



An update to:

Cut off from Justice

The impact of excluding separated and migrant children from legal aid

August 2017

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Acknowledgements

We would like to thank the following:

Erin Fisher, for supporting us with the survey dissemination and Shirley McDonagh for supporting us with some of the fieldwork.

Staff across a number of advocacy organisations, including The Children's Society services, who collaborated with us in helpful and sustained ways to make this research happen.

All the legal practitioners who gave up their time to complete the survey or participate in an interview in order to help us understand the context in which unaccompanied and separated children make their immigration claims.

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Methodology

For this report, we have used a range of sources and triangulated research approaches to build as complete a picture as possible of unaccompanied and separated children's immigration and nationality claims in the UK.

We have drawn on official data, freedom of information requests, a survey of legal professionals supporting unaccompanied and separated children and a series of 22 semi-structured interviews.

Ethics approval was given by The Children's Society, the Institute of Applied Social Research at the University of Bedfordshire, and the University of Bedfordshire's Research Ethics Committee. Pseudonyms are used throughout this report.

For more information about the methodology used please see the research report, which can be found at childrenssociety.org.uk/legal-aid



Executive summary

All children and young people in the UK should be kept safe and have equal access to justice, regardless of where they were born. However, sweeping changes made to legal aid provision for immigration cases have put some of the most vulnerable children in this country at serious risk and unable to get the help they need.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) dramatically cut legal aid, with all non-asylum immigration claims falling out of scope. This has cut off children from the justice system, often leaving them alone and unable to pursue their immigration claim.

These changes to legal aid have been particularly pernicious for unaccompanied and separated children, who are some of the most vulnerable young people in our society. They are migrant children, outside their home country, who have been separated from their parents (or other primary caregiver) and are alone in the UK. They may be living with a member of their extended family, within community networks, or are in local authority care as a looked-after child because there is no one else to care for them.

This report updates our findings in Cut Off from Justice (2015) four years after the introduction

of LASPO. It highlights the needs of unaccompanied and separated children in a system that often renders them invisible, harming both their childhood and their future.

Key findings:

- The supposed safety net to help the most vulnerable children, Emergency Case Funding (ECF), is not working and leaves children at serious risk. Although the Ministry of Justice had predicted that almost 2,500 children's immigration cases would fall out of scope for legal aid within a year under the new scheme, only around 15 applications were made for funding through the Exceptional Funding Scheme in the first year of LASPO.
- It is a postcode lottery for children who need help with their immigration status, with most free services concentrated in London and the South East. The number of services overall has shrunk by up to 50% in four years.
- As well as facing finding legal help, children also face rising Home Office fees. Since 2013, fees have increased by at least 45%.

Clearly, these children are vulnerable and need help, but very few have access to the immigration advice they so desperately need. Expecting extremely vulnerable children and

young people to find their way through complex legal matters on their own is unreasonable, often cruel. We have developed recommendations to help address the issues raised in our research:

Key recommendations

- The Government should reinstate legal aid for all unaccompanied and separated migrant children in matters of immigration under the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- The Government should formalise the role of local authorities in relation to immigration advice for unaccompanied and separated children.
- All children suspected of being trafficked should have access to legal aid either under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 or by clear exceptional funding guidance.

For the full list of recommendations, see page 43.



Introduction

The UK Government is a signatory to the United Nations Convention on the Rights of the Child (UNCRC). This upholds, amongst other principles, the rights of children to participate (Article 12) and places a duty on institutions that primary consideration is given to the rights of the child (Article 3). These rights should be considered in every aspect of a child's life, no matter who they are, or where they come from.

The introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) in April 2013 brought enormous change to our legal aid system. Immigration cases were particularly affected with all non-asylum cases being excluded from legal aid. This has brought about significant difficulties for unaccompanied and separated children.

Unaccompanied and separated children often have complex immigration histories. Travelling alone, perhaps left behind by parents, they can often be victims of trafficking, or without immigration status completely. For them, regulating their complex immigration status in the harsh environment created by legal aid is particularly challenging. These young people have a 'super-vulnerability' – their irregular

immigration status coexisting alongside the trauma they have too-often experienced and being without their parent (or carer) in the UK.

In light of this country's obligations to children under the UNCRC, the changes to legal aid, and the complex lives of unaccompanied and separated children, this report examines the current state of affairs. It follows our Cut off from Justice¹ report in 2015 and provides fresh insight into the situation faced by these vulnerable children.

Our initial research highlighted themes including the invisibility of these children, their transition to adulthood at 18, the complexity of their cases, some of the safeguarding risks their immigration status can cause, and the responses of English local authorities to these children when they are either in their care or known to them.

In this report, we revisit many of these themes, but we have also sought to build on some of the gaps in the first report. In our interviews for this report, we focused on engaging with immigration lawyers and advisers through a series of semi-structured interviews and a survey. We also sought to update

the data behind these trends, gathering information from a range of public bodies.

This report demonstrates how the consequences of LASPO have continued to develop, four years after its enactment.

1. The Children's Society. Cut off from Justice: The impact of excluding separated migrant children from legal aid (2015). https://www.childrenssociety.org.uk/sites/default/files/LegalAid_Full_0.pdf [Last accessed 16 June 2017].



Chapter One: Unaccompanied and separated children in the UK

Unaccompanied and separated asylum seeking children

Unaccompanied and separated children are some of the most vulnerable young people in our society. They are migrant children, outside their home country, who have been separated from their parents, (or other primary caregiver) and are alone in the UK. They may be living with a member of their extended family, within community networks, or are in local authority care as a looked-after child because there is no-one else to care for them.²

In our first report, Cut Off from Justice, we examined how these vulnerable young people access legal aid. We outlined how these children are 'super vulnerable' for three reasons: they are children; they are migrants; and they are alone, separated from their parents and caregivers.³

However, there is relatively little known about how many of these vulnerable children are living in the UK. Using some official sources and academic estimates, we can piece together a minimum estimate.

There is some data concerning children seeking asylum available from the Home Office and the numbers of unaccompanied children in local authority care. Together these two data sets provide an idea of how many unaccompanied children are in the UK. The number of separated children is harder to estimate and requires use of academic estimates.

Any estimate can only be a minimum estimate, because of young people – both unaccompanied and separated – who may be living below the radar of statutory bodies.

How many unaccompanied children are seeking asylum in the UK?

Unaccompanied and separated children seeking asylum in the UK form a more certain part of the numerical evidence, given that data for this group is the most comprehensive.

Official Home Office asylum statistics⁴ show the number of children applying for asylum on their own has fluctuated over time. Figure 1 shows that

between 2009 and 2012 figures fell from 2,857 to 1,125 before increasing again to a high of 3,254 in 2015. The 2016 figure of 3,175 demonstrates a slight fall on the previous year. However, all the figures in the last eight years are lower than the average figures seen between 2006 and 2009, during which an average of 3,414 asylum applications were made by unaccompanied children each year.

The number of asylum seeking children in the care of local authorities has also decreased across the same period from 3,480 in 2010 to 1,970 in 2014.⁵ This number is higher than the number of child asylum applicants because it is a cumulative number rather than a year-on-year count. The increase in 2015 to 2016, to a level that is more in keeping with figures from 2008 and earlier, may reflect efforts to better identify claims for asylum among children. Department for Education figures for 31 March 2016 show that the number of unaccompanied asylum seeking children in the care of local authorities across England was 4,210 – a 54% increase compared to the previous year, when it was 2,740.⁶

2. The Children's Society. Cut off from Justice: The impact of excluding separated migrant children from legal aid (2015). Page 11. https://www.childrenssociety.org.uk/sites/default/files/LegalAid_Full_O.pdf [Last accessed 16 June 2017].

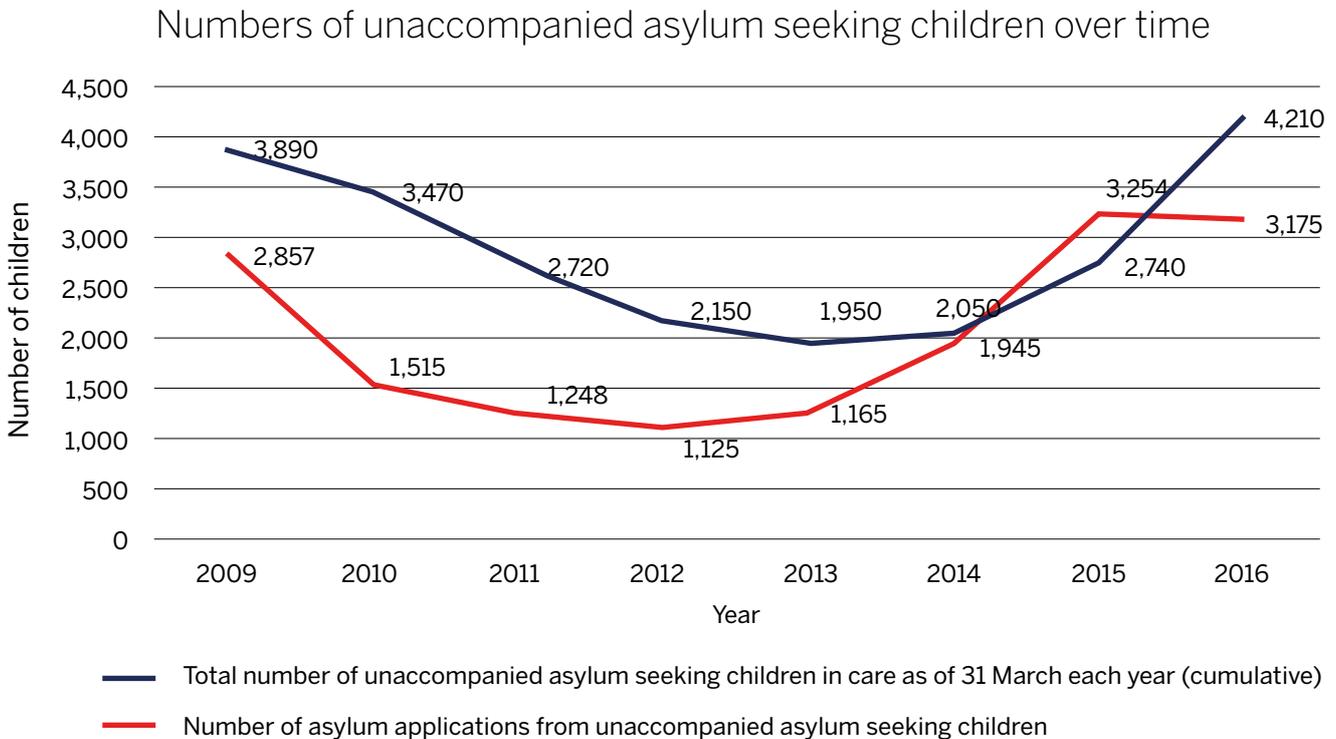
3. The Children's Society. Cut off from Justice: The impact of excluding separated migrant children from legal aid (2015). Page 33. https://www.childrenssociety.org.uk/sites/default/files/LegalAid_Full_O.pdf [Last accessed 16 June 2017].

4. Immigration statistics quarterly release 2017, Home Office <https://www.gov.uk/government/collections/immigration-statistics-quarterly-release> [Last accessed 16 June 2017].

5. Statistics on looked-after children in England, Department for Education https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/410394/SFR36_2014_National_tables_revised.xlsx [Last accessed 7 June 2017].

6. Children looked after in England (including adoption) year ending 31 March 2016, Department for Education https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/556331/SFR41_2016_Text.pdf [Last accessed 16 June 2017].

Figure 1: Number of unaccompanied children making applications for asylum to the Home Office and number of unaccompanied children in local authority care



Unaccompanied and separated children in the community

Although the most visible unaccompanied and separated children are predominantly taken into local authority care, there are likely many more outside of the care system living with family members, relatives or individuals within their community networks. Sigona and Hughes estimated that approximately 120,000 to 140,000 children are living in the UK without any regular immigration status.⁷ Although

they suggest the majority of these children either arrived in the UK with their parents or were born here, a proportion of these children will have arrived as an unaccompanied or separated child, or may have become separated in subsequent years. For example, of those children who do arrive with family members, some may later find themselves separated because of family breakdown.⁸ Research has shown that for children separated after they have arrived in the UK, it can be very difficult for children's social care to

respond to their situation. Further information on the outcomes for children in this scenario can be found in the work of Finch, who suggested that the family courts are encountering high numbers of foreign national children being subject to child protection proceedings, though it is difficult to give a precise number as there is no official record keeping on figures.⁹

Whilst there are unaccompanied and separated children living in private fostering arrangements, it is difficult to determine the

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

8. Office of the Children's Commissioner (2013) Office of the Children's Commissioner's Response to the Ministry of Justice Consultation: Transforming Legal Aid Delivering a More Credible and Efficient System, https://www.childrenscommissioner.gov.uk/sites/default/files/publications/Response_to_MoJ_Transforming_Legal_Aid_0.pdf [Last accessed 16 June 2017].

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

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numbers of such children, partly because most arrangements are not known to children's social care.^{10,11,12} Estimates do exist to provide a baseline, but statistics for private fostering are no longer collected as of 2016.¹³ The last recorded figures show that 1,560 children were reported as being cared for and accommodated in private foster care arrangements as of 31 March 2015. In this last year of data collection, some 2,740 new private fostering arrangements began.¹⁴

The difference between these official numbers and the reality is indicated by the British Association of Adoption and Fostering (BAAF), which suggests between 15,000 to 20,000 children living in private foster care – a number that is still widely circulated within policy and practice literature.¹⁵ While these numbers relate to the total number of children in private foster care and do not solely refer to separated migrant children, Crawley (2012) suggests that a sizeable number of children in private foster care will indeed be subject to immigration control.¹⁶ The discontinued Department for Education statistics show that in 2015 only 38% of children in

private foster care arrangements were UK born. Over time, the statistical set suggested that the number of UK born children was declining as more children in private foster care arrangements were born overseas.

If we apply the 38% figure for children born overseas to the estimates of children living in private foster care offered by BAAF then we can estimate that between 9,300 and 12,400 migrant children may be living in private foster care arrangements.

Based on these numbers, we can make a minimum estimate of unaccompanied and separated children in the UK. In the most recent year of data from Department for Education, local authorities were caring for 4,210 unaccompanied children as looked-after children. If we add this to the estimate that between 9,300 and 12,400 migrant children could be living in private fostering arrangements, we would have an estimate of approximately 13,500 to 16,600 unaccompanied and separated children living in the UK.

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

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

12. DCSF (Department for Children, Schools and Families) (2010) No Simple Answers: Report of the DCSF Advisory Group on Private Fostering 2008–2010 http://webarchive.nationalarchives.gov.uk/20130401151715/http://education.gov.uk/publications/eorderingdownload/d_csf-00198-2010.pdf [Last accessed 7 June 2017].

13. <https://www.gov.uk/government/statistics/announcements/notification-of-private-fostering-arrangements-2016> Statistics release announcement. Notification of private fostering arrangements 2016 [Last accessed 16 June 2017].

14. Department for Education (2014) Statistical First Release of Notifications of Private Fostering Arrangements in England: Year Ending 31 March 2014. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/328518/SFR22-2014_text.pdf [Last accessed 7 June 2017].

15. Philpot T (2001) *A Very Private Practice: An investigation into private fostering*. London: BAAF

16. Crawley, H (2012) *Working with Children and Young People Subject to Immigration Control: Guidelines for Best Practice*. Second Edition.



Chapter Two: Unaccompanied and separated children ‘out of scope’

It is important to regularise unaccompanied and separated children’s status, to provide them with long-term certainty about their life in the UK, therefore increasing the chance of them staying safe and reaching their full potential.

In order to regularise their status children need access to high quality immigration advice. The immigration and asylum rules of the UK are highly complex and change regularly. Without a trained and experienced legal professional, children are unlikely to regularise their status and may find themselves in an even more precarious situation than when they arrived in the UK alone and separated from their family.

Before April 2013 unaccompanied and separated children could apply for legal aid to help them cover their legal costs, but the enactment of the Legal Aid, Sentencing and Punishment of Offenders Act changed this. LASPO radically reduced the availability of legal aid across a whole host of areas including family and welfare law and immigration law. Under LASPO only asylum applications remain fully in scope for legal aid. There are some other exceptions, particularly where an individual has been a victim of trafficking or domestic violence, but the bulk of

post-LASPO immigration legal aid is for asylum claims.

LASPO therefore created a whole sub-set of vulnerable unaccompanied and separated children who are no longer eligible for legal aid, and as such are placed at significant risk of not resolving their immigration status and unable to make plans for their future. In the following sections we explore how many children might be ‘out of scope’ for legal aid and the immigration claims they are making.

How many unaccompanied and separated children are out of scope?

It is extremely difficult to estimate how many children are out of scope for legal aid since the changes brought into force by LASPO.

One notable group to consider is unaccompanied and separated children seeking asylum. Whilst this group of young people are in scope for legal aid for the asylum part of any initial claim, future applications can be more complicated and could see them pursuing an application that is out of scope.

There are five different outcomes from an asylum application made by an unaccompanied child. Whilst the outcome of any

claim does not dictate any future claims made, the outcomes do indicate groups of children who may be more at risk of being out of scope in future applications. Of these, two outcomes (asylum and humanitarian protection) do not usually put children at risk, as these kinds of leave would likely place the child on a clear path towards an in-scope application for indefinite leave to remain. Three outcomes (UASC-leave, discretionary leave and family and private life leave) can place children at greater risk as they will need to either make fresh asylum claims, put forward a mixed case, or a completely different claim in order to remain in the UK.

New non-asylum claims can be made because, during their stay in the UK, children often accrue reasons outside of asylum for remaining here that are recognised within immigration rules. However, these routes to settlement are usually cases for which in-scope legal aid is no longer available, such as claims that engage Article 8 of the European Convention on Human Rights.¹⁷ As such, the unaccompanied and separated asylum seeking children in this situation are an important piece of the jigsaw when trying to understand how many children are out of scope of legal aid.

17. European Convention on Human Rights. Article 8 is the ‘Right to respect for private and family life’ (2010) http://www.echr.coe.int/Documents/Convention_ENG.pdf [Last accessed 7 June 2017].

Table 1: Outcomes of initial decisions on the claims of unaccompanied asylum seeking children¹⁸

	2013	2014	2015	2016
Total initial decisions	1,112	1,270	1,930	1,959
Total grants	813	906	1,289	1,528
Total refusals	299	364	641	431
Refusals as a % of all initial decisions	27	29	33	22
Grants of asylum	287	487	420	614
Asylum as % of all grants	35	54	33	40
Grants of Humanitarian Protection	4	10	19	57
HP as a % of all grants	0	1	1	4
Grants of Discretionary Leave	383	23	41	15
DL as a % of all grants	47	3	3	1
Grants of UASC Leave	119	380	809	837
UASC Leave as a % of all grants	15	42	63	55
Grants of Family of Private Life Leave	20	6	0	5
Family of private life as a % of all grants	2	1	0	0

Table 1 details the outcomes of the initial claims made by unaccompanied children seeking asylum. It includes children who made their claims under the age of 18, but who did not receive a decision until after their 18th birthday.

Based on Table 1, one could produce a minimum estimate of the numbers of unaccompanied former asylum seeking children who might fall out of scope of legal aid for a key aspect of their case in subsequent applications. Over the four years recorded, it

would total 2,638 young people.¹⁹ This number has obvious limitations – not least that many children do raise asylum grounds in future applications/representations even if their first asylum claim was rejected. It does however provide an idea of the scale of claims made by unaccompanied asylum seeking children who are looked after by their local authority that could potentially be out of scope for legal aid.

There is no estimate of the number of separated and

unaccompanied children living in the community who might be out of scope for legal aid, so it is impossible to say what proportion of the 9,300 to 12,400 children we have estimated to be living in private foster arrangements might be out of scope.

However we do know how many children would have been eligible for legal aid before LASPO fell out of scope in 2013. Before LASPO was introduced, Just Rights and The Children’s Society sent a Freedom of Information Request to the Ministry of Justice to find

18. Immigration Statistics, Home Office <https://www.gov.uk/government/publications/immigration-statistics-january-to-march-2017/list-of-tables#asylum> Volume Three, Table as_09 [Last accessed 7 June 2017].

19. 2,638 young people is the sum of the numbers of children receiving discretionary leave, UASC-leave and Family or private life leave over all four years

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out how many children would fall out of scope of legal aid. Based on the legal aid data from 2009/10 received, a total of 2,490 cases out of the 2,700 children's non-asylum immigration cases granted legal aid that year would be out of scope after the introduction of LASPO.²⁰

This number is only slightly greater than the number of unaccompanied asylum seeking children we have judged to have been at risk over the last four years. This suggests that even pre-LASPO there were already significant barriers preventing children from accessing the free legal advice they were entitled to. The situation is now worse and there are potentially thousands of children and young people out of scope of legal aid. Our extrapolation of the table in Figure 1 finds that there are potentially 2,638 children at risk in local

authority care, or as care leavers. Combining this number with the number of children we estimate to be in private foster care, above, we suggest an estimate of 12,200 to 15,000 children are out of scope for legal aid in immigration cases.

What kind of immigration claims are out of scope unaccompanied and separated children likely to be making?

The non-asylum immigration claims of unaccompanied and separated children are often very complex.

Cut Off from Justice (2015) attempted to categorise the circumstances for children out of scope for legal aid and create a typology of out of scope cases, which could be used as part of the research framework. The same framework is used here for consistency and clear

comparison.

Appendix A gives a full breakdown of the 11 different groups of children who are now out of scope and their potential immigration claims and individual needs. We have simplified it into the six broad headings summarised below:

Trafficking

Children who are suspected to have been trafficked from outside the UK are at risk of being out of scope. These children, once confirmed as trafficked, or potentially trafficked, are in scope for legal aid. If however they are unidentified victims, or awaiting a 'reasonable grounds' decision by the National Referral Mechanism (NRM) that they have been trafficked, they are out of scope for legal aid.

Case Study: Abebi, 16 year old girl trafficked and out of scope

Ryan, an immigration solicitor, was asked to support what he first thought was an immigration application from an adult. It became very clear that what was actually in front of him was an application from a child with very palpable trafficking indicators and a history of forced marriage.

The child, Abebi, who Ryan thinks is 16 years old, has been in the country since she was 13 years old. She has been age assessed as 27 by the Home Office, and the local authority are refusing to accept that Abebi is a child, despite bone density scans that indicated an age range of between 16 to 20 years.

The local authority has refused to take her into care, despite repeated attempts by Ryan for them to reconsider their decision. The girl is highly vulnerable. She has spoken to Ryan about having been sold and she has been forced to work in a brothel. There is evidence of torture and branding by the traffickers and the girl's mental health is in a critical state, threatening suicide. She is living in adult hotel accommodation in a notoriously unsafe area of the town. At the point of the interview, Ryan had been working on this girl's case for six months free of charge, as she is out of scope for legal aid funding, and he describes the whole situation as a 'huge disaster'.

20. Connolly, H. 2015. Cut Off from Justice. London: The Children's Society. Full report, page 14. <https://www.childrensociety.org.uk/what-we-do/resources-and-publications/cut-off-from-justice-the-impact-of-excluding-separated-migrant> [Last accessed 2 May 2017].

A case study of a former asylum seeker making a new non-asylum claim

Asif was just 14 years old when he arrived in the UK from Afghanistan. When he first submitted his asylum application, it was refused and he was given discretionary leave to remain. When it was time for his leave to be extended, an Article 8 claim for leave to remain was submitted. In between his asylum claim and the extension of his leave, Asif had begun to settle into his new life with a very supportive foster family. He had been suffering from PTSD and had been self-harming for some time after his arrival, but this had improved with the sustained kindness and hospitality of his foster carer. Asif had no contact with family in Afghanistan. His Article 8 application to extend his leave was not covered by legal aid and there were significant issues in accessing public funds not just for legal provision, but for the necessary expert psychiatric evidence. Asif was lucky. His foster family were able to all pull together to finance the process and his case was successful.

Family breakdown and exclusion

Children who have experienced family breakdown are at significant risk of being out of scope. Children with insecure immigration status can be left behind by relatives that are moving on elsewhere, their adoption arrangement might break down, they might be excluded from a joint immigration claim made by their family, or they may become estranged from their parents. All of these things can put them at risk of being out of scope for legal aid and without support to access legal representation in regularising their immigration status.

Mixed cases with asylum and non-asylum grounds

Many children have 'mixed' cases. They might be applying for asylum but, for example, having lived in the UK for many years, may also have a claim based on a right to family or private life in accordance with Article 8 of the European Convention on Human Rights. Any aspect

of an immigration claim based on Article 8 rights would be out of scope for legal aid. A legal representative may be funded to give advice and representation in relation to their asylum claim, but not in relation to the Article 8 claim.

Unresolved or problematic status

Some young people may find themselves out of scope for legal aid because they have overstayed their visa, or perhaps are in care but their immigration status is unknown. Others may have lived in the UK for many years and be eligible for citizenship, but registration/naturalisation applications are out of scope for legal aid. Some may have had their status revoked because of criminal convictions and would be out of scope for legal aid in challenging that decision.

Stateless children

Children making statelessness applications are out of scope of legal aid.

Misdiagnosis

The final overarching group is children who, having sought advice, have been told that they are out of scope because the professional they asked for help failed to identify that they had an asylum or protection claim, or were a victim of trafficking. We did not include this category in the 2015 report, but one of our major findings for the first report, which is echoed in this updated version, is that many legal professionals have reported to us that they frequently see children who have been told they are out of scope when they are, in fact, eligible for legal aid. This has tended to happen simply because the professional has not known enough about the young person's case to identify the facts relevant to an asylum, protection or trafficking claim.

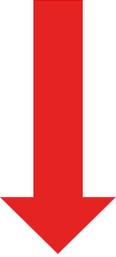
Which of these claims is the most common?

As part of this research, we surveyed legal professionals to find out the out of scope cases they were commonly

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Table 2: Distribution of ‘out of scope’ cases encountered by legal professionals

Frequency	Type of case
Least commonly seen	International adoption
	Criminal convictions
	Statelessness
	Unsettled Immigration Matters
	Family breakdown
	Citizenship
	Claims where in-scope issues had not previously been identified
	Trafficking
	Non-asylum applications
Most commonly seen	Mixed cases

encountering. There were 19 responses to the survey that could be used for this purpose and, as such, this small sample can only give an initial suggestion.

16 out of 19 respondents had come across mixed cases in their work, whereas only two had experienced cases involving the breakdown of international adoption agreements.

Our interviews with professionals reinforced the findings in Table 2. Professionals frequently told us of the challenges they found with two specific groups: children pursuing mixed cases and those who had been trafficked.

Mixed asylum and immigration cases

Professionals told us that one of the main groups they were seeing who were out of scope were children with mixed cases. Particularly those whose initial

asylum application had failed. The claims these children make, under Article 8 of the European Convention on Human Rights (the right to a family and private life) can be particularly difficult.

‘The problem is obviously where there is no longer an asylum claim, and we have had a few of those, where it has just been Article 8, and that has been unbelievably stressful.’

Jessica, OISC Advisor, Solicitor and Support Worker for separated children

The interviews also highlighted how difficult it is to succeed with an Article 8 claim. This further compounds the need for children to have access to legal advisors.

‘Article 8, knowing how hard it is to succeed...they are so vulnerable these 17.5 year olds. They have not succeeded in their asylum claims. To just dump them as children just seems ridiculous. There is a lot riding on it and there should be recognition that children should not be expected to put their cases themselves. Legal aid should be there for this small group to do their extensions.’

Amanda, Senior Immigration Solicitor and Partner

There is a particular urgency for these children, who are often rapidly approaching their 18th birthday and have a narrow window of opportunity to submit an 'in time' Article 8 application. The legal value of this group of children having timely access to an effective legal remedy is evident in the sense that it is vital to ensuring that there are no procedural obstacles that will place them at risk of becoming overstayers.

Children's international protection/Human rights and trafficking claims previously unidentified

In 2015 we drew attention to 'the complications and errors that had been made in diagnosing children's immigration needs' particularly where trafficking and international protection was concerned, and how this worked to exclude them from legal aid (Connolly, 2015). This also appeared again in both the interviews and the survey for this research:

'We see unidentified protection cases. I think trafficking most often...a lot of the trafficking claims initially show up as somebody who has entered illegally and it's not until someone takes the time to sit down and explore these issues that you realise they didn't do so of

their own accord. It takes time to get that evidence. Trafficking claims are amongst the most difficult because you're not entitled to legal aid until you are identified as a victim of trafficking.'

Elizabeth, Immigration Solicitor

Many participants in our research were very clear that the risks for trafficked children have grown significantly in recent years. There is very clear evidence that the procedures put in place after LASPO to ensure that persons who have been trafficked do not go without legal aid are not working and are also dangerous, leaving a very profound protection gap for one of the most vulnerable groups of children in our society.

One of the key issues raised was the interdependency between access to legal aid and the processes of the National Referral Mechanism (NRM), which is the national body charged with identifying victims of trafficking. One solicitor explained:

'You only get legal aid once you have the reasonable grounds position (from the NRM) and the majority of work in all of these cases is done before that – so the trafficking thing is useful but it is

really limited.'

Louisa, Law Centre Immigration Solicitor and Manager of Migrant Children Legal Project

These problems are exacerbated further because, as research has shown (Kohli et al, 2015) many children are not being referred into the National Referral Mechanism in the first place.

Children with complex lives and the post-LASPO immigration landscape

A combination of poor national statistics and the very complex circumstances faced by unaccompanied and separated children mean that the numbers of children out of scope for immigration legal aid are difficult to quantify. However our research has found that these children do regularly present to legal professionals with some circumstances, like those with mixed cases and those who have been trafficked, presenting more commonly than others.

Of course, knowing that you need immigration advice is only the first step in a very long journey for the thousands of 'super-vulnerable' unaccompanied and separated children with complex immigration claims who are out of scope for legal aid. Over the following sections we attempt to establish how these children are securing the legal help and representation they need and, once they have that help, the further challenges posed by the system itself when they make their claim.

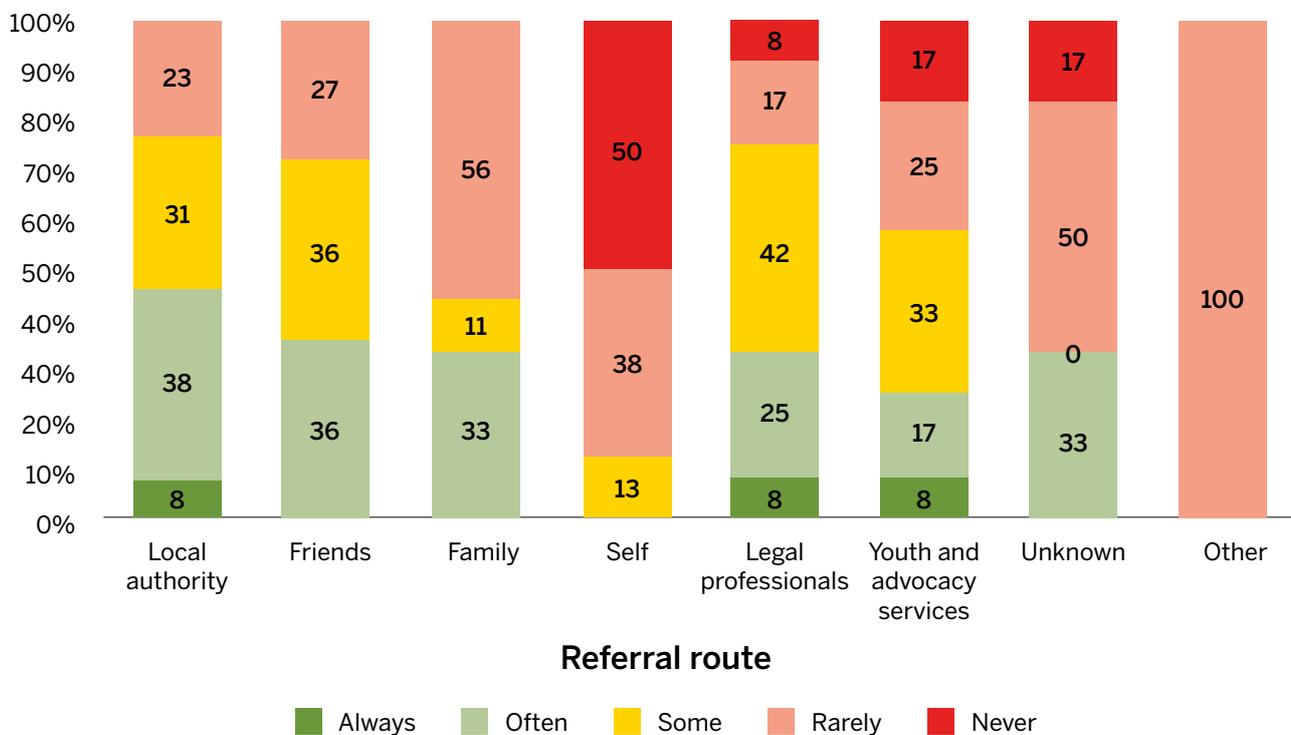
Chapter Three: The legal landscape for unaccompanied and separated children

How do children find a legal professional to help them with their case?

In our survey, we asked legal professionals to tell us how unaccompanied and separated

children were most commonly referred to them. Figure 2 displays their responses:

Figure 2: Proportion of professionals working with young people signposted from a variety of actors



Number of respondents for each referral pathway	
Local authority	13
Friends	11
Family	9
Self	8
Legal professionals	12
Youth and advocacy services	12
Unknown	6
Other	4

The figure suggests that young people are drawing on a range of different actors within their extended networks to find legal advice. Local authorities play the biggest role in connecting young people to legal advice, followed by other legal professionals. This is interesting as evidence we have gathered for Chapter 4 suggests that whilst local authorities might be signposting children towards the advice they require, they are not likely to be paying for this advice.

The role of other legal professionals is also of note. In subsequent sections, we examine the role of the free immigration advice sector. Organisations and individual solicitors will often go to great lengths to ensure a child has advice even if, for financial, caseload and other reasons, they cannot take on the case themselves.

Legal professionals, local authorities, and youth and advocacy services, play critical roles in connecting children to advice. Therefore, children who are not known to services are unlikely to find the help and support they need. However, friends and, to some extent, family play a role. This suggests that when children are not connected to professional networks they could be heavily reliant on the experiences of their peers and relatives.

Finding free immigration advice

Given their limited means, children often rely on free immigration advice. There are two main options available: free immigration advice provided by organisations regulated by the Office of the Immigration Services Commissioner and pro-bono advice offered by solicitors and law firms. Since the introduction of LASPO, we have regularly collected data from the Office of the Immigration Services Commissioner (OISC)²¹ about the number, location and level of immigration advice provided by non-fee charging organisations across the UK.

The data we have used comes from three Freedom of Information Requests for data from 31st December in 2012 (before LASPO was introduced), the 31st December in 2014 and finally on the same date in 2016. The full regional breakdowns, across all years, are published in Appendix C in the full report.

The OISC regulates the activity of anyone who provides immigration advice services and is not already regulated by another recognised body, including law centres, specialist private companies, self-employed advisers, charities, and community and faith groups offering immigration advice services, both at a cost and for free.

There are three different levels of immigration advice that OISC regulates, moving from Level One through to Level Three, depending on case complexity:

- Level One: Basic immigration advice within the Immigration Rules
- Level Two: More complex casework, including applications outside the Immigration Rules
- Level Three: Appeals to the First Tier and the Upper Tribunals of the Immigration and Asylum Chamber. From July 1st 2017, some level three advisers will also be able to undertake Judicial Review Case Management.²²

Repeating our data collection for 31st December 2016, we found many of the same trends in evidence as in our 2015 report:

- In data we collected in 2016, fee-paying providers remain almost twice as common as non-fee providers as per data we collected in 2015. In 2016, of all providers, 1,089 (64%) were fee charging and 623 (36%) did not charge for their services.
- Non-fee Level One advice remains more available than Levels Two and Three, with 78% of non-fee providers offering Level One advice, 11% offering Level Two and 11% offering Level Three.
- Services remain concentrated in London and the South East, with one third of non-fee services based in these two regions.

21. Office of the Immigration Services Commissioner. (2017). <https://www.gov.uk/government/organisations/office-of-the-immigration-services-commissioner> [Last accessed 2 May 2017].

22. Office of the Immigration Services Commissioner (2017) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/607605/Practice_Note_-_Judicial_Review_Case_Management3.pdf [Last accessed 10 July 2017]

An update to: Cut off from Justice

The impact of excluding separated and migrant children from legal aid

- All levels and fee structures of OISC regulated services had reduced by an additional 20% from 2014 to 2016, having already reduced by 33% from 2012 to 2014. Overall, from 2012 to 2016, the number of immigration advice services regulated by OISC have reduced from 3,174 providers in 2012 to 1,712 providers in 2016. This is a reduction of 46%.
- The largest cuts, over the whole period of 2012 to 2016, were among providers offering free advice at Level Three (54%) and fee-paying advice at Level Two (56%).

For a child who cannot access free OISC-regulated advice locally, the

other option is to find a solicitor who might take the case on pro-bono. It is worth stating at the outset that pro-bono advice cannot ever be an adequate way of providing consistent and effective access to the justice system. This is because pro-bono advice is hard to find. Firms do not widely advertise that they do pro-bono work as it is a significant financial risk.

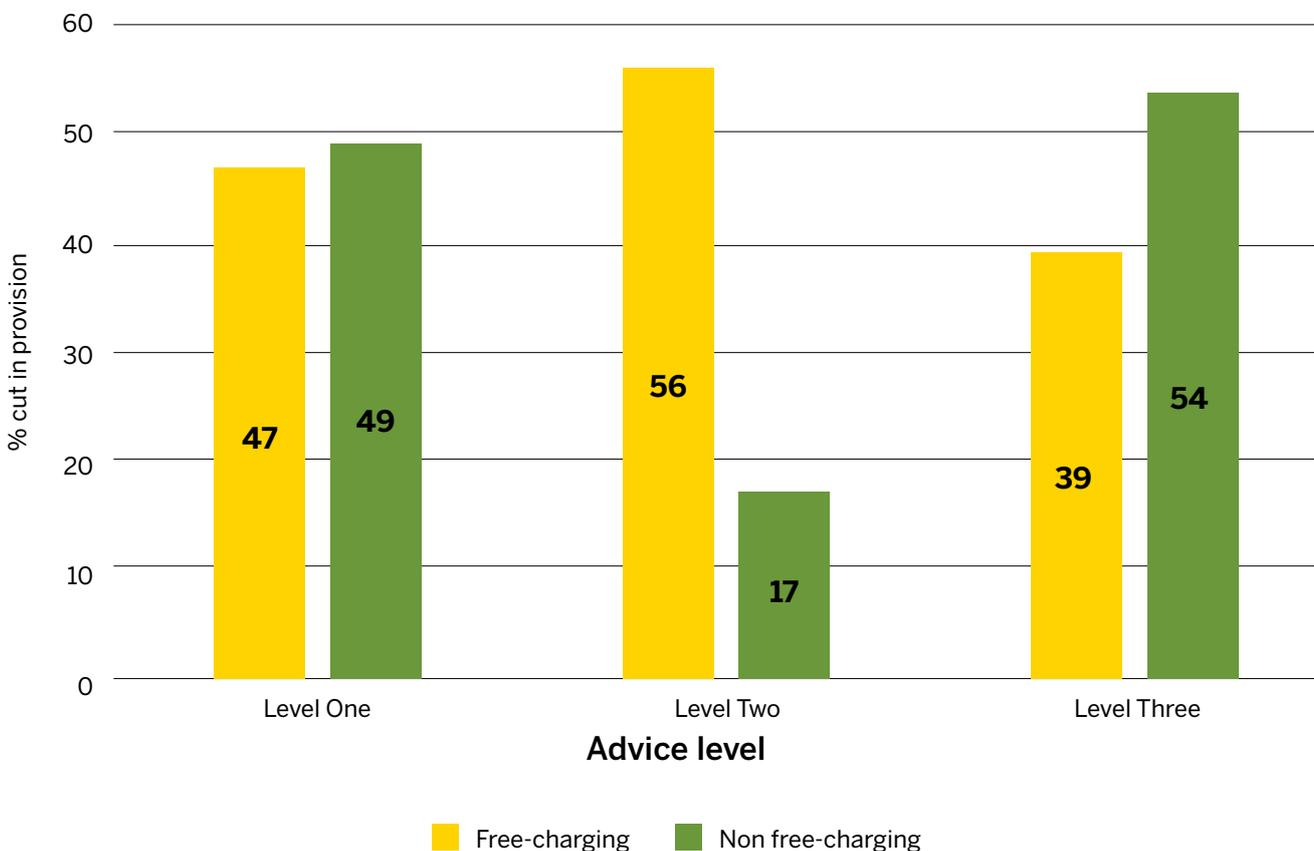
An individual might use something like the Law Society's online database²³ to identify local firms but our own examination of this²⁴ found that it is not always up to date and there are few firms offering legal aid services for

immigration. Of course, even if a relevant firm was identified there is no guarantee they will provide high quality advice or be able to take on a case.

How many children find the advice they need?

We used our survey to try to establish how many out of scope unaccompanied and separated children professionals were seeing and their typical caseload. In total, 22 of 29 responses to the survey were from legal professionals (the rest acting as 'signposters', largely OISC trained, or non-practicing solicitors). These professionals were operating in differing

Figure 3: Percentage cut in OISC providers for fee and non-fee services 2012 to 2016



23. Law Society (2017). Find a solicitor. <http://solicitors.lawsociety.org.uk/> [Last accessed 6 June 2017].

24. See Chapter Four in the main report



contexts – including law centres, charities, pro-bono solicitor projects, as well as barristers and private solicitors and advisers.

A full breakdown of what number of unaccompanied and separated children that professionals were working with can be seen in the full report. In summary however, we found that 27 participants had worked with 350 unaccompanied and separated children since LASPO was introduced. Of these about 100 were out of scope for legal representation and 150 children out of scope for legal help.

What these figures tell us is that just under 1/3 of all the unaccompanied and separated asylum seeking and migrant children that this sample of legal practitioners have been working with have not been entitled to legal aid for legal help, legal representation, or possibly both.

Exceptional Case Funding – the safety net?

If a child cannot access legal aid and if they cannot find free advice, there is one route still available to them: Exceptional Case Funding (ECF). To access ECF the case must pass the ECF threshold which is established in both legislation and case law. It centres on whether an applicant's ECHR rights, or EU law, would be breached if legal aid was withheld.

'It essentially comes down to proving to the Government that they would be breaking the law not to fund you. So that will either be HR obligations – Article 6, fair trial – that doesn't apply in immigration, but it could be the procedural guarantees under Article 8, or it could be a point of EU law. And although the guidance is a little bit more broadly written, that is essentially what it comes down to.'

Janice, Immigration Solicitor and Legal Director, Policy Organisation

In the following sections we explore how the ECF scheme is working, its suitability for children and how legal professionals are interacting with it.

Are children accessing Exceptional Case Funding?

In our last report, one of the starkest findings was that none of the participants across our participant groups of solicitors, social workers, NGO's – and even children and young people

themselves – had known of any children who had been advised to, or were indeed able to access the Exceptional Funding Scheme. This was also reflected in the ECF statistics. This time our research is showing a different picture; one that appears to be a complex amalgam of perceptions, practices and outcomes.

In the first year of the ECF Scheme, only 1,516 applications were made in total, for all age groups. The low application rate fell in the second year from 1,516 to 1,172. There are likely to be a variety of reasons for this, but one is the low prospect of success for the outcome of the application. In the first year, only 70 applications were granted, giving a success rate of just 4.6%.²⁵

Since its inception, a number of judicial rulings on ECF have resulted in an increased number of successful applications. These changes are detailed in Appendix B of the main report and they have meant that, by 2015/16 there were 1,333 ECF applications determined, of which 661 were successful. This gives a much-improved success rate of 50%.

The Public Law Project obtained data from the Legal Aid Agency regarding the geographical distribution of ECF applications across the country, between November 2015 and June 2016.²⁶ Table 3 details the response:

25. Legal Aid Agency (2017). Home: Statistics: Legal aid statistics England and Wales tables October to December 2016. Tables 8.1 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606127/legal-aid-statistics-tables-oct-to-dec-2016.xlsx [Last accessed 6 June 2017]

26. Ministry of Justice response to FOI request 108597; 29 March 2017

An update to: Cut off from Justice

The impact of excluding separated and migrant children from legal aid

Table 3: Applications for non-inquest Exceptional Case Funding received between 9 November 2015 and 30 June 2016²⁷

Region	Total	% of all applicants
East Midlands	37	4
Eastern	22	3
London	419	50
North East	34	4
North West	44	5
South East	54	6
South West	34	4
Wales	28	3
West Midlands	71	8
Yorkshire and the Humber	65	8
Neither England or Wales	9	1
No fixed abode	2	0
Unknown	21	3
Grand total	840	100%

This demonstrates the overwhelming proportion of ECF applications are made in London. It seems that outside of London finding a solicitor or adviser who will support a client with an ECF application is even more difficult than finding one inside London. This suggests that the safety net provided by ECF is not evenly spread across the country.

The Legal Aid Agency provides further information about the category of law ECF applications

were made under. When looking at ECF for all immigration claims specifically the following applications and grants were made in the first four years (see table 4 below).

Through a Parliamentary Question²⁸, we obtained some additional information about children and young people's access to ECF for immigration over the last three years (see table 5 below).

The figures demonstrate that ECF applications are low in volume and that children and young people are not well represented by the scheme. Even in 2015/16, after the scheme had been running for three years and the acceptance criteria had been significantly relaxed, children and young people were only involved in 15% of cases where ECF was granted for immigration when the numbers published by the Legal Aid Agency in Table 4 are compared with the

28. UK Parliament (2017) Parliamentary Questions: Legal Aid Scheme: Children and Young People: Written question - 68895 (Kate Green MP) <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-03-23/68895/> [Last accessed 6 June 2017]

27. The Ministry of Justice response to FOI request 108597 states as follows in relation to the data provided: 'Please note that the region listed here uses a combination of sources. Around 80% relate to the provider, found using the office code of the provider submitting the application. Bear in mind that this may be the lead office location and so does not necessarily indicate the geographic location of the individual involved. Around 20% of the regions have been found using the post code supplied alongside a direct client or assisted client application. Lastly, for some it has not been possible, using the data already in existence, to find either the office code or the direct client post code and so the region for these applications has been recorded as unknown.'

Figure 4: ECF applications, grants and success rates for immigration cases

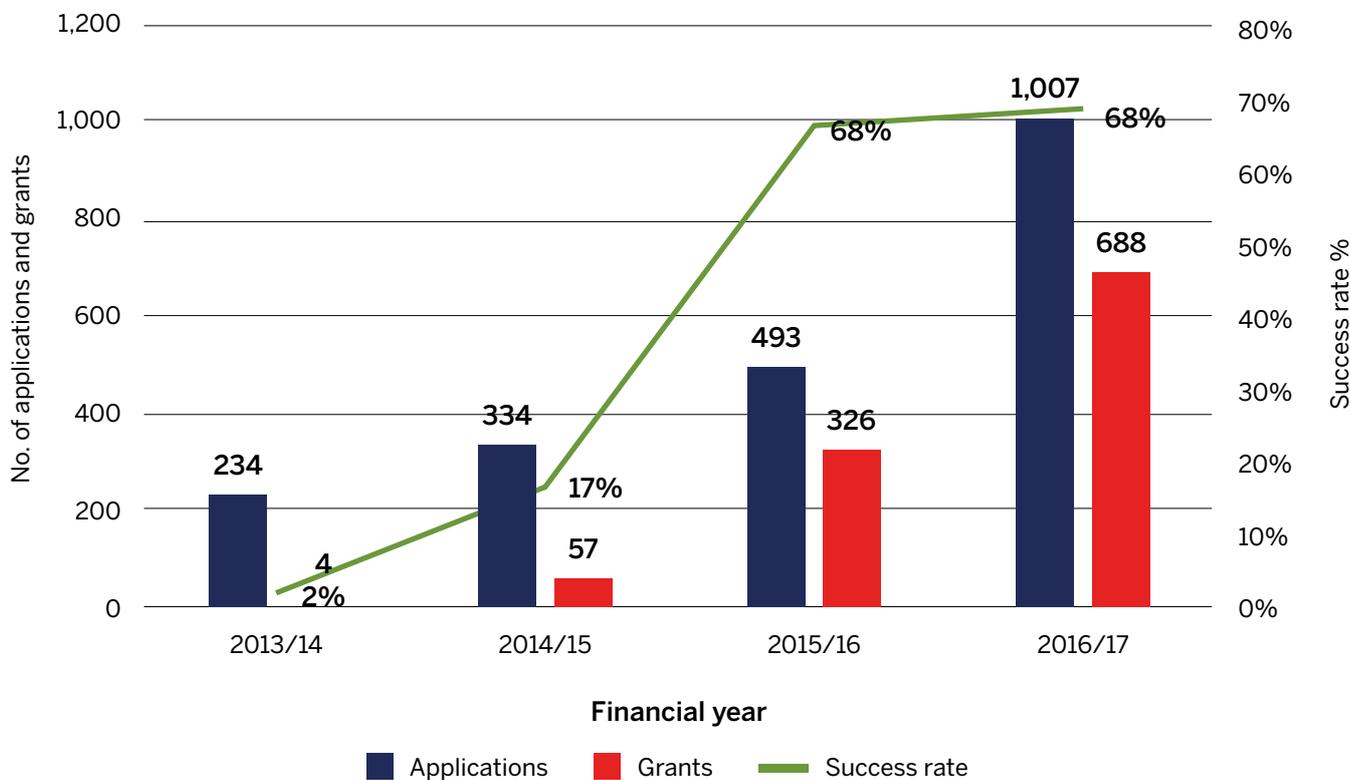


Table 4: ECF applications and grants made for immigration cases²⁹

Financial year	Applications	Grants	Success rate
2013/14	234	4	2%
2014/15	334	57	17%
2015/16	493	326	66%
2016/17	1,007	688	68%

29. Legal Aid Agency (2017). Home: Statistics: Legal aid statistics England and Wales tables October to December 2016. Tables 8.2 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606127/legal-aid-statistics-tables-oct-to-dec-2016.xlsx [Last accessed 6 June 2017]

Table 5: Applications and grants of ECF to children and young people for immigration matters

Financial year	Children under 18			Young people aged 18–24		
	Applications	Grants	Success rate	Applications	Grants	Success rate
2013/14	0	0	n/a	12	0	0%
2014/15	14	4	29%	39	8	21%
2015/16	15	12	80%	59	40	68%

number received through the Parliamentary Question in Table 5. We do not yet have the data for how many children and young people applied for ECF for their immigration claims in 2016/17. Although overall, ECF applications are up, it seems unlikely that numbers of children applying would have accelerated more than adult applications.

When compared with the system that predated LASPO, post-LASPO legal aid and ECF do not appear to provide even close to as much coverage for children and young people with immigration claims.

As mentioned earlier in the report, Just Rights and The Children’s Society sent a Freedom of Information Request to the Ministry of Justice prior to LASPO’s implementation to find out how many children would fall out of scope of legal aid.³⁰ It is against this minimum estimate of 2,490 cases of children who would have received support pre-LASPO, that numbers for children accessing ECF for immigration claims should be compared.

Even in 2015/16, with the much-improved success rate, only 15 applications were made for immigration claims under ECF for children. This accounts for less than 1% of the 2,490 cases that were expected by the Ministry of Justice (according to the aforementioned FOI response) to fall out of scope of legal aid, once LASPO was implemented.

Given the breadth and depth of data we have collected about knowledge and perceptions of the exceptional funding scheme held by children’s legal practitioners, and how these intersect with the ways they use it, we would suggest that the historically low success rate continues to be a significant factor in explaining the low numbers of applications for migrant children nationally.

Professionals’ experiences of ECF

Exceptional Case Funding still appears to be wholly under-utilised in children’s immigration cases. In many ways, therefore, we still cannot know how appropriate or effective the system is for equal and effective access to justice for

children’s immigration cases. Yet there are, unlike before, ‘pockets’ of immigration practitioners who have been ‘testing the water’ and are starting to see outcomes that are favourable in children’s cases, as illustrated in the quotes from practitioners below:

‘I didn’t use it initially. I started doing some for complicated Article 8 cases for adults, and then was discussing with a colleague about how difficult the children’s cases were and they suggested, let’s try and get exceptional funding for children, and so far, they have been approved, but I don’t think that people generally think that.’

Amanda, Senior Immigration Solicitor and Partner

30. Connolly, H. 2015. Cut Off from Justice. London: The Children’s Society. Full report, page 14. <https://www.childrenssociety.org.uk/what-we-do/resources-and-publications/cut-off-from-justice-the-impact-of-excluding-separated-migrant> [Last accessed 2 May 2017].

'I have not done that many exceptional funding applications but I was talking to somebody at a conference a couple of weeks ago who had a lot of success with them.....I am learning that quite a lot 'I have not done that many exceptional funding applications but I was talking to somebody at a conference are being granted and that there has been very much a shift since the Gudnaviciene and IS cases.'

Fozia, Law Centre Immigration Solicitor

Different perceptions of when to use the Exceptional Case Funding scheme

This remains a relatively new community of practice and, as such, there are variations in perception around the way that the exceptional funding scheme works and its purpose. Practitioners are engaging with it in different ways for children, creating another factor that builds discrimination into the system. Some practitioners consider it to be a system designed for 'exceptions', ie for very complex immigration cases only.

'The more unusual ones, maybe they have been in care or something, where it is discretionary, where they are complex cases, these probably fit exceptional funding. With other cases, as a hard-minded lawyer, you would think they are not complicated, they don't really meet the exceptional case funding criteria, therefore, I am not going to get exceptional funding. Lawyers are approaching it in a legal way, and thinking the only thing I have got is a child, and as important as I think that is, they are unsure about whether that is one of the criteria, if that fits the criteria'

Amanda, Senior Immigration Solicitor and Partner

Echoing our previous report, other practitioners were very clear that children's status as separated and unaccompanied minors intrinsically rendered their cases complex given their special vulnerabilities. They thought that an application to the exceptional funding scheme as routinely appropriate.

In the survey, we asked a series of questions around ECF to better quantify professionals' views. We found that whilst eight professionals had used the scheme, 10 had not. As a result we used interviews to explore why this was the case.

There were a number of factors at play including: a preconception that they will not succeed; a decision not to waste unpaid time on an application for which they may not receive any payment; lack of knowledge that ECF exists; or for those who did see it as a possibility, a judgement that it rarely met the practical needs of a child's case.

'I am not a big fan of the exceptional funding because of the way it works. By the time we have done the application, it is gone back and forth, and we actually start the work, the £234 funding is not worth the time. We may as well write it off and do it as pro-bono... With exceptional, you either have to do a huge amount of work³¹ to make it pay or you have to do next to nothing.'

Gary, Legal Manager and Immigration Solicitor

31. This is a reference to the 'escape fee' system; see below.

'Providers are put off ECF and escaped cases generally. Escaped cases³² are all scrutinised by a Legal Aid Agency caseworker and often assessed down or nil assessed... This is a problem even for providers like us who have a pretty good handle on this stuff... This is an awkward issue in some ways, but the complexity and risk certainly makes legal aid generally, and especially ECF and escaped cases, less attractive.'

Daniel, Law Centre Immigration Solicitor

Our research has enabled us to identify that the design of the exceptional funding system – even after case law that challenged its mechanics and thresholds – still offers legal practitioners with limited opportunities to make it a workable option for them and, ultimately, for the children and young people they work with.

Fundamentally, the process of submitting an exceptional funding application requires legal practitioners to undertake significant 'up front' and 'at risk' work. This means that there is no funding for the time they spend with children to apply, unless the application for ECF is successful and it will only be worth it if the case is an 'escape fee' case as opposed to a fixed fee case for £234. This means that not all the 'successful' work that legal practitioners do with, and for, children in their applications is remunerated and they get no funding at all if unsuccessful.

Practitioners also raised concerns that, even when cases are granted ECF funding, the rate of remuneration for 'mixed cases', such as applications that combined a claim for asylum and engage Article 8 ECHR³³ rights, is capped at the asylum rate:

'Any associated or additional application to an application within scope of Part 1 of Schedule 1 to the Act on human rights grounds will also form part of the same Asylum Matter.'³⁴

This means that practitioners have to spend the time making the ECF application, but they don't get paid any more than they would for the asylum claim alone even where it is granted. The only circumstance in which they will be paid any additional sum for the exceptional funding application and the work on the Article 8 / immigration aspect of the case is if the case is an 'escape fee'. Whether the case will be an 'escape fee' case may well not be known at the time of the ECF application.

The majority of legal practitioners expressed concerns over a gap that exists between the time they spend on 'lead-in' work for the application, which is not recoverable from the Legal Aid Agency, and the process of actually doing and putting in the application. Whilst there was 'some' replication of the work they did for legal aid prior to LASPO, the exceptional case funding system requires significantly more unpaid time and more and more free work. This expectation had already begun before LASPO, but is now amplified and unsustainable.

32. Escaped cases are cases where the amount of work done is three times the total of all fixed fees payable plus the total of all additional payments payable. Where a case qualifies as an 'escape fee' case the provider is ultimately paid an hourly rate rather than the 'fixed graduated fee'. However, they do not get paid at the hourly rate until the Legal Aid Agency approves the case as an 'escape fee' case. The Legal Aid Agency carefully checks all 'escape fees' (normal cases are sample audited) to ensure that all of the required proof of the client's means is on file, the work is all considered to be relevant and necessary and costs have been correctly stated.

33. European Convention on Human Rights (2010) Article 8 is the 'Right to respect for private and family life' http://www.echr.coe.int/Documents/Convention_ENG.pdf [Last accessed 6 June 2017].

34. 2013 Standard Civil Contract Specification Category Specific Rules https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308762/LAA-2013-immigration-and-asylum-specification.pdf [Last accessed 16 June 2017]

‘But the criticism here is that exceptional case funding is very time consuming, the assessments that we do often take an hour, an hour and a half for exceptional case funding, but that’s what you’re looking at when you apply for funding. You’re looking to do an hour, hour and a half’s free work with the risk of not getting this money. Also, again, if funding is refused what do you do with this kid? The temptation would normally be don’t apply for exceptional case funding, don’t spend an hour and a half because at the end of the day, you’re raising expectations for this child and it’s heart breaking.’

Julie, Senior Immigration Solicitor and Project Manager

Concerns were also raised by some practitioners that ECF is less able to deal with urgent cases from children and young people than the legal aid system before LASPO.

‘Exceptional funding is not a safety net, no, because of the delay it causes in actually having to apply for it, the delay in waiting for them to make a decision and the unknown. I mean the whole point of the Children Act is that you are meant to have certainty quickly for children in all actions relating to children and this idea of having to make an application for exceptional funding... They have a standard time frame of about 40 days. They will sometimes look at it more quickly if you need them to. We have had situations where, especially with extension of leave applications for young people at 17.5, in at least two cases, the deadline has been on a Thursday and they grant me the funding on a Monday.’

Elizabeth, Immigration Solicitor

‘The difficulty is in cases with Article 8, because you can’t argue it until they are about to be removed, and they can’t remove them until they are 18, so the problem is that is a very narrow window.’

Jessica, OISC Advisor, Solicitor and Support Worker for Separated Children

Overall, it was felt by respondents that ECF is not acting as a sufficiently robust system for children to be able to, without discrimination, access their effective and unhindered right to a legal remedy in their immigration cases. It was generally felt that ECF was not equivalent to the system of legal aid that existed before LASPO and that legal aid should, and could, absolutely be made available for children. As one barrister summarised:

‘It seems to have a lot of holes in it and it is fixed so close to the floor that if you fall, you are hitting the floor anyway. It is not working.’

Matt, Immigration and Asylum Barrister

Table 6: Home Office fees for a variety of most relevant applications, 2013/14 to the present

	Indefinite Leave to Remain in UK	Leave to Remain in the UK – other	Nationality Registration for a child	Nationality Registration for an adult	Naturalisation
2013/14 ³⁵	£1,051	£578	£673	£753	£874
2015/16 ³⁶	£1,500	£649	£749	£913	£1,005
2017/18 ³⁷	£2,297	£993	£973	£1,163	£1,282
13–15 % increase	43%	12%	11%	21%	15%
13–17 % increase	119%	72%	45%	54%	47%

Unaccompanied and separated children and Home Office fees

After everything a child has been through, when they are finally at the point of putting in a claim, there is still one more barrier: Home Office fees.

It is important to consider how much an immigration claim may cost an individual applicant when analysing the impact of LASPO on children. Whilst legal aid may be available for casework, each application still requires an administration fee to be paid to the Home Office. Fee waiver applications generally require detailed evidence and submissions, and carry risks of overstaying if refused in

circumstances where the child has leave to remain.

Since LASPO was introduced, Home Office fees have increased significantly. Applicants are often expected to cover the cost of fees alongside costs for a solicitor or other legal representative, where legal aid is not available. The below table shows the typical increase for specific claims likely to be made by unaccompanied and separated children, as well as those who may have recently turned 18 and become adults. Whilst there have been increases of at least 45% across all categories in the above table, there are some applications – most notably ‘Indefinite leave to remain’ – which have increased by a substantially larger amount, in

this case by 119%.

There are also a variety of other costs that unaccompanied and separated children may be liable for. For example, often they will have to acquire a passport and the cost of this varies depending on the country. There are also fees for appeal in many instances (although not for those in local authority care). In addition, children must also consider the costs of the immigration health surcharge.³⁸ Fees can easily total up to two thousand pounds for a single application, with fees continuing to rise annually. In addition to legal fees and other associated costs, children are required to pay the health surcharge brought in under the Immigration Act 2014.³⁹ These

35. Home Office, UK Border Agency (2003). Home: About Us: Fees for our services: UK Border Agency fees valid from 6 April 2013 <http://webarchive.nationalarchives.gov.uk/20130503023608/http://www.ukba.homeoffice.gov.uk/aboutus/fees/> [Last accessed 6 June 2017].

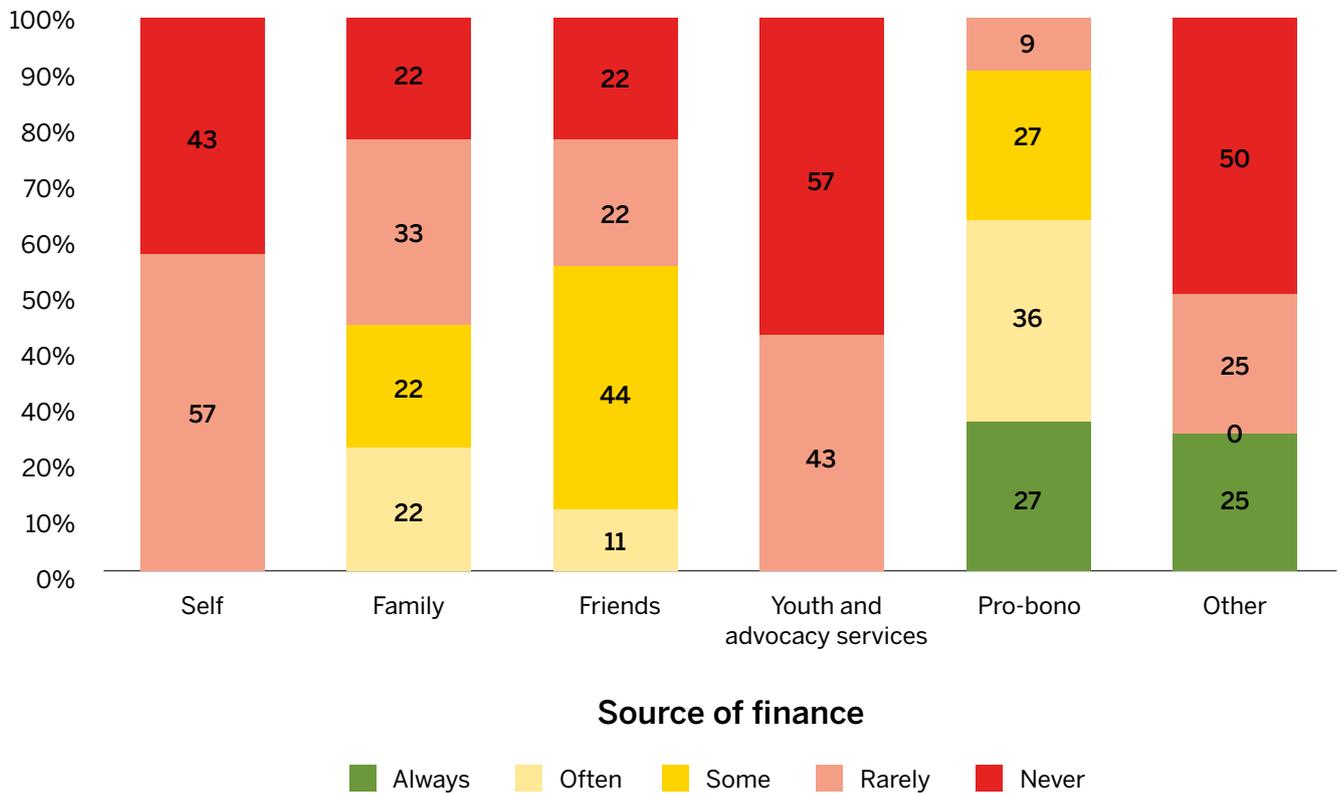
36. UKVI (2017). Home: Fees and forms: Home Office Immigration & Nationality Charges 2015/16 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/419449/fees_table_for_website_2015_03_30.pdf [Last accessed 6 June 2017].

37. UKVI (2017). Home: Fees and forms: Home Office Immigration & Nationality Charges 2017/18 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/607212/fees_table_April_2017.pdf [Last accessed 6 June 2017].

38. Gov.uk (2017) <https://www.gov.uk/healthcare-immigration-application/overview> [Last accessed 10 July 2017]

39. Gov.uk (2017) <https://www.gov.uk/healthcare-immigration-application/overview> [Last accessed 26 July 2017]

Figure 5: Proportion of professionals seeing children rely on a variety of funding sources for the application



additional fees cause unnecessary anxiety for children who cannot afford to pay them.

In our survey we asked professionals to explain how young people paid either Home Office fees, or legal fees more generally, if they could not access pro bono advice or ECF.

Figure 5 shows their responses.

This demonstrates that, other than pro-bono legal advice, unaccompanied and separated children struggle to find other sources of funding for their legal fees. The next most common source of support is friends, followed by family. In our first

report, we found children to be at significant risk when relying on friends, family and community for support as it often came with strings attached. This could perhaps put young people at risk of exploitation and certainly put them in a state of informal indebtedness.

Number of respondents for each source of finance	
Self	7
Family	9
Friends	9
Youth and advocacy services	7
Pro-bono	11
Other	4



Chapter Four: An alternative route? Local authorities and access to justice

Local authority policies, organisational contexts and practices: A complex and inconsistent picture

In our 2015 report, local authorities were found to support children in two main ways: either with financial support to cover solicitor costs, or by supporting young people to access free legal advice. It was also recognised that social workers can play an important role in assisting to gather the important documents and evidential proofs of a child's claim.

However, practice is highly variable.⁴⁰ We found that only one local authority had an explicit policy regarding how to ensure children could access immigration advice and make decisions around the funding of their cases.

For this report, it was important to establish what progress has been made in providing a more standardised approach to the immigration needs of vulnerable unaccompanied and separated children.

Our Freedom of Information request to all local authorities achieved a response rate of 73%, which is equivalent to 111 out of 152 of the local authorities in England.

Local authority knowledge about children at risk

We wanted to establish how much local authorities knew about the children who might be subject to immigration control in their area – both those in their care and those living in the local community.

The local authorities that responded to FOI requests told us they were caring for a total of at least 4,446 unaccompanied children under the age of 18. Given the sample size, this is broadly in line with the official DfE figure, which for 2015/16 stood at 4,210.⁴¹ Our figure suggests that there is now a larger population, but this seems logical given that the DfE figure is not the most recent financial year's data and that number of unaccompanied children arriving has been increasing in recent years.

We also asked local authorities how many children they identified as suspected victims of trafficking in the calendar year of 2016, and how many they subsequently referred to the National Referral Mechanism (NRM). The outcome of the NRM referral, as well as the length of time in which a decision is being made, is of critical importance as to whether a child is within scope for legal aid. Furthermore, our survey and

interviews suggest that trafficking was commonly identified.

'I've got a Vietnamese minor who claimed asylum and was referred to the NRM and was waiting months and months and months. I threatened judicial review, they said they'd make a decision and they didn't. I threatened judicial review again, they then issued a 'reasonable grounds' decision but they still haven't issued a 'conclusive grounds' decision following that, and that's been over six months.'

Steven, Law Centre Solicitor

40. Connolly, H. 2015. Cut Off from Justice. London: The Children's Society. Full report, page 55 <https://www.childrenssociety.org.uk/what-we-do/resources-and-publications/cut-off-from-justice-the-impact-of-excluding-separated-migrant> [Last accessed 2 May 2017].

41. Department for Education (2017). Children looked after in England including adoption: 2015 to 2016. Table A3, <https://www.gov.uk/government/statistics/children-looked-after-in-england-including-adoption-2015-to-2016> [Last accessed 6 June 2017].

A total of 36 local authorities answered the questions on identification of trafficking. This makes up 24% of all local authorities in England. They reported referring 185 children to the NRM in 2016. They were also able to tell us that 121 (65%) of the children were subject to immigration control. In the official NRM statistics a total of 1,204 children were referred to the NRM in 2016. Of these, 247 were from the UK and the other 957 (79%) would have been subject to immigration control in some way (some were EU nationals).⁴²

It is likely that other agencies referring children to the NRM, such as the UK Visas and Immigration Authority, are more likely to be reporting non-UK citizen children than local authorities through virtue of when they encounter children who may have been trafficked. The data

still suggests local authorities have some way to go until they have reliable data demonstrating how many children have been trafficked in their area and how many of these are subject to immigration control.

Children in private fostering arrangements

Of all local authorities that we contacted via Freedom of Information, 91 reported a total of 2,427 children in private fostering arrangements across their jurisdictions. Thirteen of these local authorities reported a total of 39 migrant children in private foster care, and a much larger number of 77 of authorities recorded no migrant children in foster care. Another 11 local authorities recorded no information, or were unable to complete the FOI response in time. Given research reviewed in

Chapter One finding that some 120,000 to 140,000 children are likely to live in private foster care⁴³ the accuracy of local authorities' records, and ability to identify privately fostered children, must be questioned.

Importantly, of all the local authorities that recorded migrant children in foster care, only three reported that they had supported children to access legal advice for immigration applications, with a total of 12 children supported to access free immigration advice and assistance. One local authority said that it had paid for legal advice for less than five children. That leaves between 23 and 26 cases of children where it is not clear if they were required to resolve their immigration status and, if so, what support was offered to do so.

Table 7: Data for children in private foster care⁴⁴

	Number of children
Total number of children in private foster care	2,427
Number of migrant children in private foster care	39
Number of migrant children supported with access to legal advice for immigration cases	12
Number of children who the local authority funded legal advice for	<5
Number of migrant children where there is no information on what support was offered for immigration	Between 23 and 26 children

42. National Crime Agency (2017) National Referral Mechanism Statistics: End of Year Summary 2016. Page 15. <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/2016-nrm-statistics/788-national-referral-mechanism-statistics-end-of-year-summary-2016/file> [Last accessed 6 June 2017]

43. Sigona, N and Hughes, V. (2012) No way out, No way in: Irregular Migrant Children and their families in the UK. ESCE Centre on Migration, Policy and Society. University of Oxford

44. Whilst there are unaccompanied and separated children living in private fostering arrangements, it is difficult to determine the numbers of such children, partly because most these arrangements exist unknown to children's social care services. See page 14 for further information.

What local authority support, and how much?

We asked local authorities to give us information about how they funded legal advice for unaccompanied asylum seeking children.

Twelve local authorities said that they did pay for legal advice for a total 24 unaccompanied asylum seeking children. This is a very small fraction of the 4,446 unaccompanied children in care that we have recorded through local authority FOI data. Many unaccompanied children would be eligible for legal aid because they have an asylum claim, but this does not include any Article 8 aspect of their ‘mixed’ case and it

must be clearly stated that not all will have asylum claims.

Sixty eight local authorities stated that they did not fund immigration advice for unaccompanied asylum seeking children in their care. A further 31 local authorities either did not answer the question, or had an exemption they applied allowing them not to answer.

Many more local authorities supported unaccompanied asylum seeking children to ‘access’ legal advice. We defined this as ensuring that young people were properly linked up with pro-bono or free advice. Fifty seven local authorities supported 1,196 children to access advice.

A small number of local authorities (14 in total) stated they did not support unaccompanied asylum seeking children to access immigration advice. This is very concerning – even those eligible for legal aid are unlikely to be able to find credible advice and work closely with their solicitor, or caseworker, without some level of support. Forty local authorities either did not answer, or exercised their exemption rights.

We also asked local authorities to tell us who they consulted to determine if a child needs immigration advice.

Table 8: Actors advising social workers on children’s immigration needs

	In-house legal team	External council	Case-by-case/ internal and external	No response/ exemption right
No. of local authorities	14	29	48	20
% of respondents	13%	26%	43%	18%

The responses demonstrate that just under half of local authorities are making decisions on a case-by-case basis. This is unlikely to be satisfactory. Social workers and others may be making assumptions about the level of advice needed, children are likely

to be receiving varying levels of support, and it is unlikely that the appropriate checks and balances are in place to ensure that mistakes are not being made.

This pattern was reinforced when we asked for local authorities to

provide the internal policy they used when working with children subject to immigration control. In total, two local authorities had a formal policy. In 2015 only one local authority had such a policy.^{45,46} Six local authorities told us that a policy was ‘in

45. Connolly, H. 2015. Cut off from Justice. London: The Children’s Society. Full report, page 56. <https://www.childrensociety.org.uk/what-we-do/resources-and-publications/cut-off-from-justice-the-impact-of-excluding-separated-migrant> [Last accessed 2 May 2017].

46. Unfortunately, the local authority that had a written policy in the first report did not respond to the new Freedom of information Request. Therefore, there could be three local authorities with policies in place.

development'. For this report, 71 local authorities told us they did not have a policy. Equally concerning were the 16 local authorities who claimed to have a policy, but in reality, did not. These local authorities referenced guidance documents such as the Department for Education's Unaccompanied and Trafficked Children's Statutory Guidance⁴⁷, Home Office guidance⁴⁸, or general looked-after children guidance.⁴⁹ None of these documents provide any specific detail on how local authorities should be making decisions when securing immigration advice for unaccompanied and separated children and young people.

Overall, the findings from our interview participants highlight that a complex and inconsistent picture still exists within and across local authorities when it comes to supporting unaccompanied and separated children and young people with their immigration needs.

Too much discrimination in the 'system'

There is too much discrimination built into the system and not all unaccompanied and separated migrant children in local authority care, care leavers, or even those supported under Section 17 of the Children Act (1989), have equal opportunities to access the legal advice and representation they

need. In many ways, there are no significant surprises or shifts in the findings since our last report. Importantly, however, the context of these findings is new. The post-LASPO environment is no longer new and the responses of local authorities cannot simply be explained as transitional.

As in our last report, the interview findings show that there are variable policies and practices of local authorities when it comes to the procurement of legal services for unaccompanied and separated migrant children. On the one hand, there is evidence that some local authorities will be filling, or at least trying to fill, the gap that has been left by LASPO:

'We get a lot of referrals from people just trying to regularise their status, many will be children, either being abandoned by their parents, or for whatever reason their family has broken down, then children come into care, and primarily, social services pay for that in our area, so they are filling the gap.'

Diana, Immigration and Asylum Barrister

'The family-related, the private life-related, that is where there is a real dearth of funding but in my experience, personally, LA's are stepping in the vast majority of the time.'

William, Senior Immigration Solicitor and Partner

On the other hand, evidence shows that local authority support for accessing and/or funding legal services for unaccompanied and separated migrant children is very uneven.

'I have seen various approaches by local authorities in the areas I cover. I have seen local authorities paying and paying solicitor's fees as well and on a private basis to make further leave applications. The almost "gold standard" approach is where I have had local authorities pay for outstanding asylum appeals, and to protect their rights under UASC

47. Department for Education (2014). Statutory guidance: Care of unaccompanied and trafficked children. <https://www.gov.uk/government/publications/care-of-unaccompanied-and-trafficked-children> [Last accessed 7 June 2017].

48. Home Office (2016) Processing children's asylum claims. <https://www.gov.uk/government/publications/processing-an-asylum-application-from-a-child-instruction> [Last accessed 7 June 2017].

49. Department for Education (2015) Statutory guidance: Children Act 1989: care planning, placement and case review. <https://www.gov.uk/government/publications/children-act-1989-care-planning-placement-and-case-review> [Last accessed 7 June 2017].

leave, the application for further leave has been made under that as well, concurrently. Then with others I have also had disputes regarding what support they are willing to provide for children out of scope.'

Fozia, Law Centre Immigration Solicitor

'I am very concerned at the moment. Social services tell us that they would have to look very carefully at any application from a young person or a request for the sort of funding to fight an application on an Article 8 case, which can be difficult to win. When they are very close to being Appeal Rights Exhausted, and becoming care leavers, at which point the care leaver service obviously stops⁵⁰, so what they are saying is, they don't know if they can do that

because social services have to show that they are spending their money properly.'

Jessica, OISC Advisor, Solicitor and Support Worker for separated children

Local authority funding for children's cases: Unsustainable and unsuitable

Whilst some local authorities do seem to be paying the legal fees for some unaccompanied and separated children some of the time, concerns were raised by legal professionals that this is unsustainable for local authorities – as well as an entirely unsuitable alternative source of public funding – when it comes to children's immigration cases.

The questions raised around the sustainability of this method of funding echo our findings in the first phase of this research from participating local authorities. We have found that solicitors have been offering local authorities reduced rates as a prompt for local authorities to support unaccompanied and migrant children to access legal advice and representation. Concerns have been raised that responses to these offers are ad hoc. Clearly, relying on local authorities to step into the gap left by LASPO is problematic and unsuitable.

'At the beginning of LASPO, I went to LA's and said, look, these are not going to be covered anymore. If you want them done, then we will give you a reduced rate. Absolutely, we are not interested. They just said, we don't have a budget for that so we will have to think again about how this is done, and so now any payment by social services is really ad-hoc and small. It is not an alternative source of funding...Some local authorities have absolutely no interest in paying anybody anything. It's a mess.'

Amanda, Senior Immigration Solicitor and Partner

Local authorities being 'blind-eyed' to the appropriate legal channels for children and young people

In this worrying context, evidence is also beginning to emerge of some local authorities being

50. Currently appeal rights exhausted care leavers are entitled to leaving care support but there is regulation forthcoming from the Immigration Act 2016 which will remove leaving care support from care leavers who are appeal rights exhausted. In this interview, it was unclear if the respondent was speculating on future practice, or had experienced local authorities mis-applying the law, as it stands, and illegally excluding appeal rights exhausted care leavers from their leaving care services.

wilfully 'blind-eyed' to the legal needs of the children and young people in their care. We appear to have uncovered some evidence of local authorities actively limiting the types of legal status applications they will fund, and potentially constraining children's chances of securing the most appropriate form of legal protection.

'Some just don't want to know. Some have difficulties and internal conversations that they can't spend whatever money they need to refer them. The one thing they are doing is referring children to the nationality checking service. It is what it says on the tin. They just check without looking at the facts. We recently had a rejected referral from a local authority. It took 15 emails and they went back and thought about it. They are worried about the registration fee of £933. So, they have gone away and thought about it...In some ways, you can't criticise local

authorities because their budgets are very tight.'

Julie, Senior Immigration Solicitor and Project Manager

We have further evidence that unaccompanied asylum seeking care leavers with failed asylum claims are at a heightened risk of local authorities choosing to ignore any other legal avenues that are available for them to ensure their stay and protection in the UK – such as Article 8 ECHR extensions. Fears have been expressed in this research that, in some local authorities, social workers may be taking unaccompanied asylum seekers to the police station on their 18th birthday to prompt Home Office removal; again, without the will or the time to submit alternative immigration applications.

'They categorise these young people as asylum seeking children, and if that fails, then they are eventually going back home when they become an adult and that is the end of our responsibility to them, without thinking about Plan B if their asylum fails. I have

had several enquiries from social workers saying, "we are taking the asylum seeker to the police station on their 18th birthday" and I know that some local authorities have made a kind of policy decision on that, without anyone looking at whether there is an Article 8 claim in the interim and no check on whether the asylum advice was good or the decision right or challengeable.'

Dipti, Immigration Solicitor, Migrant Children's Project⁵¹

Local authorities not always identifying children's immigration needs in their role as corporate parent

The section above addresses the issue where local authorities are wilfully ignoring children's immigration circumstances. However, where local authorities do not meet children's immigration and citizenship needs, it is often not because they are intentionally choosing to do that. Rather, the immigration backgrounds of children are often complex, as too are the

51. Currently appeal rights exhausted care leavers are entitled to leaving care support but there is regulation forthcoming from the Immigration Act 2016, which will remove leaving care support from care leavers who are appeal rights exhausted. In this interview, it was unclear if the respondent was speculating on future practice, or had experienced local authorities mis-applying the law, as it stands, and illegally excluding appeal rights exhausted care leavers from their leaving care services.

An update to: Cut off from Justice

The impact of excluding separated and migrant children from legal aid

laws, policies and processes that determine their entitlement and how to access their entitlements. The majority of social workers often just do not have the legal and practical knowledge to be able to diagnose and appropriately refer children on to solicitors that can help. Much more planning is needed, in terms of funding, developing relationships with good quality providers, and finding appropriate solicitors to work with children on their claims. Local authorities also need to consider their responsibility as a corporate parent and how this interacts with the 'corporate parenting principles' of the Children and Social Work Act 2017⁵², once this section of the Act is enacted.

'Local authorities are not that good at identifying separated children who need their immigration status resolved. We did some training with social services to try to raise the issue with a bit more and since then we seem to be getting more referrals.'

Steven, Law Centre Immigration Solicitor

52. Legislation.gov.uk Children and Social Work Act 2017 Section 1 <http://www.legislation.gov.uk/ukpga/2017/16/section/1/enacted> [Last accessed 16 June 2017].



DONNAY

Conclusion

This report has examined the situation faced by separated and unaccompanied children in immigration proceedings, following the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act in 2012, and compared the new findings to those we found in 2015.

As we found in our 2015 report, a child's status as a separated or unaccompanied minor invites complexity into their immigration cases given their specific vulnerabilities. This group of children have not yet transitioned into maturity, are often alone, with complex personal histories, and having to face increasingly bureaucratic Home Office systems, sometimes without any adequate support and direction. It is important to frame these vulnerabilities in the context of children's rights, which should be protected in accordance with the UNCRC.

By identifying and exploring the effects of 11 common situations that separated and unaccompanied children may experience, it was possible to demonstrate the multiple factors that might influence their immigration applications. Such complex cases naturally require a nuanced professional response from an immigration advisor. Their complexity, and the absence of asylum and protection claims, means that their cases are not eligible for legal aid funding under LASPO.

Children's claims for asylum or support as victims of trafficking are not identified adequately. Poor funding and a lack of trained professionals exacerbates this and prevents early intervention.

There are serious issues facing young people who wish to access immigration advice services. As with the 2015 report, our report finds that there is a geographical disparity in access to immigration advice and representation services, and a shrinking of services which do not charge fees. Furthermore, not all advisors have specialised knowledge of children's immigration cases and it does not form the large proportion of their immigration work.

The Exceptional Case Funding scheme, which was introduced as part of LASPO, does not appear to be fulfilling its function as a 'safety net' for funding cases that are out of scope. Although there has been an increase in applications made and success rates, many of the professionals that we interviewed had yet to complete an application for ECF. Reasons included a preconception that they will not succeed; a decision not to use unpaid time on an application for which they may not receive payment, and a lack of knowledge about ECF generally.

The exceptional funding system, even after case law that challenged its mechanics and

thresholds, still offers legal practitioners limited opportunities to make it a workable option for them and, ultimately, for the children and young people they work with.

Whilst the exceptional funding scheme is not working as a whole for unaccompanied and separated migrant children, it is particularly inappropriate for children with trafficking claims and children with mixed cases, where some elements are in and out of scope.

We have found little evidence that local authorities have been able to fill the gaps in provision caused by LASPO. Our research has found that local authorities have varying practice when it comes to facilitating access to immigration advice and representation for children in their care. Most local authorities are dealing with the immigration needs of young people on a case-by-case basis, instead of having a standardised policy.

As with the exceptional funding scheme, there is inconsistency in provision of the system and not all unaccompanied and separated migrant children in local authority care, care leavers, or even those supported under Section 17 of the Children Act (1989), will have equal opportunities to access the legal advice and representation they need to redress their immigration problems.

Recommendations

Recommendation 1

The Government should reinstate legal aid for all unaccompanied and separated migrant children in matters of immigration by bringing it back within 'scope' under the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Recommendation 2

If Recommendation 1 is not fulfilled, the Government must provide a full timeline and complete its intended five year review of LASPO, with appropriate consultation of stakeholders that support unaccompanied and separated children in immigration proceedings. As part of this review, the ECF system must be examined for its suitability in providing access to justice for children. The Government should fully consider recommendations made about improving access to justice for this cohort and implement them.

Recommendation 3

The Government should formalise the role of local authorities in relation to immigration advice for separated children given the ambiguity that exists around whether a local authority is under any obligation to secure legal services for separated or unaccompanied children that it is either 'looking after' or 'assisting.'

Recommendation 4

If Recommendation 1 is not fulfilled, social workers and independent reviewing officers should be trained in the identification of children that are out of scope and how to best support their legal needs within this new and complex territory.

Recommendation 5

All children suspected of being trafficked, whether they have been referred into the National Referral Mechanism or not, should have access to legal aid either by being brought within 'scope' under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 or by clear exceptional funding guidance.

Recommendation 6

Until legal aid is fully reinstated for children in immigration cases, local authorities should develop written policies that offer clarity to their social workers, and the children they support, on their decision making process in relation to securing immigration advice for children.

Recommendation 7

Outreach work should be undertaken in schools and colleges to inform children and young people about immigration and the law, routes to regularisation and their importance.

Recommendation 8

The Government should commission external independent research into the existing capacity and number of practitioners available with specialist expertise in children's immigration law cases.

Recommendation 9

The Government should waive application fees and the costly immigration health surcharge for unaccompanied and separated migrant children and young people (up to the age of 25) in their immigration applications.

Appendix A: Children out of scope or at risk of being out of scope

Category of circumstances	Particulars of circumstances
Trafficking	<p>Trafficked children who have not been referred to a first responder and/or the National Referral Mechanism (NRM).</p> <p>Trafficked children who have been referred to the NRM but are waiting for a 'reasonable grounds decision'.</p> <p>Trafficked children who have been referred to the NRM but have received a negative 'reasonable grounds decision'.</p> <p>Trafficked children who have been referred to the NRM but have received a negative 'conclusive grounds decision'.</p>
Children separated from family due to family breakdown	<p>Separated children who have come to the UK at an earlier age but have since been abandoned by or separated from their parents and/primary care giver (eg due to child protection issues, domestic violence, death, family breakdown).</p> <p>British children born in the UK to a non-national parent and British parent (or one with settled status) but it proves difficult to evidence the child's citizenship rights because there has been a family breakdown.</p> <p>Children who arrived into the UK as dependents of EU citizens but are no longer in the care of that parent / family member.</p>
Immigration cases – leave to enter or remain on non-asylum matters	<p>Unaccompanied and separated migrant children seeking leave to enter or leave to remain in the UK on non-asylum grounds, including under the immigration rules and the non-protection elements of the European Convention on Human Rights. Including:</p> <p>Unaccompanied and Separated migrant children who have reached 17.5 and are making a non-asylum grounds application for an extension of their existing leave.</p> <p>Unaccompanied and separated migrant children granted UASC leave for 2.5 years but this leave expires before they have reached 17.5 years of age and where they are making an extension application on non-asylum grounds.</p> <p>Unaccompanied and separated migrant children appealing a decision about their leave on non-asylum grounds.</p> <p>Unaccompanied and separated migrant children seeking leave to enter or leave to remain in the UK on grounds of long residence.</p>
Mixed cases	<p>Unaccompanied and separated migrant children making applications to stay in the UK on a mixed case basis (because they have an asylum/'international protection' claim mixed with a non-asylum claim). Only the asylum/'international protection' element of the case will now be funded by legal aid.</p>

An update to: Cut off from Justice

The impact of excluding separated and migrant children from legal aid

Category of circumstances	Particulars of circumstances
Exclusions from family cases	Separated migrant children who initially arrived into the UK with family but were not included in the asylum and/or immigration claim of their primary care giver and have since separated from their family (and do not have a claim for asylum in their own right).
Criminal justice processes	Unaccompanied and separated migrant children involved in criminal justice processes who have had their immigration status revoked as a consequence of criminal activity and who face deportation (and who wish to raise Article 8/EEA arguments to resist deportation).
Statelessness	Children who are not considered a national of any State under the operation of its law.
International adoption	Children who arrived in the UK via an international adoption arrangement where this has broken down.
Citizenship	<p>Children with the right to obtain British citizenship after 10 years.</p> <p>Children with the right to make an application for citizenship through their parents, even though separated from them, and with the right to apply for citizenship on the basis that their future is clearly in the UK.</p>
Unresolved immigration matters	<p>Separated migrant children in the care system who do not appear to have a clear immigration status and this status remains unresolved.</p> <p>Separated children in private fostering arrangements (eg in the care of an extended family member, family friend, member of community) who do not appear to have a clear immigration status and this status remains unresolved.</p> <p>Unaccompanied and separated children who have overstayed their visa.</p>
<p>Children with previously unidentified claims that would fall in scope</p> <p>(Nb these children are in scope for legal aid but our research has found they often think they are out of scope because of the quality of advice they have received.)</p>	<p>Unaccompanied and separated migrant children who have previously had immigration advice and representation that has failed to correctly diagnose circumstances relevant to an asylum or international protection claim.</p> <p>Unaccompanied and separated migrant children who have previously had immigration advice and representation that has failed to correctly diagnose trafficking circumstances.</p> <p>Unaccompanied and separated migrant children with unresolved asylum/human rights/trafficking claims where these have not been identified by non-legal professionals such as social workers, teachers, youth workers/advocates.</p>

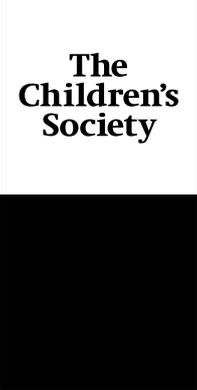
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PCR120/0817