing in the context of only two countries and in practice a best interests assessment is not conducted before any family tracing is undertaken. A 2012 case in the Court of Appeal found that the Secretary of State had breached her duty to trace the Appellant’s family stating that “there were at least some further questions that could and should have been asked beyond those included on the [Secretary of State’s] tracing pro forma”.

Current Home Office practice on family tracing

Analysis by Kent Law Clinic looked at the cases of young Afghan ‘failed asylum-seekers’ to examine if findings from KA (Afghanistan) could be applied to see if further submissions or a fresh claim for asylum could be made. It found that in no case examined was there any evidence that the Home Office had taken steps to assist with tracing beyond advising the client about the Red Cross Tracing Service. In some cases, the issue of family tracing was used to discredit the young person’s claim whereby for example, young people ‘declining assistance’ with tracing had this turned against them stating that they had failed to provide enough information about their family and that they had therefore failed to discharge the duty placed on them in KA. Alternatively, by attempting to contact their family the Home Office has used this to argue that they can be reunited with them on return. Our research highlighted this issue:

‘[Tracing] has been completely misused by the home office as a tool to implement negative decisions, it should be about the interests of the young person, but is used to discredit young people who don’t know where their family is or don’t give information about family – either the young person doesn’t have knowledge about their families or feels unsafe to give that knowledge and so the Home Office say they are lying and if they do know where family is is it used to try and return them’

NGO worker

‘We have experienced young people who felt their families would be placed at risk if they are contacted by the Red Cross in their village or alternatively feel pressured because they think if their family is found they will be able to stay in the UK longer’

Psychological therapist

‘Courts and other players have penalised children for not going to the Red Cross or going to the Red Cross too late, its being used as an attack on credibility. I see this frequently that it’s implied they are lying’

Retired Upper Tribunal Immigration Judge

Concerns about practical difficulties in countries such as Afghanistan where movement throughout the country is limited were also raised in relation to the role of family tracing in finding a durable solution and none of the young people or practitioners we spoke to reported a case of family tracing with a positive outcome.
‘I haven’t seen any family tracing which is effective, very often the replies which come back from the Red Cross say it is too dangerous for their workers to go there...I’m not convinced it’s helpful as a road to go down’

Retired Upper Tribunal Immigration Judge

‘Normally the Red Cross can’t find the family. In Afghanistan it’s very different, sometimes places don’t even have any names, it’s not like places have street names, there’s nothing like that, it’s impossible to find people’.

Former separated child

Separated children as sponsors of family reunion

The Immigration Rules dealing with family reunion for refugees do not provide for parents of separated child refugees or separated children granted humanitarian protection to be granted leave to enter and remain here with them. Parents of a refugee child are treated as no more than “other family members” and may be permitted to join the child only if “compelling, compassionate circumstances” are shown whereby the child would have to apply for discretionary exercise of ministerial power outside the immigration rules. This may well impact on any consideration of a durable solution for a child granted protection here.

Returning to country of origin

Returning a child or young person could form part of a durable solution but it is essential that such decisions are underpinned by a comprehensive and transparent assessment of the best interests of the children concerned. In the new Department for Education guidance it states that ‘Planning for a return home may be difficult, but care and pathway plans should include contingencies for durable and best interest plans for unaccompanied children. who are likely to have to return to their country of origin’ Such planning would only be holistic if it includes a full home study report.

Under 18s

As a matter of policy the UK does not remove separated children unless there are suitable reception arrangements in place in their countries of origin. Nevertheless, our experience and government policy indicates there is a presumption on the part of the Home Office that it is in a child’s best interests to be returned to the care of his or her family. For example, the Home Office’s Child Asylum Instruction states that:

‘In considering the grant of UASC Leave the starting point should be whether the child can be returned to his/her family’.

A tendency from the Home Office and local authorities to age dispute children means some under 18s may be returned whilst they are still children. The lack of a formal best interests determination procedure similarly has raised concerns about how the Home Office make decisions on returning young people with the Joint Committee on Human Rights inquiry into the ‘rights of unaccompanied migrant children’ stating that best interests are not being assessed thoroughly enough when making returns decisions in relation to these children. Our research also highlights these concerns:

‘Their [the government’s] assessment of best interests is that it is best to be back with their family and its not nuanced at all....Its all well and good saying you have to be back with the family but unless you have a proper assessment of the family situation that’s an unknown. We see this now that the Home Office thinks if a family have raised the money to send you they must have the money to have you back….this is just speculation it’s not a proper assessment’

Solicitor

Establishing a returns mechanism to Albania

Albania is now the country with the highest number of separated children coming to the UK. Intake has increased significantly over
recent years with numbers increasing ten times in the last 3 years\textsuperscript{193}. Claimants are not usually granted asylum with over a 90% refusal rate. The Home Office believes it is not always in the best interests of these young people to be separated from their parents, environment or their culture for any length of time. Albania is also considered by the UK government as having shown a strong commitment to child welfare issues and therefore a return process is considered by the Home Office as appropriate and timely. However, NGO reports highlight that state institutions concerned in child protection do not operate in a systemic, coherent and coordinated manner and that the professionals involved are not obliged in law to identify children at risk so that they can be referred and protected. Even if referral happens, there are no standard protocols for the professionals to follow\textsuperscript{194,195}. Statistics also show it is the most common country of origin for children referred to the NRM\textsuperscript{196}.Children have often been trafficked by family members or may be involved in blood feuds so it is not necessarily safe to return them and a full investigation should be undertaken as to the risk of re-trafficking if the child is returned.

The Home Office is exploring the viability of establishing a returns mechanism for young people to Albania. A Memorandum of Understanding was agreed with the Albanian Government in March 2013 on data sharing and access to information. In February 2014, the government undertook a scoping visit to Albania and they have subsequently written to seven children to explain that they are to be referred for to Albanian Social Services for family assessment via the UK Embassy.

Civil society organisations have raised questions and concerns regarding the policies around data sharing and access to information between the Albanian Authorities and the Home Office, consent from the young people themselves and to what extent they are receiving adequate legal advice and representation as well the ability of social workers from the UK to practice internationally. The Home Office has described this process as exploratory saying they are taking a very cautious evidence-based approach to scoping the process and assessing whether it is right to progress to return in any of these cases. They have said that no decision has yet been made on whether they will begin returning unaccompanied children to Albania, and currently there is no fixed timetable for this decision.

**Over 18s**

Returning a young person to their country of origin is often regarded as the most desirable, durable solution. However, statistics show that in practice many young people are not being returned or removed. For example, in 2013 only 107 of these young people either voluntarily returned or were removed, far lower than the number of asylum applications lodged by separated children annually. It is well documented that many former separated young people tend to go missing once all their rights to appeal for extension of leave to remain are exhausted. Research has shown that this is linked to efforts made to enforce removal and that a genuine fear of return or that young people feel they are now too far removed from their roots for return to be realistic drives this behaviour . The Court of Appeal in the case of KA Afghanistan emphasised that there is no ‘bright line rule’ when it comes to assessing risk on return based on a person’s age, ‘stating that persecution is not respectful of birthdays – apparent or assumed age is more important than chronological age’.

**Voluntary return**

Young people have the option of Assisted Voluntary Return (AVR) by which they would return to their country of origin with a package of cash and support in kind to ease their integration. However, in practice, organisations working with these young people find this option difficult. For example, practitioners from The Children’s Society report that young people from Afghanistan cannot access money offered through the AVR programme because they need a particular credit card for reimbursement which is unavailable in Afghanistan. A project called ‘Positive Futures’ has also been developed in recognition of the needs and vulnerabilities of this group of young
people who are facing the prospect of enforced return, specifically to Afghanistan and who are ineligible for further support in the UK. The project offered pre-return skills and training in an attempt to help encourage young people to overcome barriers and to take up AVR. However, the project found that the fear of return, even with extra training, was not sufficiently persuasive to convince them to return voluntarily.

Refugee Action, the organisation running the government’s AVR programme, report that a significant proportion of Leaving Care teams in local authorities do not discuss AVR as an option with the young people in their care. They argue that does not offer sufficient levels to enable sustainable return for young people turning 18 because the level of support for return when a separated child becomes an adult drops significantly.

Our research indicated that a young person’s ability to resolve their immigration status impacted on their desire to voluntarily return to their country of origin. The young people we spoke to unanimously indicated that if they had leave to remain they would be more likely to want to find their family and return because of the option being available to them in the UK if their attempts fail:

‘Status provides an identity to the country, you can go to another country and then you can come back with no problems, you have a home and nation where you belong, it would make it easier for you to find your family and return there.’

Separated child

Lack of monitoring after removal or return

There is a lack of research about what happens to former separated children who are forcibly removed which makes assessing the situations of these young people and the degree to which this approach might represent a durable solution very problematic. The UK’s Independent Asylum Commission found that there is insufficient monitoring of what happens to people who have been forcibly returned once they have left the UK. There is no post-return monitoring or sustainability programme for those persons who choose not to return as part of an assisted voluntary return package and whose subsequent removal from the UK is enforced.

A small number of studies have assessed the impacts of removal on these young people with a focus on Afghans. They include an examination of post-removal outcomes, arguing that adjustment, integration or reintegration post removal is either difficult or impossible, and that re-migration to other countries is the norm. Key emerging issues include the vital role of extended family networks in reintegration processes and the impossibility of paying migration debts, the impact of insecurity and poverty, a lack of education and employment opportunities, the perceived ‘Westernisation’ of returnees and the existence of mental health issues. The risk of forced recruitment by anti-government groups was also of grave concern. These same concerns were reflected in some interviews for this project:

‘People who are sent back to Kabul are given 1100 Afghanis that’s 11 pounds that won’t even get you into the city centre. You can be easily exploited there is a lot of sexual exploitation which is a taboo to talk about so the Home Office don’t understand about this issue. When young people go there with their UK mobile phones they have English names on them, if anyone sees this they can be beheaded, even if you explain you are deported, they will be accused of being an American agent.’

Senior Personal Advisor, local authority

Case law has resulted in a more mixed picture. The case of HK and Others found that children are not disproportionately affected by problems and conflict experienced in Afghanistan and that family in Afghanistan needs to be thoroughly considered as an option for return. Conversely, case AA (unattended children) Afghanistan found that separated children can be at risk of serious harm if returned to the country. The latter judgment demonstrates the need to consider carefully and wherever possible to show evidence of the specific forms of serious harm that the
child would be at risk from if returned. It also draws attention to the potentially problematic granting of 'UASC-leave' to the majority of separated children from Afghanistan until they reach 17½, which means the possibility of granting Humanitarian Protection or Refugee Status instead which would offer a longer-term solution can be overlooked.
8. Key features and principles when developing a durable solution for a separated child

A durable solution will differ for each child depending on their needs, wishes and best interests. Therefore based on our research as well as using international guidance and standards we have set out what we recommend as the key features and principles that are needed to develop an effective durable solution for separated children in England.

1. Best Interests of the child at the heart of the process
Article 3 of the UNCRC states that the best interests of children must be a primary concern when making decisions that affect them. The establishment of a Best Interests assessment and determination process is therefore necessary for establishing a durable solution. This is because a mechanism is needed to ensure that when making any decision which affects a child’s life, all agencies involved can obtain all relevant information and then consider the impact of any potential decision on the welfare of the child and their best interests as they develop into an adult. This assessment and determination helps to better ensure a durable solution is identified on a case-by-case basis and all aspects of a child’s life are weighed and considered in relation to their best interests.

2. Respect for the views of the child
Article 12 of the UNCRC states that a child has the right to express their views, feelings and wishes in matters affecting them, and that these views should be given due weight in accordance with their age and maturity. Effective participation requires decision-makers to put in place procedures that enable the wishes and feelings of children to be heard and considered. This includes ensuring that children are informed and aware of the decisions that are being made, in a way that they can understand and developing appropriate mechanisms, so that children are provided with an opportunity to be heard in matters affecting them. It is critical that this forms part of a best interests assessment. Only with the child’s wishes and feelings are taken into account through this process, can a truly durable solution be found. However, the views of a child will not always be conclusive, for example in the case of a trafficked child; they can sometimes still remain influenced by their trafficker.

3. Engaged multi-agency actors with specialist knowledge
Ensuring the development of a durable solution for a separated child involves a multi-agency and multi-disciplinary approach including for example advocates to represent the young person’s views, social workers and, health professionals. A durable solution is more likely when the immediate and long-term needs of the child are communicated and considered amongst all involved agencies and incorporated into all decisions about the child. Specialist knowledge and training regarding separated children is a key requirement for all professionals involved so that the unique needs of separated children are fully and effectively understood.

4. Independent legal guardian or advocate
For a best interests assessment to be fully effective, an independent legal advocate or guardian is needed to help separated children to navigate between the complex child protection, immigration, family and criminal court systems and serve as a key point of contact between all agencies and actors. They are also crucial to help the child overcome cultural or language barriers so that they can articulate their wishes and feelings about their future.
guardian or advocate should be able to instruct lawyers to make sure that local authorities have to act in the best interests of a child or young person and that separated children are correctly assessed and get the services to which they are entitled. The impartiality and independence of this person is also key to enable the child to fully trust them.

5. **Fair and timely immigration decision-making**
Each separated child’s immigration case must be fairly and fully considered in the first instance—as promptly as possible, making sure where there are grounds to appeal a refusal of asylum, an appeal is lodged and that consideration is also given to a long term child specific protection status in the effort to determine a durable solution. This consideration of protection needs should be considered alongside a best interest’s assessment and the findings of this assessment should inform the immigration decision and vice versa. Immigration decisions should not simply be considered in isolation before best interests are properly assessed. This should inform the decision as to whether a child is returned, re-settled in a third country or integrated into England.

6. **Comprehensive transition planning**
Everyone involved in providing for the care of a separated child must be aware of their unique circumstance and be able to provide for their needs now and in the future as they transition into adulthood. This process should ensure the child has the opportunity to make their wishes and feelings known and that they have the best information and support possible in helping them plan for their future and achieve a durable solution. Each child should have a plan for permanence taking particular account of the child’s immigration status and making clear allowances for how this will change over time through dual or triple planning with clear options for review. This can be achieved by considering different pathways open to the child.

7. **Access to quality legal advice and representation**
The need to effectively address and resolve a separated child’s immigration status is necessary in order to ensure their protection needs are fully explored and considered. Only with free access to quality legal advice and representation will a best interest’s assessment be fully effective and a solution which is truly durable be found.

8. **Access to services essential**
Access to services are highlighted in Articles 24 (health) Article 28 (education) and Articles 27 (standard of living) of the UNCRC and should be guaranteed for separated children in creating stability, building their capacity, resilience and skills for their future, to make sure they are able to develop into healthy adults. Access to education provides stability and normality which can mitigate the negative effects of traumatic experiences and support them to overcome isolation and build resilience. It also opens up vital opportunities for integration, as well as social and economic development in later years irrespective of which country they live in. Additionally, separated children can have age-specific health needs as children as well as needs related to their experiences of persecution and forced migration including high rates of mental health issues.

9. **Continuous review and right of appeal**
Achieving a durable solution should be an ongoing process of review as the child’s needs, wishes and best interests evolve over time as they develop and grow into an adult. A process of review is a fundamental part of the care planning framework
in England and is set out under Article 25 of the UNCRC in acknowledgement of this. As part of this, it is also critical that a child is able to input into the process of review and has the right to challenge or appeal any decisions they disagree with, often with the help of a guardian or advocate. They should be able to see written, reasoned decisions about their care in order to be able to make an informed view.
9. Conclusions and recommendations

There are a limited number of options for improving permanence and stability for separated children and young people in England which could help improve the process of reaching a durable solution. However, this report has highlighted a significant number of concerns and deficiencies in the government's approach. Significantly, the government has been unable to communicate how they interpret the concept of a durable solution and how they make assessments and determinations when establishing a durable solution for a separated child. Consequently, we believe it is vital that the government adopts the following overarching recommendations:

1. **There must be a cross-governmental position and accompanying strategy which commits to finding a suitable durable solution for each separated child in England.** This should include a recognition that the term needs to reflect the totality of a child's rights and needs in accordance with the UNCRC and the UN Committee's General Comments.

2. **The government should introduce a holistic and multi-agency Best Interests Determination process which would lead to a durable solution.** This would help to ensure that when making any decision which affects a child's life, including about both their immigration status and care or pathway plan, all agencies involved in the child's lives should take steps to obtain all relevant information and then consider the impact of any potential decision on the welfare of the child taking the best interests of the child into account.

3. **The government should establish a pilot project to trial possible best interest processes and ensure that these are independently evaluated by an appropriate external institution.**

The following further detailed conclusions and recommendations relate to the essential elements of finding a durable solution for separated children, which are still missing from the government's current approach.

**a. Ensuring the best interests of the child**

Separated children's best interests are not being holistically and effectively assessed and determined across all the systems within which they are involved. The current immigration decision-making framework for separated children involves widespread granting of temporary 'UASC-leave', with further determinations often delayed until just before the child turns 18 years old. This does not serve the best interests of children. Postponing such long-term decisions increases anxiety and contravenes the child's best interests by taking away the safeguards offered by the UNCRC.

The uncertainty and instability of this limited leave hampers separated children's transition into adulthood, particularly in the pathway planning process and affects the young person's access to other rights and entitlements outside the immigration system which are vital to the development of a durable solution including for example, health and education. To better ensure separated children's best interests are protected:

**The Home Office should commission an independent external audit of its current practice relating to the assessment and determination of best interests in separated children's cases.** This would help to gain an insight into the Home Office's current approach to best interests. This information should then be published and disseminated.

**Improvements should be made to the quality and length of training available for Home Office case workers on best interests assessments for separated children.** This would mean that all case owners are required to have knowledge in
considering a child’s best interests at all stages of the process including how this will contribute to a durable solution. Training should highlight the weight and importance given to the concept of best interests by the courts and how to undertake a detailed assessment of best interests which demonstrates very significant justification if the best interests of the child are to be overridden.

An alternative child protection status should be explored for separated children who don’t qualify for asylum. This status would be granted if deemed necessary after a multi-agency best interests determination process. Separated children’s protection needs are wide-ranging and may not be catered for within the Refugee Convention. Where children are likely to face breaches of the UN Convention on the Rights of the Child such as destitution, discrimination, homelessness and lack of access to adequate medical treatment on return to their country of origin, they should be granted indefinite leave to remain so that their ability to meet their maximum potential as adults is not put into jeopardy by uncertainty and delay.

The government should ensure all separated children are allocated an independent legal guardian or advocate as part of the process of finding a durable solution. This is vital to ensure local authorities have to act in the best interests of a child or young person, are correctly assessed and get the services to which they are entitled. A guardian would also act to navigate, facilitate and broker multi-agency relationships in the best interests of the child across the multiple systems within which they are engaged such as the welfare, immigration and justice systems. A legal guardian would also be able to instruct solicitor’s to act in the child’s best interests.

b. Quality legal advice and representation

Poor legal advice, especially failure to appeal a first refusal of asylum means many separated children are not having their cases fairly and fully considered in the first instance. This situation stores up problems until the young person begins their transition into adulthood at which point legal aid for many cases is no longer available in its entirety. This means the ability to resolve the young person’s immigration status is being made more difficult and is potentially cut short. To ensure better access to quality legal advice and representation:

The Ministry of Justice should restore immigration legal aid for all claims made by separated children and young people up to age 25 years old, including those not being looked after or being provided with leaving care services. This would help ensure that separated children are given enough time and the right conditions to enable them to explain their circumstances as fully as they can and to be comprehensively advised and represented, in accordance with their rights under the UN CRC. It would also ensure young people over 18 are protected as they transition into adulthood.

c. Improved interaction between the care and immigration systems

Good quality care and pathway planning was highlighted in our research as essential in ensuring a separated child has access to the best information and support possible in helping them plan for their future, both during their time being looked after and when leaving the care system. It is also an important component in establishing a durable solution. The continuing conflict between the Home Office policy of allocating limited immigration status, as well as a heavy reliance on age assessments, and the care planning process aimed at permanence was highlighted as a significant hindrance to effective pathway planning. In addition, we have found that inconsistent practice by social workers in ensuring ‘dual’ and ‘triple’ planning takes place and that this process is not being effectively communicated to separated children. The unique situation of these children is also frequently omitted from broader government commitments about
permanence and stability within the care system. To improve care and pathway planning for separated children:

**The Department for Education should review how local authorities are currently considering children’s immigration status within the pathway planning process.** This would help to explore how this crucial element of separated children’s lives is being considered by professionals within the care and pathway planning process.

**Local Authority Safeguarding Children’s Boards (LSCBs) should encourage the Home Office to cooperate with local authority approaches to safeguarding and should invite representatives from Home Office immigration functions to regional and local sub-groups.** This would help to ensure that the needs of separated children in relation to their immigration status would be better understood by all agencies and incorporated into any decisions towards achieving a holistic durable solution.

**Local authorities must do more to retain and improve the knowledge of social workers working with separated migrant children and consider whether specialists are required.** This is particularly relevant in parts of England where there are increasing numbers of separated children. These social workers could make up part of a broader team dealing also with other children in care or form a separate specialist team.

d. **Appropriate care-leaving support**

The government’s policy of granting the many separated children temporary ‘UASC-leave’ means that on leaving the care system their immigration status often remains unresolved and many are refused leave to remain and become ‘appeal rights exhausted’. This causes them to fall through the gap between immigration regulations and legislation to support care leavers. There are considerable inconsistencies in the way local authorities are discharging their duties to this group of vulnerable young people coupled with a lack of funding from the Home Office to support their care. This situation is leaving former separated children in an extremely precarious position, having a profound impact on their ability to properly consider options for their future making the establishment of a durable solution hugely challenging. To ameliorate this situation:

**The Department for Education’s care leaver’s strategy should address the situation of separated migrant children leaving care and make sure the role of the Home Office Visa and Immigration Unit in these young people’s lives is incorporated.** This would facilitate a more integrated approach on policy related to care leavers, to include those subject to immigration control.

**Local authorities should be provided with new guidelines to ensure that separated children leaving care continue to receive leaving care support regardless of their immigration status.** This support should be available at least up to the age of 21, or 25 if the young person remains in education in line with leaving care legislation. Although a longer-term solution would be preferable, this would enable more young people to finish their education and gain qualifications, giving them better prospects in the future.

**Local authorities should report to the Department of Education about the number of young person who have support withheld or withdrawn as a result of Schedule 3 of the Nationality, Immigration and Asylum Act 2002.** This would help to collect better data on how many young people are affected by this legislation.

**Separated children transitioning into adulthood should have the same opportunities to access higher education as for all others in England.** Education was a key issue raised by the young people themselves. This is integral to a successful durable solution for these young people, and regulations should be amended to ensure that all separated children including those leaving care with
leave to remain, including those with in-time applications pending in England are eligible for home fees and student support, regardless of immigration status.

e. Preservation of the family environment, maintaining or restoring relationships

Family tracing and family reunion were investigated in this research as part of the consideration of a durable solution. With no formal process for determining what is in the best interests of a separated child in England it is difficult to understand how the Government is considering tracking within the wider context of searching for a durable solution for a separated child. Our research has indicated that in some cases the issue of family tracing is used to discredit a child or young person’s asylum claim or if a child attempts to contact their family the Home Office has used this to argue that they can be reunited with them on return. To make family tracing an effective essential component of a durable solution which works for separated migrant children:

The Home Office should develop a family tracing instruction which is informed by a best interests determination process. Once this is in place, a family tracing instruction must:

- Make clear that as part of tracing, decision-makers have a duty not only to adhere to the section 55 guidance but also demonstrate how they have considered the child’s best interests at every stage of the process.
- State that a comprehensive family assessment must be conducted when considering family reunification for a separated child. This will serve to ensure that any reunification is in the best interests of the child and satisfies the Home Office’s Section 55 duty. It is also important for decision-makers to note that where a child maintains or renews contact with a family member in their home country or a third country, this is not necessarily an indication that there is therefore no risk to the child.

The Government should reconsider allowing separated children who have been recognised as refugees to be eligible to be a sponsor for family reunion in the UK. This is currently not the case and is a breach of Article 9 of the UNCRC, the principle of family unity, where the child is a refugee and/or where it is in the best interests of the child not to be returned to their country of origin.

f. Returning to country of origin

The Home Office’s lack of a formal best interests determination process and the lack of research about what happens to former separated children who are forcibly removed, makes assessing the situations of these young people and the degree to which this approach might represent a durable solution very problematic. Furthermore, analysis of existing research and practice suggests that engaging young people in voluntary return or encouraging them to retain contact with their local authorities when support is withdrawn once they leave the care system is sometimes difficult. The views of young people interviewed for this research suggest that most have built a life for themselves in the UK, developed friendships and made good progress in education where it is available and in many cases returning to their country of origin is often not their main immediate aim for their future. When considering return as one possible durable solution:

A separated child should only be returned to their country of origin on a voluntary basis to family, not to institutionalised care. This should only be implemented following a detailed expert assessment of the individual child’s needs and best interests.

The Home Office should conduct independent research into the return process for former separated children to their countries of origin, to determine if this approach can be deemed to be in their best interests and if it represents a durable solution. This
would help determine the suitability of this approach, which is currently unknown, in establishing a durable solution and the longer-term outcomes for the young person.

Local authorities should train social workers on how to better communicate with children about the possibility of return. This should happen early on in the pathway planning process where there is the possibility that a child after 18 years old could be left with no right to remain in the UK. This could help give the young person more notice and chance to plan for options which may help lead to a durable solution.

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and/or assists the unaccompanied child with respect to the
examination of the application and ensure that the
representative is given the opportunity to inform the
unaccompanied child about the meaning and possible
consequences of the interview and, where appropriate,
how to prepare himself for the interview.

As also suggested in UN Committee on the Rights of
the Child General Comment 6
http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf
(paras 41-49)
http://www.refworld.org/publisher,CRC,GENERAL,,42dd17
4b4.0.html Section 7 of UNHCR’s guidelines on policies
and procedures in dealing with unaccompanied and
separated children seeking asylum
http://www.refworld.org/docid/3ae6b3360.html
It is a painful fact that many children and young people in Britain today are still suffering extreme hardship, abuse and neglect.

The Children’s Society is a national charity that runs local projects, helping children and young people when they are at their most vulnerable and have nowhere left to turn.

We also campaign for changes to laws affecting children and young people, to stop the mistakes of the past being repeated in the future.

Find out more
childrenssociety.org.uk

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