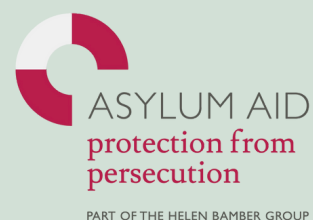


Understanding Criminalisation

Report A: Why Some Young People Seeking Asylum Come into Contact with the Criminal Justice System

A report for practitioners and policymakers



November 2024

THIS REPORT IS PUBLISHED BY

The Migrants' Law Project

The Migrants' Law Project (MLP) is a legal and public legal education project, hosted by Asylum Aid. The MLP work to enforce, advance and defend the legal rights of asylum-seekers and refugees and other vulnerable migrants through securing substantive changes in policy and practice. Katie Commons of the Migrants' Law Project helped coordinate the Understanding Criminalisation research project and edit the final report.

Commons Law CIC

Commons is a specialist not-for-profit criminal defence law firm based in London. Commons defends people accused of criminal offences and advises individuals and organisations otherwise affected by the criminal law. Commons are the first criminal law firm in the country to integrate a commitment to social justice and holistic defence into their organisational structure. Grace Loncraine of Commons Law CIC helped coordinate the Understanding Criminalisation research project and edit the final report.

Asylum Aid

For 30 years, Asylum Aid has been a leading charity working in the refugee rights sector. Asylum Aid provide legal advice and representation on behalf of asylum-seekers and refugees. They also undertake research and advocate for policy change to ensure the safety and wellbeing of incredibly vulnerable people. Kamena Dorling and Alison Pickup helped to edit the final report.

About the Author

Benny Hunter has a Masters of Science in the Politics of Conflict, Rights and Justice from SOAS University. He brings with him to this research eight years of experience in youth work with unaccompanied asylum-seeking children and young adults. He is also involved in research, policy and advocacy work on refugee rights and on international justice and accountability.

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1. The Research

a. An introduction

"I refer to those who come to seek refuge in our community, ask for our hospitality, commit a severe crime, and then claim human rights and asylum protection because they want to stay here even when they have committed that crime. I do not think that it is acceptable for an old lady of 78 to be mugged for £60, as happened in my city, and for the three people who mugged her to continue to claim that they require asylum in this country. I believe that people who are found guilty of committing crimes and are given a custodial sentence of more than two years forfeit their asylum rights, and I think that we should legislate to take them away".

David Blunkett, Labour politician and Home Secretary 2001-2004, in 2002 (1)

"The people coming here illegally do possess values which are at odds with our country. We are seeing heightened levels of criminality related to the people who have come on boats – related to drug-dealing, exploitation, prostitution. We need to ensure we bring an end to the boat crossings".

Suella Braverman, Conservative politician and Home Secretary 2022-2023, in 2023 (2)

For at least twenty years, political rhetoric from mainstream political parties in the United Kingdom has emphasised the risk posed to the public by criminals who come to the UK seeking asylum. This builds on a long tradition of moral panics: Jewish people fleeing pogroms in the late nineteenth century were at first characterised by the British press as *"criminal foreigners"* (3). Rational fears – about national security concerns and ensuring safer communities – have been amplified and distorted by media commentators and politicians seeking to argue for stricter border controls, and action to clampdown on the 'abuse' of the asylum system (4).

1. Hansard (2002), Nationality, Immigration and Asylum Bill Debate, 24 April 2002

2. LBC Radio (2023), Suella Braverman interview, 26 April 2023

3. Daniel Rosenberg, Channel 4 (2005), The Aliens Act

4. Monish Bhatia, International Journal for Crime, Justice and Democracy (2015), Turning Asylum Seekers into 'Dangerous Criminals': Experiences of the Criminal Justice System of Those Seeking Sanctuary.

There is no strong evidence that supports the claim that people seeking asylum are more likely to commit crime than the UK general population: research in this area is extremely limited. Asylum claims peaked in the UK in the late 1990s and early 2000s, due to wars and violence in former Yugoslavia, Iraq and Afghanistan. In 2001, Robert Ayling, then Deputy Chief Constable of Kent Police, said that contrary to media impressions, crime had actually fallen in Dover and the Kent area: *"As in most groups, the overwhelming majority of asylum-seekers are law-abiding citizens. There are criminals who are asylum-seekers and often their victims are other asylum-seekers"* (5).

The only study identified during a review of the literature to interrogate the link between immigration and crime is a 2013 data study examining whether an increase in the foreign-born population had any causal effect on the local crime patterns in England and Wales from 2002 to 2009. It found that *"a one percentage point increase in the asylum-seeker share of the local population is associated with a 1.1% rise in property crime but no change in violent crime"* (6). The macro effects of an increase in people seeking asylum - only 0.1% of the population overall - are small, despite the pervasive rhetoric. The study argued that given the lengthy asylum application process, plus the inability of people seeking to work and the very low financial support available to them, this marginal increase in property crime is unsurprising.

Though cognisant of the dangerous and inaccurate public discourse, staff at the Migrants' Law Project (MLP) recognised the importance of understanding why a small minority of the people seeking asylum with whom they worked with did come into contact with the criminal justice system: first, because of the disproportionate impact on these clients' futures; second, because it appeared to them to be the most vulnerable and traumatised amongst them who were the most likely to be criminalised.

Coming into contact with the criminal justice system had a serious and adverse impact on their clients' ability to successfully claim asylum. Some clients became so stressed that they struggled to engage with the preparation of evidence for their asylum application, meaning solicitors had instead to focus on supporting them through the criminal justice process. Work on supporting clients through the criminal justice system was in turn complicated by clients' difficulties in advocating for themselves; the confusing nature of the UK criminal justice system; and problems with overstretched criminal solicitors with limited experience of working with traumatised young people who had spent their formative years outside of the UK.

5. Alan Travis, The Guardian (2001), [Police chiefs call for fair treatment of asylum seekers](#)

6. Bell et al. (2013), [Crime and immigration: evidence from large immigrant waves](#)

The MLP partnered with South London-based not-for-profit criminal defence firm Commons Law CIC. With funding from the AB Charitable Trust, it commissioned two reports to understand more about young people who come into contact with the police and the criminal courts; their experiences of this; and what this means for their life in the UK. This is the first of those reports.

b. The methodology

Report A focuses on why some asylum-seeking and refugee children and young adults come into contact with the criminal justice system.

The research is based on:

- A literature review
- Analysis of Commons Law legal casework data collected between January 2021 and October 2023.
- Interviews with young people
- Interviews with legal professionals
- Interviews with supporting professionals
- Observations of court proceedings at Canterbury Crown Court

Funding provided by the [AB Charitable Trust](#) allowed Commons Law CIC to undertake legal work on behalf of young people seeking asylum which might otherwise not be covered by legal aid. With prior consent, this data was anonymised and analysed for use in this report.

	Number of cases
Concluded	31
Ongoing	5
Total	36

Six young people seeking asylum and 18 supporting professionals were interviewed as part of this research. Supporting professionals included social workers, youth workers, accommodation key workers, and criminal, immigration and community care solicitors.

To preserve the anonymity of interviewees, pseudonyms have been used (identified by a *) and other identifying information has been removed.

See **Appendix A** for more information on the methodology.

For acronyms and terminology, see **Appendix B**.

c. Young people seeking asylum

This research seeks to understand the criminalisation of young people who are either seeking asylum or have received refugee status.

This cohort includes people who are **25 years old and younger** (7); are **living in the UK without other adult family members** (either unaccompanied or alone); and **have claimed asylum** at some point whilst in the UK. Within this there are four distinct groups with some overlapping experiences and concerns:

- Unaccompanied children seeking asylum
- Former unaccompanied children seeking asylum who are care-leavers
- Lone young adults seeking asylum
- Age-disputed young people seeking asylum

d. Unaccompanied children seeking asylum

The term 'unaccompanied asylum seeking children' (often referred to as 'UASC') is an administrative category used by the government for children aged 17 and younger who have arrived in the UK unaccompanied (without an adult family member) and who have (at some point) lodged an asylum claim. (In this report we are instead using the term 'unaccompanied children seeking asylum' to reassert an emphasis on the age of these young people).

7. The age range was chosen to reflect the reality that young people are vulnerable and have additional needs. Young adulthood as a distinct phase of development between childhood and adulthood is not a recent concept. While there is no legal definition of young adulthood, some legislative provisions apply to young adults aged 18-25, such as provisions of the Powers of Criminal Courts (Sentencing) Act 2000. The Children Act 1989 also makes provision for young people to be defined as care leavers until at least the age of 21 and beyond, provided they commence a programme of education and training before the age of 25. To reflect a breadth of experiences including unaccompanied children and young adults, the age range of 25 years old and younger was selected for this research.

Unaccompanied children seeking asylum are most often looked-after children living under the care of local authority children's services (8). Under the Children Act 1989, and the Children (Leaving Care) Act (2000), these children have the right to accommodation, education and financial support provided by a local authority, as well as support from a social worker and care through a foster carer in a children's home if they are under 16 (or their needs require) it). Most tend to the older end of the spectrum: only 13% are under the age of 16 (9). Approximately 95% are male.

In 2023, the UK received 3,412 applications for asylum from unaccompanied children (10), and in the last five years, there have been at least 19,235 such applications, representing 9% of all asylum applications made in the UK in this period. In the last five years, the top five countries of origin of unaccompanied children were Eritrea, Iran, Sudan, Afghanistan and Albania (11).

Nationality /Year	2018	2019	2020	2021	2022	2023
Albania	223	238	105	121	781	110
Afghanistan	293	437	457	637	1,686	855
Eritrea	684	597	356	407	356	300
Iran	269	545	352	1,264	600	115
Sudan	496	457	470	460	597	495
Other nationalities	1,098	1,501	1,033	1,493	1,222	1,537
Total	3,063	3,775	2,773	4,382	5,242	3,412

8. For the purposes of this research, this group also includes those children who have been granted refugee status or humanitarian protection and are therefore technically no longer 'asylum-seeking'.

9. Department for Education (2022) Children looked after in England including adoptions, Reporting Year 2022

10. Home Office (2023), Asylum and resettlement datasets

11. Home Office (2023), Asylum and resettlement datasets

d. Former unaccompanied children seeking asylum who are care-leavers

At 18 years old, unaccompanied children seeking asylum age out of the care system and become 'care-leavers'. Most will be entitled to leaving care services, under the Children Act 1989 and the Children (Leaving Care) Act 2000, until they turn 21 (25, if they remain in education or continue to require that support) (12). At the end of 2023, local authorities in England and Wales supported 12,890 former unaccompanied children (aged 21 or younger) – approximately a quarter of all care-leavers at that time (13).

Those leaving care who are awaiting the outcome of their asylum claim - including appeals - are entitled to the same level of support from the local authority as any care leaver. Once granted refugee status or humanitarian protection, these young people are entitled to support from the local authority, but may also claim benefits, work, rent, and access to social housing. Those who have been refused asylum have a precarious right to some accommodation and support.

e. Lone young adults seeking asylum

This report also covers those who arrive in the UK aged between 18 and 25 without any other adult family members. As they arrived after turning 18 they are not entitled to any local authority support whilst awaiting an asylum decision. Under sections 95 and 98 of the Immigration and Asylum Act 1999, the Home Office provides housing and subsistence support to any person claiming asylum who cannot afford to meet their own essential living needs until the Home Office or appeal courts finally determine their asylum claim. Once granted refugee status or humanitarian protection, these young people are entitled to no further support from the Home Office, but may claim benefits, work, rent, and access social housing.

In 2023, there were 25,982 asylum applications by people aged 18-25 years old: approximately 31% of all applications. Not all of these young people will have arrived without family (14). The number of young adults claiming asylum quadrupled between 2018 and 2022; however, this may be due to changes in the process for assessing the age of young people (see next section).

12. For the purposes of this research, this group also includes care-leavers who have been granted refugee status or humanitarian protection and are therefore technically no longer 'asylum-seeking'.

13. Department for Education (2023), Care leavers who were unaccompanied asylum-seeking children - NATIONAL dataset

14. Freedom of Information Request, 77866: Asylum claims lodged each year by Age, Date: 31/08/2023

Age	2018	2019	2020	2021	2022 (15)	2023 (16)
18 years old	706	793	590	1,437	2,327	1,683
19 years old	692	812	698	1,710	2,850	2,138
20 years old	800	994	940	2,217	3,447	2,863
21 years old	846	1,160	1,035	2,506	4,177	3,372
22 years old	1,062	1,288	1,202	2,872	4,597	3,945
23 years old	1,212	1,422	1,333	2,872	4,383	4,303
24 years old	1,205	1,463	1,448	2,930	4,249	3,899
25 years old	1,311	1,673	1,752	3,634	4,210	3,779
Total (18-25 years old)	7,834	9,605	8,998	20,178	30,240	25,982

15. Freedom of Information Request, 77866: Asylum claims lodged each year by Age, Date:
31/08/2023

16. Freedom of Information Request, FOI2024/06749: Asylum claims lodged each year by Age, Date:
15/08/2024

f. Age-disputed young people

There is one final group that falls within the remit of this study: age-disputed young people. Immigration officials record the date of birth of all children and young people arriving in the UK to claim asylum. When someone claims to be under 18, either i) their age is accepted and they are placed in the care of children's services; ii) immigration officials decide, after a short visual 'assessment', that they are adults aged 18 years or older, and they are placed in the adult asylum system; or iii) they are considered to be 'age dispute' cases, and referred to children's services for a full case-law-compliant age assessment led by social workers, known as a 'Merton-compliant' age assessment.

4,698 age disputes were raised by immigration officials in 2023 (17). Of those resolved, 69% were found to be children (either after a short visual 'assessment' by immigration officials or full age assessment led by social workers) and 31% were adults.

Refugee organisations have flagged these statistics as "wildly misleading" (18). In 2022 alone, based on local authority data released under Freedom of Information (FOI) requests, more than 850 children were wrongly placed in the adult asylum system, referred back to children's services and then found to be children following a Merton-compliant age-assessment (19). This figure is likely an underestimate, as not all local authorities responded to the FOI request. Very many vulnerable young people seeking asylum then clearly 'fall through the gap', are accommodated in the adult system, where they receive no support or protection; even those looked after by children's services may have first been accommodated in the adult system for some time.

17. Home Office (2023), [Asylum and resettlement datasets - Age Disputes](#)

18. Kamena Dorling and Maddie Harris, Helen Bamber Foundation, Asylum Aid and Humans for Rights Network (2023), [Disbelieved and denied: Children seeking asylum wrongly treated as adults by the Home Office](#)

19. *ibid.*

2. Criminalisation of young people seeking asylum in London and Kent

a. Casework analysis

Commons Law CIC reviewed its criminal defence casework with young people seeking asylum. The breakdown is as follows:

Crime Investigated	Number of cases
Travel offences (Driving without insurance, driving while intoxicated, use of private e-Scooter, etc.)	12
Violent offences (Affray, Assault, Grievous Bodily Harm, etc.)	9
Drugs offences (Possession, Intent to Supply, etc.)	8
Immigration offences	3
Fixed Penalty Notices (Covid-19 fine, Travel without ticket fine, etc.)	2
Criminal Damage	2
Failure to appear in court	2
Rape	1
Fraud	1
Possession of weapon	1

Some of these cases led to charges being brought and the young person attending magistrates or crown court, whilst others resulted in 'No Further Action' following investigation.

We have grouped the cases into the following themes:

- b. Crime related to travel**
- c. Crime exacerbated by failure to manage bureaucracy**
- d. Crime that occurs in accommodation**
- e. Crime related to conflict and behaviour**
- f. Crime related to the economic position of asylum-seekers**
- g. Crime involving coercion**
- h. Immigration crime**

Legal professionals (criminal and immigration) and supporting professionals (charity caseworkers, social workers and accommodation key workers) provided further context and analysis to these incidences of contact with the criminal justice system.

b. Crime related to travel

"I was on my electric scooter. They just [stopped me for] no reason. It got me really angry. They didn't see anything suspicious, they just pulled up on me, said: 'Stop'. There was only one police car [initially]. But then another four cars pulled up. I wasn't even arguing with them or anything. They stopped me, they said, because I was on my electric scooter. They said: 'At this time, people, they [use the scooters] and sell drugs and stuff'... They searched me properly. It don't feel right. They had no reason to. They said: 'Don't ride on the pavement'. I don't understand the issue with electric scooters... Public transport is really expensive."

Samson*, 19, from Eritrea

"These private e-scooters... [young asylum-seekers] assume it's going to be legal, but it's not... I think the police have assumed that all these kids are up to no good – they do seem to get stopped more frequently than others."

It is illegal in the UK to use e-scooters on public roads, pavements or cycle lanes without valid insurance: however, it appears this area of law is virtually unknown to many young people. Clients also felt targeted by the police: they said police failed to explain the law clearly or politely.

Joelle*, Criminal Defence Solicitor

"With all my clients, [I hear]: 'Could you get me asylum, but most importantly could you get me a driving licence?'... They get to 17 or 18 and all their mates are driving and it matters so much. All the other transition points to adulthood that are so important for kids who've got citizenship – getting a job, driving a car, going to uni – are denied to [them]."

Emily*, Immigration Solicitor

Issues relating to travel were the most common incidence of criminalisation. This could be due to the limited opportunities available to young refugees: they had no qualifications and so sought work as delivery drivers. Beyond the problems with e-scooters, several young people sought advice following a driving offence such as driving without valid insurance (or licence) or driving while intoxicated.

"I [represented a client during] Covid who was a delivery driver, and he got a Covid fine, because when he was coming home, he was getting food after his shift. I felt like: 'Really? Are you really going to pick on the delivery driver who's just on a really long shift and wants to get food before he gets home?'"

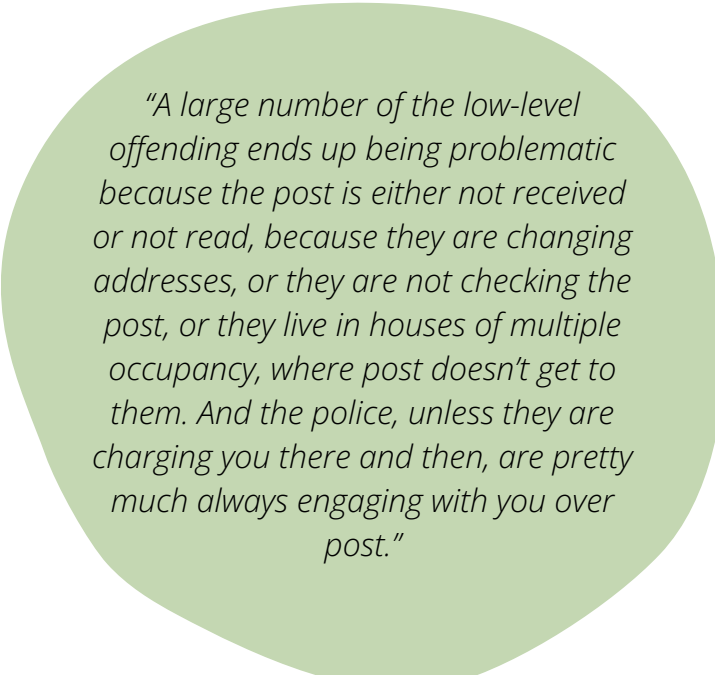
Darya*, Immigration Solicitor

Some had been misidentified or wrongly convicted: after receiving legal representation, charges were dropped and convictions overturned. Unfortunately, Legal Aid is not generally available for driving offences. Without this, young people might not be able to challenge their criminalisation which would not just negatively impact their capacity to earn money, but could also adversely impact applications for further or indefinite leave to remain.

c. Crime exacerbated by failure to manage bureaucracy

"I was inside the train. They gave me a ticket. They take my name, date of birth, nationality, reference number for my claim for asylum, and my address. The reason they gave was: 'You go out of the area. This is not your area'. [It was during a Covid-19 lockdown]. They gave me a £400 fine. I don't know how you pay. I got help [from someone]. That person say 'I [paid] for you, don't worry.' But after a couple of months came the post saying: 'You have to pay £3,700 now'. My support worker from Salvation Army help me to do one form. Then I go to court one time. Then I go to a second court... On my fourth time in court, they say: 'Congratulations, they drop your case'. I feel very, very happy on that day."

Abdullah*, 21, Bedoon from Kuwait



"A large number of the low-level offending ends up being problematic because the post is either not received or not read, because they are changing addresses, or they are not checking the post, or they live in houses of multiple occupancy, where post doesn't get to them. And the police, unless they are charging you there and then, are pretty much always engaging with you over post."

Fiona*, Criminal Defence Solicitor

A number of clients sought advice after they were criminalised due to minor infractions, including not paying fixed-penalty notices for breaches of Covid-19 regulations on time. Case notes suggest that a number of these cases could have been resolved earlier and that delays lead to increased fines or court summons, thus increasing the likelihood of a seriously negative outcome for the client. Some didn't respond to contact by the police or by the courts, were convicted in their absence and later sought legal representation to overturn convictions, which is more difficult than offering a defence at an earlier hearing."

When asked why they had not resolved these issues earlier, clients reported: struggles to manage bureaucracy; a failure to understand the content of letters or how to resolve fines (perhaps due to language difficulties); and not picking up or reading post. In a number of cases, avoidant behaviour – not seeking to resolve an issue due to stress or worry about the consequences – was identified as a possible cause. Young people seeking asylum are regularly moved (either by the Home Office or their local authority) and might not receive post if sent to a previous address or not forwarded."

One young person received a notice of intended prosecution requiring him to provide details of the driver of a car to which he was registered. This was a work vehicle and the client no longer had access to it at the time of the alleged offence. His former boss refused to provide him with the relevant information; the client completed the form as best he could and returned it, thinking the matter was now resolved. In fact, he missed a further letter from the police informing him that the form had been completed incorrectly. As a result, he was prosecuted despite not having committed any offence.

Failure to receive, understand, or adequately deal with post has become more serious since the introduction of the Single Justice Procedure (SJP) in 2015, which enables a single magistrate to deal with non-imprisonable offences without a court hearing. The defendant is sent a charge sheet, a summary of the allegation, and key witness statements through the post, with 21 days to respond. If they plead guilty, they can request that their sentencing takes place with or without a hearing. If they plead not guilty, they will be given a date to attend court, and their case will proceed like a regular trial. If they do not respond, the court can find them guilty on the basis of written witness statements alone – without hearing from them – and proceed to sentence straight away. If a person never received the SJP notice and is convicted, they can make a statutory declaration within 21 days to have their conviction overturned. After this date, a person can appeal to reopen their case, but the court will only agree to this if the “interests of justice” require it. Navigating either appeal process without a lawyer is difficult, but legal aid is often not available. The SJP is only to be used where defendants are over 18. However, in 2023, the Evening Standard uncovered more than 100 cases of children aged 16 and 17 being prosecuted through the SJP (20).

One young refugee represented by Commons was prosecuted by a transport company for riding without a ticket. He was convicted under the SJP after failing to engage with the letters. He did not have any defence to the charge and so it was difficult to see how the case could be reopened. Fortunately, after his solicitor called the company, it applied itself to the court to reopen the conviction as it agreed that the prosecution was not in the public interest given the client’s situation. Without the goodwill of the company, this young person would have been left with a conviction that all parties agreed was neither necessary nor just. As with other criminal offences, a SJP conviction for a young person seeking asylum has additional consequences to those faced by British citizens, who might suffer secondary consequences to their immigration status, affecting their ability to work, rent, and remain in the UK, simply because they didn’t receive or read their mail.

“[Criminalisation has] been primarily for minor things. [One] client was not wearing a mask on public transport, and didn't have one with them. And they were given a very large fine - in the hundreds of pounds. The fine arrived when they were out of the country... So they didn't turn up to the hearing... As a result... I think they were fined... about 1,000 pounds. It was a very significant sum of money that they couldn't afford... They hadn't explained, they hadn't tried to contact the court to ask for a payment [plan], or anything like that. And we found out about it, at the time when we were doing their application for settlement. Basically, they should have been refused indefinite leave to remain just based on that one violation.”

Susan*, Immigration Solicitor

20. Tristan Kirk, Evening Standard (2023), [Children unlawfully handed criminal convictions in fast-track justice system](#)

d. Crime that occurs in accommodation

A number of cases represented by Commons involved accusations of violent crime or threats of violence or property damage that had taken place where the defendant was living: either in staffed hotel accommodation provided by the Home Office or in staffed accommodation provided by the local authority responsible for their care. In both settings, private companies manage the accommodation and staff.

Some professionals felt that young people reacted negatively to discrimination and mistreatment, or perceived mistreatment, by accommodation staff or other people that they had to live with. One young person in this study lashed out at a staff member who had shoved him and called him dirty. Another client living in hotel asylum accommodation was the victim of an assault by a fellow resident, but was arrested himself after police were called. He describes this experience in his own words:

"[At the hotel] an Iranian man came to talk to me. He started arguing with me for no reason. I said: 'Please move [away from me]'. He told me: 'Stand up'. After I stand up, he punched me and ripped my shirt. On that day there was blood on my teeth. My neck was blue, from being bruised. The manager of the hotel speak Farsi, the same language as this man. He told the police that I harassed him. When the police came to the hotel, it was a very, very bad day for me. I was very, very nervous. My autism came to me and I am shouting. Twelve police officers came. Maybe four police cars. I didn't do anything. The staff [of the hotel], the security people, they listened to the [other] man. They said to the police that it was me that made the problems. They speak very fast. I don't understand. They say: 'You are now under arrest'. I say: 'I don't do the trouble'. He put the handcuffs on me. They take me to one police station. [My lawyer] came there. They interview me. I said: 'I don't do the trouble. Some people beat me.' I explained what happened. [My lawyer] said: 'Don't worry, there is a [CCTV] camera, there is evidence, you have proof of what happened.' I was in the police station for one day and overnight. Then [the police] said: 'Go out, you free'. They gave [the other person] community service. The experience gave me more pressure, more anxiety. I have bad flashback memories. The police said [to the hotel manager]: 'You have to move him [the perpetrator]'. But when I go back to the hotel, he was still there and still harassing me. I spoke to the manager of the hotel, he said: 'I don't care'. He said: 'You have a problem, speak to the Home Office.' Then [a charity volunteer] helped me to move out of that place. I feel very relaxed. Now I am okay."

Abdullah*, 21, Bedoon from Kuwait

Some interviewees felt that young people were criminalised for actions for which they would have been unlikely to face criminal prosecution if they were living in a family home. Fairly common displays of teenage frustration, such as shouting aggressively or breaking household objects, could result in a police visit. For example, accommodation staff called the police on a young person who had broken a cupboard door in frustration.

Young people have had to be autonomous and independent on their long and risky journeys to the UK. Entering environments governed by rules can be an adjustment. This applies not just to children, but young adult care-leavers who can face strict curfews (21), as can adults living in Home Office-provided accommodation (22). Young people are sometimes under the watch of individuals who hold a lot of authority over their lives and may have no prior experience in working with young people, especially traumatised young people away from family.

"A lot of the violent crime... has been when a young person [feels] immensely disempowered in front of... key workers, social workers, and... situations occur where they're angered, or they feel unsafe, then... it leads to a kind of outburst. And they might hit a key worker or [someone else]... [When] we speak to the young person about it, they will say... 'this person wasn't listening to me, [they] put me down, they don't let me do tons of things that I should be able to do where I live. I've had this issue with them again, and again and again.' And eventually that escalates."

Maria*, Caseworker

The accommodation itself can cause distress and frustration. Refugee Action observed *"pest and rodent infestations, mould and flooding"* at Home Office hotel accommodation. The food served there was *"inedible and of such low quality that it creates and exacerbates illness, and causes hospitalisation, weight loss and malnutrition"* (23). Young people have to share rooms with strangers, their privacy is undermined by staff entering rooms as they please while they are forced to wait for many months for an asylum decision. A 2024 study, undertaken with clients of the Helen Bamber Foundation, analysed clinical data from 110 participants and found higher levels of mental health difficulties for people seeking asylum living in hotels compared to those living in alternative housing (24).

21. Chris Gee, Manchester Evening News (2023), [Young care leavers face strict curfew when they move into new home](#)

22. May Bulman, The Independent (2021), [Asylum seekers threatened with homelessness for not complying with 'unlawful' 23-hour curfew, court hears](#)

23. Refugee Action (2023), [Hostile Accommodation: How the Asylum Housing is Cruel by Design](#)

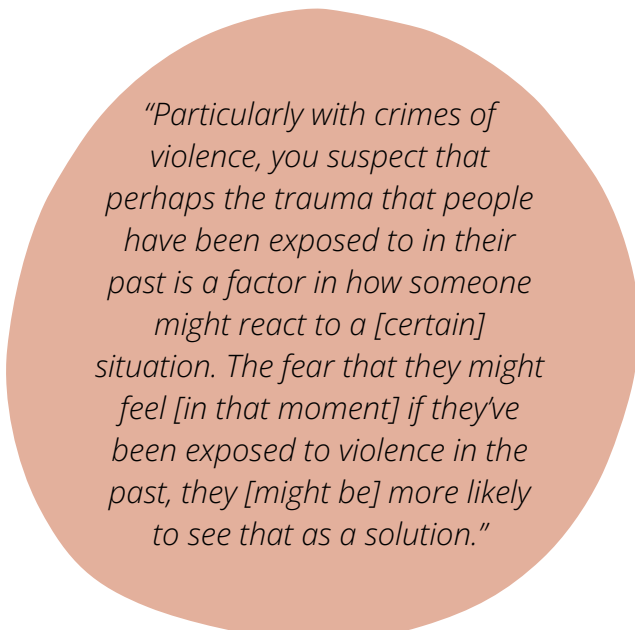
24. Helen Bamber Foundation (2024), [Suffering and squalor: The impact on mental health of living in hotel asylum accommodation](#)

One young adult represented by Commons was arrested after participating in a protest at a notorious asylum accommodation centre about the inhumane conditions they were forced to endure there.

e. Crime related to conflict and behaviour

Conflict (between young people and figures of authority – and young people themselves) and negative behaviours (such as aggression, anti-social behaviour, and behaviour linked to substance use and abuse) are important factors in violent offences by this group. Being triggered by an experience or environment, perhaps due to previous adverse or traumatic experiences, are further influences.

Most of Commons' clients in this study either had formally diagnosed mental health conditions or were presenting with symptoms typically associated with one. Some clients were receiving treatment, others were self-harming or had suicidal ideation. One client was acutely distressed at Court and sent his solicitor "photos of dead bodies to show what happened to people in his country and what he saw". Other clients experienced worsening mental distress due to delays in bringing their case to court. Tragically, one client died by suicide during the period of this study.



"Particularly with crimes of violence, you suspect that perhaps the trauma that people have been exposed to in their past is a factor in how someone might react to a [certain] situation. The fear that they might feel [in that moment] if they've been exposed to violence in the past, they [might be] more likely to see that as a solution."

Sam*, Accommodation Key Worker

Our evidence suggests that members of this cohort appear resilient when they first arrive after their risky and traumatic journeys – they are committed to thinking positively about their futures and travel amongst peers. Their ability to cope, make positive decisions and stay hopeful is undermined post-migration – perhaps because they experience instability, lack of support, and are left in 'limbo'. Some are placed in isolated settings, away from their peers or community-based support that might be 'protective'.

Young asylum-seekers who have survived difficult journeys expect their situation to improve upon arrival in the UK. Further obstacles to accessing security, stability, and support, particularly in achieving secure immigration status can prolong or exacerbate their mental health difficulties and re-traumatise them. Vulnerable young people are often forced to undergo an age assessment process, where their rights as children hang in the balance. In addition to that, almost all young people are forced to go through an often adversarial asylum interview process, in which the threat of return hangs over them.

Links between trauma and mental health issues and criminality have long been recognised. Poor mental health often prompts people to seek solace in drugs and alcohol, which lower inhibitions and increase impulsivity. In fact, mental health professionals recognise that substance misuse is more often than not an unhelpful way that individuals use to cope with trauma-related and/or depressive symptoms. Several of Commons' cases involved clients who committed acts of violence while under the influence of substances, or otherwise managing mental health difficulties.

"Young people who have been a victim of trafficking or very severe abuse should have their own time to disclose that and probably it shouldn't be to an officer of the state, it should be to a psychotherapist... If we force these children into [talking about their traumatic experiences], it will trigger a response."

Sam*, Accommodation Key Worker

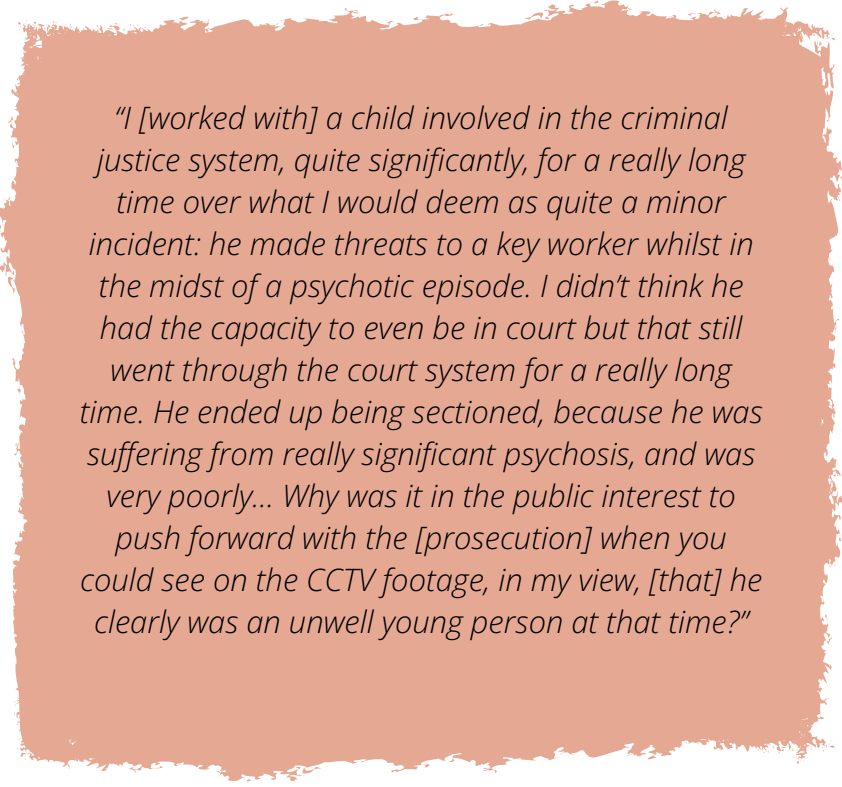
Traumatised individuals often experience hypervigilance, which is a state of heightened alertness to potential dangers and threats. Hypervigilant people can overreact to things happening around them in a way that may seem hostile. Moreover, individuals with traumatic mental health presentations may react to reminders of past trauma (e.g. perceived hostility when questioned by authorities in torture survivors) with automatic 'fight or flight' responses, that are often largely outside of their conscious control.

"One young person... just needed 24-hour support and someone to speak to about his mental health. He went into his substantive [asylum] interview. They started to talk about his parents and brother who had drowned at sea. And that conversation just triggered him. When he came out of that interview, [he] very quickly started to display quite a lot of PTSD, struggling to talk about things, like stressing out, throwing things, which we weren't seeing before. We were trying to get GP appointments, then [he was] not attending them. He was going missing. He thought that people were traffickers, and they would want money from him because he was in debt. And then it ended up with him having knives [on his person] and then him threatening someone with a knife, [saying] that this person was a spy. Which traumatised other young people [in that accommodation]."

Florence*, Accommodation Keyworker

When Commons was able to instruct an expert to undertake a psychiatric assessment exploring links between one of their client's actions and their post-traumatic stress disorder (PTSD) a significantly reduced sentence was handed down on the basis that the offence would not have been committed *"but for"* the experiences of trauma.

The National Protocol on Reducing Unnecessary Criminalisation of Looked-After Children and Care-leavers states magistrates should *"receive training on the impact of trauma and abuse on development, particularly their effect on emotional and behavioural development and self-regulation"*. The impact of this change of approach on the decisions taken by the police and Crown Prosecution Service (CPS) to charge traumatised individuals with criminal offences remains unclear.



"I [worked with] a child involved in the criminal justice system, quite significantly, for a really long time over what I would deem as quite a minor incident: he made threats to a key worker whilst in the midst of a psychotic episode. I didn't think he had the capacity to even be in court but that still went through the court system for a really long time. He ended up being sectioned, because he was suffering from really significant psychosis, and was very poorly... Why was it in the public interest to push forward with the [prosecution] when you could see on the CCTV footage, in my view, [that] he clearly was an unwell young person at that time?"

Denise*, Social Worker

Crimes related to gender-based violence were not over-represented in the casework data. Commons represented one young person convicted of serious sexual assault and another who was found guilty of assault by beating his partner and sentenced to a community order with curfew and domestic violence educational course. This theme was raised by some professionals interviewed for this research:

"Young men that have perpetrated sexual violence or domestic violence – I really feel that has a huge amount to do with a massive lack of education. These are young men, who, from sometimes as young as 12 years of age, have had absolutely no parenting, no positive role models, no [adult] community – and so have no idea how to build interpersonal relationships. They have massive amounts of issues with attachment and problems understanding how to relate to the opposite sex. They've been in some sort of survival mode for the whole of their developmental years."

Maria*, Caseworker

"We had a period where there was a lot of accusations of sexual assault and rape... [young people] getting arrested for those offences off the back of fitting a description. When I challenged the police on what that description was, it was basically 'Sudanese.' [I felt that it was] racial profiling."

Denise*, Social Worker

CASE STUDY: DEBESAY

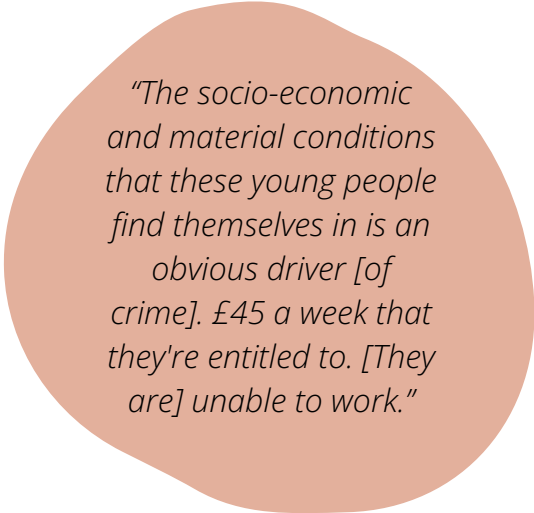
In April 2021, Debesay Teklehaymanot was sentenced to 10 years in prison at Sheffield Crown Court for a series of "terrifying" violent crimes (25). The refugee from Eritrea was a care-leaver who had previously been living in foster care, and later in local authority accommodation, before going on to commit a series of robberies while wielding an axe, at the age of 18. He was found guilty of three robberies, possessing a bladed article, and one count of assault.

The presiding judge recognised Teklehaymanot's young age, his mental health issues and alcohol and drug use. The court heard that Teklehaymanot had had "a difficult childhood and adolescence" and "travelled [to the UK] in terrible conditions". However, in sentencing, the judge said: "I take into account your young age, but the way in which you cold-bloodedly carried out these robberies shows a maturity beyond your young age".

25. Jon Cooper, Sheffield Star (2021), [A terrifying axe-wielding Sheffield robber struck three times and hit one victim over the head](#)

e. Crime related to the economic position of asylum-seekers

A number of professionals interviewed for this report spoke about the economic pressures facing young asylum-seekers. Stuck in the asylum system, often for years, they are legally unable to undertake paid work. Yet they may still be under pressure to provide financially for their family living in poverty in a home country or in a refugee camp. They may experience the same social pressure as all adolescents to buy consumer items. Living on £45 per week (or under £9 a week if living in full-board accommodation such as hotels) for an extended period of time means accessing even the basic necessities of food and travel can be very difficult. These pressures can push young asylum-seekers into cash-in-hand 'black-market' jobs, leaving them vulnerable to exploitation, or other forms of illegal work.



"The socio-economic and material conditions that these young people find themselves in is an obvious driver [of crime]. £45 a week that they're entitled to. [They are] unable to work."

Jonathan*, Criminal Defence Solicitor

"Nobody's allowed to work. We're dealing with young people that are traumatised, they're trying to settle into the country, they're [going] to college and out into the world with [other] young people, and they've got to live on, what, £50 a week? A lot of them haven't got independent living skills. So they end up [getting] takeouts all the time... Understanding the pressures from back home... I have spoken to people's mums (maybe in Ethiopia or in Afghanistan) [and] the focus is: send me money, send me money, send me money. We can't empathise [with that level of poverty]. 'Granny's got an abscess on her tooth. She could die' - we don't get that - you think it is only an abscess, but your mum is screaming down the phone at you hysterically. For a lot of people, who don't have a national health service or a safety net in life, people do die, their babies die... but if you've got the money, boom, you're sorted... [If you're an unaccompanied young person] you [might have] further displaced brothers and sisters who are struggling and you would know what it's like [on the journey] because you've done it and that the level of exploitation [experienced] on the way, so getting money to your brother... the pressure is massive."

Sam*, Accommodation Key Worker

Even those young people who have been granted legal status and are legally able to work face limited economic opportunities, due to language and educational barriers. There are limited job prospects for a young refugee with poor English-speaking skills, with no or few qualifications, and with limited access to social networks that might provide better work opportunities. Equally, trauma and mental health issues are a barrier to work. Sleep problems are a recognised issue for young refugees, particularly for newly arrived unaccompanied children (26). Struggling to fall asleep at night and then sleeping long into the day can prevent young people from accessing or maintaining a job, working regular hours and earning good pay.

"[These] youth... are extremely attractive recruits to people who sell drugs, because they are generally not in education or training, have no sources of income and have obvious material needs. So [they] often end up being recruited into low-level drug supply."

Jonathan*, Criminal Defence Solicitor

26. Hannah Lawrence and Olivia Micheltore, Coram (2019), Understanding sleep problems experienced by unaccompanied asylum-seeking children and children in care

"The biggest one is probably economic access for asylum-seekers. In theory, refugees [with legal status] have that. But that doesn't mean they immediately have the skills and the qualifications required to get good [well-paid] work here. There needs to be some acceleration of that in some way. Otherwise, you just force people into underground [work]."

Maria*, Caseworker

CASE STUDY: 'ALTEO'

Care-leaver Alteo*, from Albania, was 22 when he was stopped by the police in his car and in possession of two bags of cocaine and £600 in cash. He was arrested for possession of Class A drugs with intent to supply, driving without insurance and drug-driving, but was later charged with only possession of Class A drugs. The police eventually agreed to issue a caution rather than proceed to court, but by this time, Alteo† had given up on his life in the UK and had found a way to return to Albania, despite the dangers he faced there.

"I was an asylum-seeker [when I was arrested for selling drugs]. The first time, the Home Office sent me a response [to my claim] within one year, but I never got it. I only learnt that my case had been refused four years later. It was a bit of a misunderstanding on all sides... I knew that [having a criminal record] was going to have a bad impact over my life. But I didn't care, to be honest. Because I never was given a chance. I was there [in the UK] for eight years. As soon as I came over there, I think I tried my best to do as good as I could. I went to college, I participated in lots of local projects, [met with] lots of organisations, [participated in] research projects... I was trying to do everything right. But then I couldn't start university - they wouldn't let me, because I didn't have the right to live in the UK, I didn't have [status]. That period of my life was very stressful, to be honest. I felt like I couldn't do anything else. I was afraid. So that pulls you into making different choices. Sometimes you make mistakes. At the time, it felt like the right decision, because I felt like I wasn't in control over my life... I was waiting for such a long time [for status]... I was trying to contribute, I thought I was trying to do everything good, but not getting any reward out of it... Before getting pulled over by the police, I was stressed a lot because I had nothing to do all day. I tried to get to university two years in a row. They accepted me, I had the grades, I had the qualifications, everything else, but I had no [legal status], so I couldn't [go]. At some point, I got tired, I couldn't go and play football anymore. I got very stressed. At the time I got pulled over by the police, I knew I was doing something wrong, but it made me feel better in a way. At least I was doing something I wanted to do, it was not like I was asking permission from someone else [on how to live my life]. Because I felt like with everything I was trying to do, I always would have had to ask a question to someone: 'Can I do this? Can I go there?' So it wasn't easy at the time."

f. Crime involving exploitation

Lack of economic access and opportunity might lead some young asylum-seekers into criminality – but it can also increase the risk of criminal exploitation or being trafficked into modern slavery. The environment in which young asylum-seekers are housed can also increase the risk of criminal exploitation. Some young people represented by Commons were recognised victims of trafficking and modern slavery, while others showed signs of being criminally exploited or of experiencing debt bondage. Exploitation might involve working to cultivate cannabis crops on a farm, or working unpaid in a nail salon or in domestic servitude, or it might involve moving quantities of drugs from one location to another, known as ‘county lines’. A number of interviewed professionals spoke in detail and with empathy about the systemic factors of this exploitation:

“They’ve got debts hanging over them. They’re living in crap accommodation, they’ve not got enough money coming in each week... And traffickers say to them, ‘you have to work for us, you have to do whatever we say, otherwise we’re going to kill you, we’re going to kill your entire family’. People are really seriously abused in order to keep them under control. I’ve worked with a lot of young people who have found [themselves] in environments like cannabis farms, in street drug dealing and driving drugs around the country and working illegally in car washes, restaurants... and I’ve had cases where confirmed, very clear, victims of trafficking have still been put through a prosecution by the CPS, despite being recognized as victims of trafficking - going against all of the modern slavery legislation.”

Serena*, Social Worker

A barrister who had represented a number of young people from Afghanistan described the exploitation her clients sometimes faced:

“I’ve represented [asylum-seekers and refugees] as young as 13 or 14. [Some] have been... targeted by older men, and groomed. [They] have been subjected to sexual exploitation. One of the trends I find a lot... particularly with young men coming from Afghanistan, is this unspoken culture of abuse of young men and boys. They are vulnerable, because of the position they’re placed in, with limited supervision, and no-one really looking out for them at all, from a pastoral point of view. And someone will come along and offer them all the things they need access to in exchange for X. Or they’ll just start abusing them. [Or] they are exploited by gangs... and they start carrying drugs for people... some become involved in violent crime as a result of those two experiences, because they have to prove themselves. Because they’re under some form of duress. That’s generally my experience.”

Yvonne*, Criminal Barrister

Debt bondage puts young people seeking asylum at risk of criminal exploitation. At various points in their journey, young people crossing borders will be expected to pay 'agents' or 'people smugglers' a fee that can be levied for access to particular camps, accessing lorries, and small boats to cross the English Channel. This cost is often not paid in advance of travel but on successful completion of the journey.

"[Some] young people do arrive and owe money. They could be in debt... The way it's run in Calais is that 'it doesn't matter if I didn't help you, I own that lorry yard and you owe me money [because you entered a lorry there]'. With children, what I've been told is that the [people smugglers] give them a year to get their papers, and then after a year, it's payback time. I've seen debts doubled, where a young person still hasn't got their papers after two and a half years. They're terrified of getting caught and of getting into trouble, but the smugglers have just doubled [the debt]. I've seen a lot of young people disappearing [as a result]. So debt bondage certainly brings them into criminal contact."

Sam*, Accommodation Key Worker

The Modern Slavery Act was introduced in 2015 to provide a defence to some crimes where the person was compelled to act due to their exploitation through human trafficking. However, this high threshold excludes subtler forms of exploitation and pressure. In the experience of Commons Law CIC, individuals who should be able to avail themselves of this defence were still criminalised. One young person, in receipt of a decision from the National Referral Mechanism (NRM) confirming that they were a recognised victim of human trafficking, still spent over a year in Crown Court criminal proceedings until the CPS, threatened with a judicial review of their actions, finally agreed to offer no evidence against him.

Some professionals described how the asylum system and the care system both increased proximity to, and smoothed entry into, forms of criminal exploitation. Delays in asylum decision-making, placement in inappropriate accommodation provision alongside adults and care-leavers already involved in 'county lines' drug-dealing, and inadequate support from carers and accommodation key workers, all increased the likelihood of modern slavery.

"I feel really strongly that the way the asylum system is set up... hands these kids on a plate to traffickers. If you think about the delays – a three year plus delay – in NRM [decision making]. Albanians, last year, were delayed twice as long [as other nationalities]. So you make somebody wait, with literally no hope, no right to work [and] very small amounts of funding from the local authority, facing a cut off point at 18 or 21, depending on which the local authority is. And then these criminal gangs, who know that those young people are in these vulnerable positions, that they have no family, offer them that kind of network and support. We literally have a system that you couldn't better design to feed people back to the traffickers. I think it's extraordinary when young people come out [of the system] without ending up prey to these people."

Emily*, Immigration Solicitor

"It's the people they place them with. They'll place them with older children... who are already swept up in the criminal justice system and subject to these influences [that are] very negative, and they inevitably get drawn into it. There's no assessment of [accommodation] suitability. I don't think the care system is fit for purpose. The social services don't know how to deal with them, they don't have the resources to deal with them, because everything has been cut back, because of austerity. The social workers that you do have... are not experienced enough, or don't have the common sense to know how to approach these young people. It comes down to the fact that we just don't take care of them."

Yvonne*, Criminal Barrister

Becoming involved in selling drugs, for instance, can also stem from a desire for belonging and social support provided by other persons involved in this enterprise. This can be particularly attractive to young people experiencing loneliness, having just arrived in the UK and without their family. A much-cited 1995 paper by social psychologists Baumeister and Leary argues that *"a need to belong is a fundamental human motivation"* (27). According to Baumeister and Leary, all *"human beings have a pervasive drive to form and maintain at least a minimum quantity of lasting, positive, and significant interpersonal relationships"*. This fundamental 'need to belong' can turn into a risk factor for criminal exploitation in environments where there is limited supervision or support and lack of opportunities for community integration and positive relationships with peers and adults. For one young person represented by Commons, the line between the fear he felt of the people who had instructed him to carry drugs for them and his desire to seek their approval was so thin that it was difficult for his solicitors to advise whether a statutory modern slavery defence might apply.

"Why do people join gangs? [They are] disaffected, [have] poor economic potential, [have] no support network, no community, no family connection. They're perfect. Every kind of identifying factor for people joining gangs, [young asylum-seekers] are experiencing the vast majority of those factors. [These young] people are looking for that [replacement] family, that sense of belonging, [and] there are many, many people out there that are going to offer that, who are criminals. I've worked with some young people who are struggling with English, struggling with the culture, they might be very shy and overwhelmed. And, matey comes along, they're from the same cultural background, [they say:] 'We will look after you, just carry these drugs for me, it's alright, we will sort you out, yeah you're our mate.' And they're groomed into criminal activity. The reward is obviously having a sense of family and belonging within that."

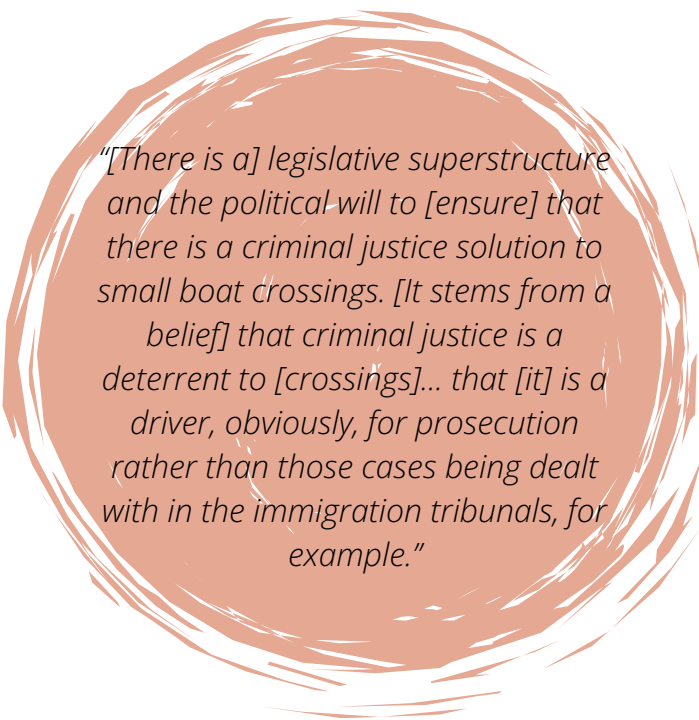
Sam*, Accommodation Key Worker

27. Roy Baumeister and Mark Leary, Psychological Bulletin (1995). The Need to Belong: Desire for Interpersonal Attachments as a Fundamental Human Motivation

g. Immigration Crime

Commons represented three young people who were arrested and charged with so-called 'immigration offences. This is a form of criminalisation that has seen a recent growth due to the expansion of the definition of illegal entry to the UK.

In December 2021, the Court of Appeal quashed the convictions of three asylum-seekers jailed for between two and six years for assisting unlawful immigration after piloting small boats across the English Channel (28). Commons represented one of the defendants in this case. The Appeal Court Justices presiding on this case found that *"as the law presently stands, an asylum-seeker who merely attempts to arrive at the frontiers of the United Kingdom in order to make a claim [of asylum] is not entering or attempting to enter the country unlawfully."* However, in 2022, UK law was changed to criminalise almost all means of arriving in the country to claim asylum.



"[There is a] legislative superstructure and the political will to [ensure] that there is a criminal justice solution to small boat crossings. [It stems from a belief] that criminal justice is a deterrent to [crossings]... that [it] is a driver, obviously, for prosecution rather than those cases being dealt with in the immigration tribunals, for example."

Jonathan*, Criminal Defence Solicitor

The Nationality and Borders Act (NABA), introduced in 2021 by then-home secretary Priti Patel and made statute in 2022, sought to nullify the legal difference between 'entry' and 'arrival' that was judged to exist in that appeal case. It amended Section 24 and Section 25 of the Immigration Act 1971, closing the loopholes in the original law that were exposed by the Court of Appeal case. Section 24 criminalises both 'arrival' in the UK without entry clearance and 'entry' without leave to enter. But there is no entry clearance visa that can be applied for in order to enter the territory of the UK to claim asylum – and it is necessary to be in UK territory to lodge an asylum claim. It is now also a breach to facilitate the arrival of asylum-seekers in the UK under Section 25 of the Act, even when the facilitator stands to make no material gain.

28. Free Movement (2021), [Seeking asylum isn't illegal yet, criminal courts confirm, quashing small boat convictions](#)

NABA not only expanded the scope of the criminal charges possible for those seeking to enter the UK to claim asylum, but also significantly lengthened their maximum sentences: up to four years for 'illegal entry' under Section 24, and 'facilitation' under Section 25, carries a maximum sentence of life imprisonment. In March 2023, a Court of Appeal ruling (29) confirmed that Article 31 of the United Nations 1951 Refugee Convention – which requires signatories not to penalise refugees who enter a country illegally – does not defend against the crime of unlawful arrival, meaning people seeking asylum in the UK are not exempt from prosecution. However, the CPS accepts that imprisoning 50,000 people (the estimated number that crossed the Channel in small boats in 2023) would not be in the public interest (30). Instead, the CPS has stated they are only seeking to prosecute cases with "aggravating factors", including those who "had their 'hand on the tiller of the dinghy', however temporarily, and "re-entrants".

"There are several ways in which people end up driving the boat. But it is clear in all situations that these people are not those high up in organisations profiting monetarily from the organisation of smuggling. Sometimes, they are forced. Sometimes, they get a reduced fare. Sometimes, everyone takes turns. Sometimes, something goes wrong, and if they have boating experience, they take over. The person who is arrested is just [the person] who Border Force identifies when they are intercepted. There have been young people under 25 charged with these offences, and some with active age disputes (of being under 18)."

Vicky Taylor, DPhil candidate at the Centre for Criminology, University of Oxford

Research undertaken by Vicky Taylor has clarified how the process works in practice (31). Individuals arrested under criminal powers are held at Manston Short-Term Holding Facility. Without access to their phones, they are taken to a police station for questioning. They are offered a duty solicitor, and after being held overnight in a police cell, usually appear in the Magistrates Court the next day. Bail is "routinely denied" and individuals are then sent to prison on remand. The whole process, from small boat to prison, takes less than 48 hours. In the first year after NABA, 240 individuals were charged with Section 24 offences (for 'arrival on small boat') and 49 with Section 25 offences (for 'piloting of small boat') (32). Recent reports have indicated that at least 23 age-disputed young people (who claim to be unaccompanied children) have been charged with immigration offences, treated as adults by the criminal justice system and criminalised since the introduction of Nationality and Borders Act in 2022 (33).

29. R v Ashari Mohamed & Ors [2023] EWCA Crim 211

30. R -v- Mohamed and others, 21 December 2022

31. Vicky Taylor, Border Criminologies (2023), Evidence from courtwatching: documenting the criminalisation of people seeking asylum in the UK

32. University of Oxford and others (2024), No Such Thing As Justice Here: The criminalisation of people arriving to the UK on small boats

33. OpenDemocracy (2024), Children prosecuted as adult 'smugglers' in UK, Italy, Greece

Research undertaken for this report included attending sentencing hearings at Canterbury Crown Court in June 2023. Four people were sentenced to prison on one day for crimes related to navigating across the Channel in small boats. Three young people from Sudan (one age-disputed case and two aged under 25) were sentenced to either eight or nine months under Section 24 following a guilty plea. A 28-year-old man from Sudan was sentenced to 36 months in prison for the more serious 'facilitation of illegal entry' offence under Section 25, also following a guilty plea. It is worth noting most Sudanese asylum-seekers are granted refugee status, and Sudan is currently experiencing intense conflict (34). In sentencing of one of the section 24 cases, Judge Simon James explained his reasoning for handing down a custodial sentence:

"You are just one of thousands who, in the last year or so, have attempted to gain illegal entry into the United Kingdom while trying to navigate the English Channel in a small, unseaworthy, overcrowded boat. In doing so, you put yourself and others in danger, and forced the coastguard to commit considerable time and resources to come and rescue you. This is a prevalent offence, generating widespread and considerable public concern – particularly considering the unprecedented pressure [that the] attempts to circumvent immigration controls in this way is placing on already stretched public resources. Any attempt to evade immigration control has a capacity to undermine a nation's security. This is a method of illegal entry that is generating substantial profits for organised criminal gangs. In such circumstances, sentences need to carry an element of deterrent."

Judge Simon James, Canterbury Crown Court

CASE STUDY: IBRAHIMA

In the early hours of 14 December 2022, a small boat laden with people was crossing the English Channel. The boat got into trouble off the coast of Dungeness, 30 miles west of Dover. Temperatures had dropped to 1°C overnight and a yellow weather warning was in place across Kent at the time (35). A fishing trawler eventually discovered people clinging to inflatable vessels in the icy waters early the next morning and the crew pulled 39 people (including a dozen unaccompanied children) out of the waters and to safety (36). Tragically, four people (including a teenager) lost their lives.

Rescued from the water, 19-year-old Ibrahima Bah from Senegal was transferred to a Border Force vessel and taken in to land, where he was arrested and charged with *"knowingly facilitating the attempted arrival in the United Kingdom of people he knew, or had reasonable cause to believe, were asylum-seekers"* (37). He appeared in Folkestone Magistrates Court and was then remanded to prison. Subsequently, he was further charged with four counts of manslaughter after an investigation by Kent Police. A three-week trial commenced on 27 June 2023.

"To be granted entry clearance, you need to be outside of the United Kingdom. To be granted asylum, you need to be inside the United Kingdom... [There is no visa available for] entry clearance in order to come to the United Kingdom to claim asylum... So, you have to be here to claim asylum, but there is no mechanism under the entry clearance in order to get it... and if you arrive in the United Kingdom to claim asylum... that is now a criminal offence, is it not?"

Richard Thomas KC, Defence Counsel in the trial of Ibrahima Bah, cross-examining an immigration official

On 26 July 2023, the jury was discharged after failing to reach a verdict (38). At a second trial held in January and February 2024, the jury unanimously found Ibrahima guilty of facilitating illegal entry into the UK and, by a majority of 10-2, guilty of manslaughter by gross negligence. He was sentenced to nine and a half years in prison. A campaign to have the conviction overturned, and for Ibrahima to be freed, has been launched in the UK (39).

35. BBC News (2023), [Channel boat deaths: Man in court over four deaths at sea](#)

36. Diane Taylor, The Guardian (2022), [Four who died crossing Channel believed to be Afghan and Senegalese](#)

37. The Guardian (2022), [Man, 19, charged with people-smuggling after four die trying to cross Channel](#)

38. BBC News (2023), [Ibrahima Bah: Jury discharged in migrant crossing deaths trial](#)

39. Captain Support UK, Twitter/X (2024), [Jury convicts Ibrahima Bah: statement from Captain Support UK](#)

3. Understanding the systemic and the structural

In the previous section, we outlined a number of specific themes arising from casework analysis that go some way to explain why some young asylum-seekers come into contact with the criminal justice system in the UK.

We will now interrogate how the systemic and structural issues in the lives of children and young people seeking asylum in the UK, feed into and contribute towards criminalisation. In this section, we will draw on secondary sources to provide some wider analysis.

Firstly, **children and young people seeking asylum are often very vulnerable** due to their life experiences, both before and after arriving in the UK. They have been forced to migrate, separated from their family, may have suffered violence or abuse on their journeys, and are often re-traumatised by the UK's asylum system. Traumatic and adverse life experiences like these, especially when experienced in a crucial period of development such as childhood and adolescence, often lead to poor mental health which, in turn, affects young people's ability to cope with the stressors of settling in a new country.

Secondly, **systems in the UK increase vulnerability**. Depending on whether they arrived before or after their 18th birthday, children and young people are often accommodated in harmful or inappropriate local authority or Home Office accommodation, sub-contracted to private companies, where they receive inadequate or no support, and required to take part in lengthy, stressful, and sometimes re-traumatising age assessments and dispute processes.

Thirdly, **behaviours related to that vulnerability are surveilled and responded to in ways that increase the risk of contact with the criminal justice system**. Unlike British young people living independently or with their families, the offending behaviour of children and young people seeking asylum and living in staffed accommodation are more likely to be responded to through the police and then the court system.



I. Factors that increase vulnerability

a. Perilous journeys to the UK

Youth migration is often driven by conflict, human rights abuses, fear of death and persecution or natural disasters, as well as a lack of educational or economic opportunities. Some young people will have endured prolonged exposure to physical and sexual violence in countries where this is used as a weapon of war (40). Young people arriving from war-torn areas have suffered the direct and indirect consequences of conflict and disrupted infrastructure, leaving some of them with war-related injuries and disabilities, and with physical and mental health issues (41).

In 2022, the top five countries of origin of unaccompanied children were Eritrea, Iran, Sudan, Afghanistan and Albania (42). In **Eritrea**, the government forces thousands of young people each year to undergo military training before they have completed school, often remaining indefinitely under military discipline (43). Since the Taliban assumed de facto control of **Afghanistan** in August 2021 there have been reports of human rights abuses, including targeted killings, torture, threats and intimidation, against civilians associated with the former government (44). Boys are at risk of being recruited by the Taliban, and used in armed conflict (45). Huge protests in **Iran** were sparked by the death of Mahsa Amini in September 2022 (46). Protesters face violent reprisals, lengthy prison sentences, torture and execution. In the four months following the outbreak of protests, at least 522 protesters were killed, including 70 children (47).

40. Sanchez-Clemente, Eisen, Harkensee, et al, Beyond arrival: safeguarding unaccompanied asylum-seeking children in the UK, Archives of Disease in Childhood 2023;108:160-165

41. *ibid.*

42. Home Office (2023), [Asylum and resettlement datasets](#)

43. Human Rights Watch (2019), [“They Are Making Us into Slaves, Not Educating Us”: How Indefinite Conscriptio Restricts Young People’s Rights, Access to Education in Eritrea](#)

44. Human Rights Watch (2023), [World Report 2022: Afghanistan events of 2022](#)

45. Home Office (2023), [Afghanistan: Country policy and information notes](#)

46. Josh Askew, Open Democracy (2023), [How Britain’s broken asylum system props up the Iranian government](#)

47. Sophia Richards, Jurist (2023), [Human rights group reports 522 Iran protestor deaths since September 2022](#)

Conflict in **Sudan** escalated in April 2023 after fighting broke out between the Sudanese military and the Rapid Support Forces across most of the country. Thousands have died, and millions forcibly displaced by fighting (49). **Albanians** remain the most common nationality referred to the NRM in recent years (50). While some Albanians willingly migrate because of political instability, corruption, lack of employment and educational opportunities, others are trafficked into Britain for exploitative work (51).

Almost all young people seeking asylum who travel to the UK make difficult and dangerous journeys to reach here: only a tiny minority arrive through resettlement programmes. During these journeys, they are regularly subject to human rights abuses, including torture, sexual violence and false imprisonment, and are themselves witness to violence, abuse and death.

"In Iran – the guy who was taking us across the border [into Turkey], the agent – I think he made a mistake. Instead of going around the army post, we went straight to the post. The post was on top of the mountain. As soon as we got a little bit closer to them: bang, bang, bang, they started shooting. I don't know, how did I get off of that mountain? We all started running. You're walking up the hill. But you are running down now. Some people fell and [were hurt] because there were a lot of stones. One guy got hit. The bullet, right here (points to head). His whole head was coming out. It came out right in front of me. I was running. I just saw him make one glance back, then bullet, boom, and he was gone. That guy that got hit, he's got family. Nobody would even come to look for him on that border. The army is not picking up that body, I'm telling you now. Where are they going to take him?"

Hamed*, 22, from Afghanistan

49. MSF, In Focus: Conflict in Sudan

50. Home Office (2023), Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2022

51. Amelia Gentleman, The Guardian (2023), Young Albanian men 'viciously exploited' after arriving in UK

A 2023 United Nations Human Rights Council report cited evidence of “*crimes against humanity*” committed against migrants in Libya including torture and sexual slavery (51). Many of these migrants in Libya later reach Europe via the Central Mediterranean route and then make onward journeys to the UK. In 2023, the European Committee for the Prevention of Torture (CPT) found widespread use of violence, intimidation and prolonged detention by European states against asylum-seekers who tried to cross Europe’s borders (52). Amnesty International also found evidence of systemic abuses, including Polish border guards using unmuzzled police dogs to force people seeking asylum into freezing cold rivers and swamps, and border authorities in Latvia and Lithuania using batons, tasers and rubber bullets. In 2021, Human Rights Watch reported that French officials regularly subject adults and children living in migrant encampments around Calais to “*degrading treatment*” (53).

These experiences impact on the way in which these young people later experience life in the UK – and for those who are accused of a crime, how they experience contact with the criminal justice system.

b. Experiences in the UK asylum system

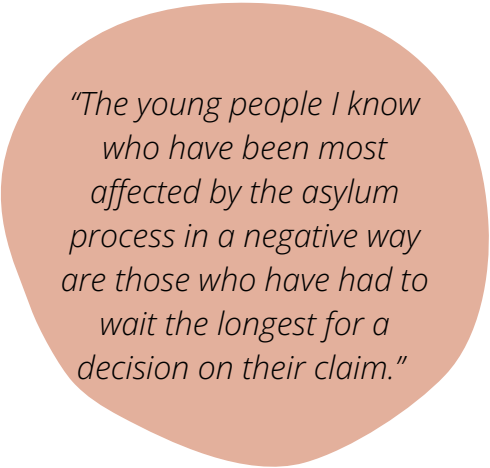
Research has shown that the UK asylum system itself is traumatising for young people and children seeking asylum (54). The burden of proof in an asylum claim rests with the child or young person: they may be required to disclose information about abuse, trafficking, or traumatic events in their asylum statement or substantive interview, and an asylum caseworker may further probe and question that experience.

51. United Nations Human Rights Council (2023), Independent Fact-Finding Mission on Libya

52. Council of Europe (2023), Anti-torture committee calls on European governments to put an end to pushbacks and prevent ill-treatment of foreign nationals at borders

53. Human Rights Watch (2021), France: Degrading Treatment of Migrants Around Calais

54. The Children’s Society (2018), Distress Signals: Unaccompanied Young People’s Struggle for Mental Health Care



"The young people I know who have been most affected by the asylum process in a negative way are those who have had to wait the longest for a decision on their claim."

Sam*, Accommodation Key Worker

After this distressing experience, children and young people are left in limbo while they wait for their claim, something that can take months or years. The Children's Commissioner reviewed the evidence of the 'subjective wellbeing of children subject to immigration control in England' and found that *"uncertainty about, and an inability to influence, immigration status is traumatic for children, causes significant anxiety, and erodes children's capacity for overcoming past trauma"* (55). This is *"the dominant source of stress and anxiety in migrant children's lives, and the most important determinant of their wellbeing"* (56).

Distress is *"particularly severe for children whose asylum claims had been rejected"* and who feared being *"forced to return to dangerous contexts, where they may have been victims or witnesses of violence in the past"* (57). In the past five years, 23% of asylum claims by unaccompanied children seeking asylum were refused or given only temporary leave (some 3,000 children) in an initial decision. Among 18-29 year-olds, 41% of asylum claims in the last five years were refused or resulted in a grant of temporary leave in an initial decision (58).

Refused asylum-seekers can go on to appeal the decision of the Home Office at the First Tier Tribunal, and following that to the Upper Tribunal. Of the appeals resolved in the year ending March 2023, the applicant was able to overturn the original negative decision in around half of all cases (51%) (59). People seeking asylum who are unsuccessful at the appeal stage are then considered to be 'appeal rights exhausted' and will likely have no recourse to public funds (NRPF). Young people who are 'appeal rights exhausted', in most instances, continue to be supported by the local authority.

55. Children's Commissioner (2017), Children's Voices: A review of evidence on the subjective wellbeing of children subject to immigration control in England

56. *ibid*

57. *ibid*

58. Home Office (2023), Asylum and resettlement datasets

59. *ibid*.

However, care-leavers who are 'appeal rights exhausted' are at risk of having local authority support withdrawn. Although the local authority must carry out a human rights assessment to determine whether removing someone's leaving care support would breach their human rights, there is very little guidance on how a local authority should do this. Young adults who were accommodated by the Home Office and become 'appeal rights exhausted' are at risk of having their accommodation and financial support removed by the Home Office, and that person is at risk of destitution, or detention and removal.

Even where a child or young person is able to obtain asylum, it is unlikely that they will be reunited with their family if they were separated in their country of origin or on their journey to the UK. There is no allowance in the UK's immigration rules for children or young adults with refugee status to sponsor their parents or other family to join them in the UK, which can exacerbate existing mental health difficulties and feelings of isolation (60).

The asylum process can erode children and young people's trust in authorities and institutions of the state. Even the government's own Safeguarding Strategy acknowledges that *"unaccompanied children sometimes go missing because they feel unsupported in their application for asylum"* (61).

c. Negative life experiences and trauma-related mental health concerns

There is significant evidence that people seeking asylum and refugees are at a higher risk of mental health conditions than the general public; this risk is greater still for children and young adults. A 2022 systematic review of academic literature on the prevalence of mental health disorders among unaccompanied children seeking asylum in European countries concluded that *"PTSD, depression and anxiety are the most prevalent problems"* (62). This is reflected in other research: a 2019 study of 19 German facilities for refugee children (primarily from Afghanistan, Syria, and Eritrea) found that 36.7% of accompanied children and 64.7% of unaccompanied children met *"the clinical cut-off for post-traumatic stress symptoms,"* with similarly high percentages exhibiting symptoms of depression and anxiety. Being without family was *"highly predictive for higher levels of psychological distress"*; unaccompanied children reported significantly more traumatic events and were more susceptible to self-harm and suicide (63).

60. Families Together Coalition (2022), Refugee family reunification in the UK: Challenges and prospects

61. Home Office and Department for Education (2017), Safeguarding Strategy: Unaccompanied asylum seeking and refugee children, November 2017

62. Baeza et al. (2022), Mental health of unaccompanied refugee minors in Europe: A systematic review

62. Müller, et al, Child and Adolescent Psychiatry and Mental Health, 13(1) (2019), Mental health and associated stress factors in accompanied and unaccompanied refugee minors resettled in Germany: a cross-sectional study.

A 2020 study of more than 100 young refugees in Germany, including both unaccompanied children and young adults, found that the risk of developing mental-health problems (such as depression, psychosis or cognitive difficulties), and their severity, rises significantly with each accumulated trauma a young person has experienced (64). Risk factors included traumatic experiences before, during and after their flight. Stressful conditions in host nations — for example, poor living conditions, multiple relocations, social exclusion and hostility towards refugees – only added to that risk.

Longitudinal follow up studies have demonstrated long-term persistence of mental health difficulties (depression, PTSD and anxiety) in unaccompanied minors at 18 months (65) and two years (66) following arrival in a receiving country.

Those who migrate during adolescence have also been found to be at greater risk of psychosis (67). After taking into account factors including ethnicity, markers of social disadvantage, and parental history of psychosis, academic researchers from University College London (UCL) in a 2024 study found that those who migrated between the ages of 11 and 17 had almost twice the risk of developing psychosis compared with white people who had not migrated. However, there was no increased risk for people who migrated in infancy, earlier childhood or adulthood. In a further analysis, the researchers found the increased risk of psychosis in adolescents was significant only among black and north African migrant, with the risk of psychosis being at least two to three times higher for these groups than for white people who had not migrated.

In 2018, the Children's Society investigated mental health among asylum seeking and refugee young people and children in England and found that *"young people can face a protracted battle to achieve stability in their lives, with immigration processes, lack of material support, isolation and other barriers stopping them from feeling the safety we would hope to provide for them. The effects of the traumatic events that young people have faced prior to their arrival in the UK can continue to affect them for substantial periods of time through a range of symptoms, such as flashbacks, sleep disturbances, memory impairment, anger and disruptive behaviour, self-harm and even suicide. Once young people are in the UK, their mental health can deteriorate if they face barriers in settling their lives and their long-term prospects. Self-harm and suicide pose a grave risk for these young people, especially if they are not receiving holistic support"* (68).

64. Alison Abbott, Nature (2020), How young refugees' traumatic pasts shape their mental health

65. Vervliet, Marianne et al. (2014), "The mental health of unaccompanied refugee minors on arrival in the host country." Scandinavian journal of psychology vol. 55,1

66. Jensen, Tine K et al. (2014), "Development of mental health problems - a follow-up study of unaccompanied refugee minors." Child and adolescent psychiatry and mental health vol. 8.

67. The Guardian (2024), Migration during adolescence linked to increased psychosis risk, study finds

68. The Children's Society (2018), Distress Signals: Unaccompanied Young People's Struggle for Mental Health Care

Some young people try to cope with their mental health issues by misusing substances such as alcohol, cannabis and non-prescribed medication. A 2013 review of academic literature on mental health and alcohol and drug use amongst young people of refugee background found that *“young refugees are at a high risk of developing [mental health] and [alcohol or drug] disorders”* (69).

In the UK there has been significant reporting on deaths by suicide amongst asylum-seeking and refugee young people (70). Between 2016 and 2021, UK charities reported that at least 13 teenagers who had arrived in the UK as unaccompanied children seeking asylum, had gone on to die by suicide (although this was understood to be an underestimate) (71). A 2019 study in Sweden found the risk of suicide among unaccompanied young people to be nine times that of the rest of the same-aged Swedish population, (72) whilst another study in the US found that 30% of unaccompanied children report suicidal ideation (73).

Local authorities in England and Wales have a duty to ensure that the mental health needs of children in their care are met. The government’s 2016 independent review into the criminalisation of children in the care system, conducted by Lord Laming, acknowledges that local authorities sometimes *“struggle to meet the mental health needs of asylum-seeking children who have experienced extreme trauma and violence”*. Young adults and care leavers face additional barriers to access mental health provision (74).

69. Miriam Posselt, Cherrie Galletly, et al, Mental Health and Substance Use (2014), Mental health and drug and alcohol comorbidity in young people of refugee background: a review of the literature

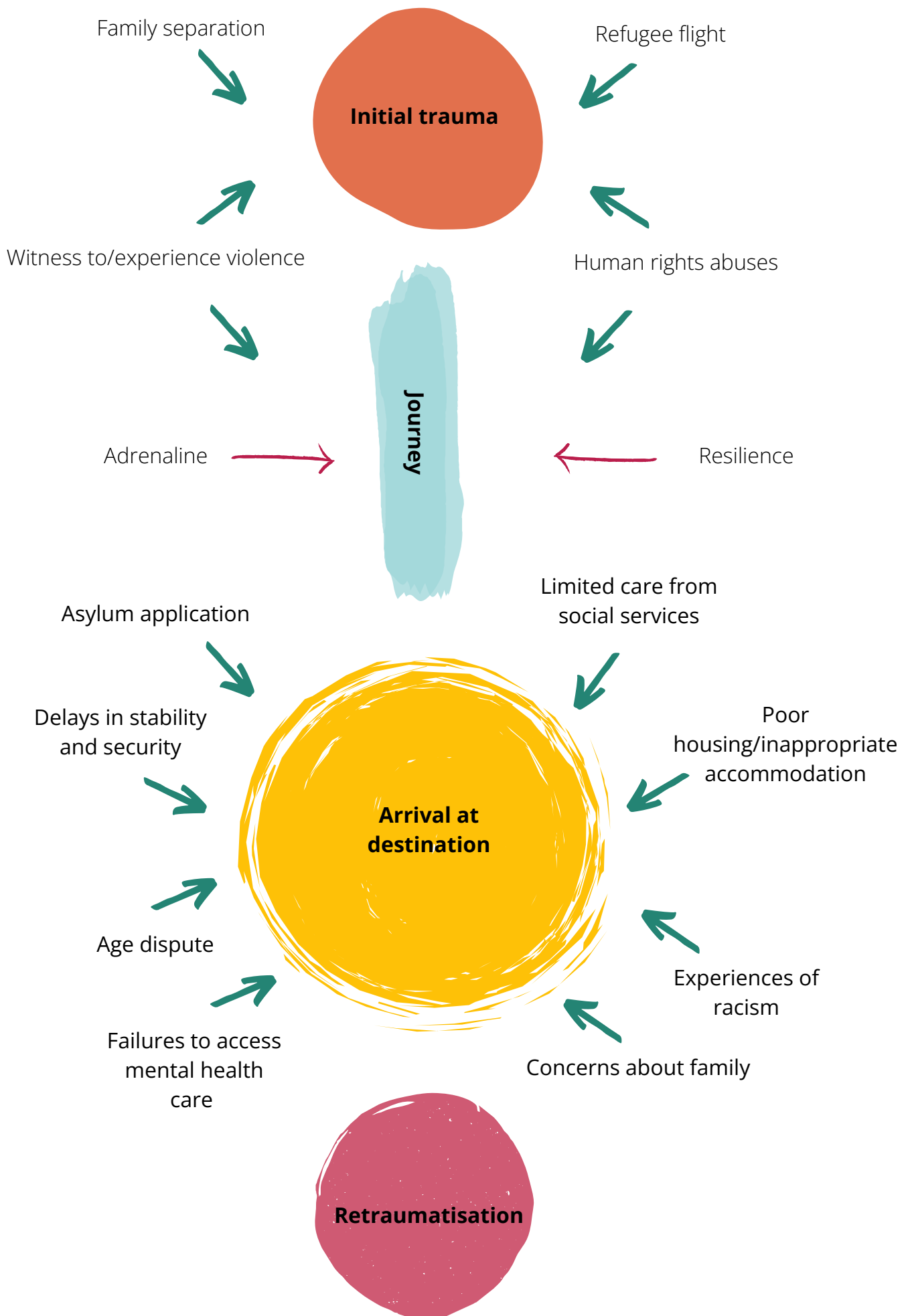
70. Diane Taylor, The Guardian (2019), Teenage refugee was fourth of friendship group to kill himself; BBC News (2021), Are asylum suicides an unfolding national tragedy?

71. The Guardian (2021), Charities raise alarm over suicides of young asylum seekers in UK

72. Hagström et al. (2019), High Suicide Rates Among Unaccompanied Minors/Youth Seeking Asylum in Sweden

73. Cardoso, J. B. (2018). Running to stand still: Trauma symptoms, coping strategies, and substance use behaviors in unaccompanied migrant youth. Children and Youth Services Review, 92, 143–152.

74. Lord Laming, Prison Reform Trust (2016), In Care, Out Of Trouble: How the life chances of children in care can be transformed by protecting them from unnecessary involvement in the criminal justice system



II. How vulnerabilities are supported and accommodated

a. Inadequate accommodation placements and support in the care system

Under the Children Act 1989, local authorities must provide accommodation to children in need in their area, including unaccompanied children seeking asylum. This might be a foster care placement (especially for those aged 15 or younger), shared semi-independent accommodation with 24-hour staffing, or independent accommodation with staff during certain hours or no staff. Section 22(3) of the Act sets out the general duty of a local authority to safeguard and promote the welfare of a child in their care. This 'corporate parenting', underpins all activity by the local authority in relation to a child. One of the central duties is care planning: the long-term plan for meeting a child's needs, including health, education and training, and emotional and behavioural development. Key professionals would include a designated social worker, foster carers, and residential staff, known as key workers.

The Children's Commissioner found *"some [unaccompanied] children speaking very positively about the difference social workers made in their lives"* while others felt *"social workers were not interested in their wellbeing"* (75). In 2013, the Joint Committee on Human Rights (JCHR) reported *"extraordinarily varied"* local authority care for unaccompanied children seeking asylum, with the government itself commenting that there was an *"issue with local authority consistency – some are very effective, and others not so"* (76). In the decade since, local authorities have experienced significant cuts to their budgets, having a devastating effect on children's services. A recent Ofsted inspection of Croydon's Children's Services (where unaccompanied children seeking asylum are half of the looked-after population) highlighted the *"widespread and serious failures in the services provided to children and their families in Croydon that leave some children at risk of significant harm"* (77).

75. Children's Commissioner (2017), Children's Voices: A review of evidence on the subjective wellbeing of children subject to immigration control in England

76. Joint Committee on Human Rights (2013), Human Rights of unaccompanied migrant children and young people in the UK

77. Ofsted (2017), London Borough Of Croydon: Inspection Of Services For Children In Need Of Help And Protection, Children Looked After And Care Leavers And Review Of The Effectiveness Of The Local Safeguarding Children Board

The Children's Society found that *"material conditions such as housing... have a large bearing on the wellbeing of young people"* (78). Looked after children are often moved from placement to placement, disrupting education and undermining healthy and meaningful relationships with adults (79). Aida, a 16-year-old Eritrean young person interviewed for the Becoming Adult project, (80) spent just a few weeks in foster care before being moved into shared accommodation. Being moved several times *"within a short period and without having any real say in the matter"* was described as *"destabilising and upsetting"* by her (81).

The JCHR inquiry found that children sometimes face *"placement in inappropriate accommodation without suitably trained staff to provide support"* (82). Unaccompanied children are disproportionately accommodated in unregulated provision, independent or semi-independent accommodation with limited support from 'accommodation key workers', and not regulated by any quality inspectorate. The number of looked after children in unregulated accommodation has risen from 2,900 in 2009 to 6,100 in 2019 (83) of which 43% (in semi-independent accommodation) and 36% (in independent accommodation) were unaccompanied children seeking asylum, even though they represent only 6% of looked after children overall.

"[Local authorities] are allowed to place 16 and 17 [year olds] in independent or supported accommodation. It is unregulated at this point in time... People [working there sometimes] haven't got DBS checks (84), no one is trained... [unaccompanied] asylum seeking young people have been placed in those settings... They're there alongside high-needs British young people in care [who] come from a broken family and [who have] a history of primary carer abuse. That is a whole different world from the needs of unaccompanied asylum-seeking children... If these [unaccompanied asylum-seeking] young people were provided with specialist supported accommodation... this would allow young people to receive the support and care that they need, to feel safe and resilient, to be able to crawl through the Home Office [asylum process]. But we're not doing that. We're throwing them into settings where there are young people who have complex and extremely high needs, [where there is] drink, drugs, gang stuff, everything going on, and expecting these young people to navigate it. And clearly that doesn't work."

Sam*, Accommodation Key Worker

78. The Children's Society (2018), Distress Signals: Unaccompanied Young People's Struggle for Mental Health Care

79. MOPAC (2021), Reducing criminalisation of looked-after children and care leavers

80. Becoming Adult Project

81. Elaine Chase, Jennifer Allsopp, (2020), Youth Migration And The Politics Of Wellbeing (Bristol University Press)

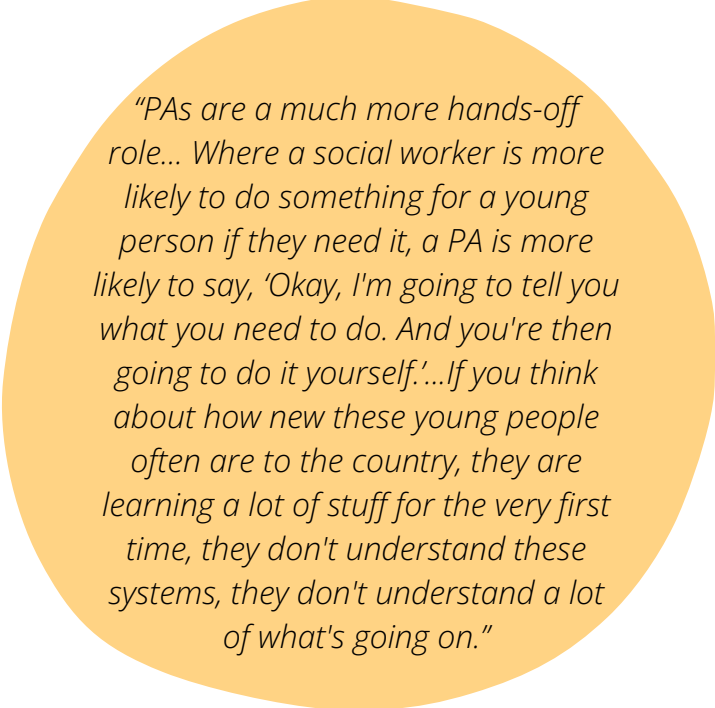
82. Joint Committee on Human Rights (2013)

83. Department for Education (2020), Use of unregulated and unregistered provision for children in care

84. Disclosure and Barring Service checks which help employers make safe recruitment decisions

Many children and young people have not even been able to access this support. Despite the clear legal framework for unaccompanied children that provides for their care by local authorities, during the duration of this study, the Home Office had developed, since June 2021, a separate system that accommodated children outside of local authority care in hotels across England (85). This started after Kent County Council announced it would not take any more unaccompanied children, citing 'extreme pressure' on its services (86). At least 146 children accommodated in these hotels went missing, with a UCL led study finding that some were *"likely to have been trafficked"*. (87) A series of judgements in the High Court between 2023 and 2024 found that the Home Secretary and Kent County Council had acted unlawfully in placing these children in hotels (88) and that Kent County Council could not use a lack of funds or lack of staff as an excuse for non-compliance with its legal duties to accommodate unaccompanied children (89).

When children age out of the care system at 18, becoming "care-leavers", they stop receiving support from qualified social workers, transitioning to support from Personal Advisers (PAs). PAs do not have to undergo social work training, and are only required to meet the young person they are supporting every eight weeks.



"PAs are a much more hands-off role... Where a social worker is more likely to do something for a young person if they need it, a PA is more likely to say, 'Okay, I'm going to tell you what you need to do. And you're then going to do it yourself.'...If you think about how new these young people often are to the country, they are learning a lot of stuff for the very first time, they don't understand these systems, they don't understand a lot of what's going on."

Serena*, Social Worker

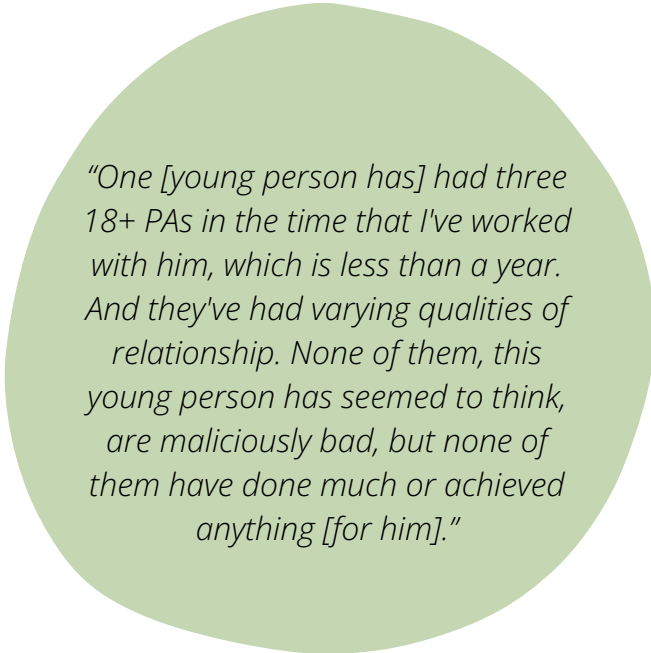
85. Refugee and Migrant Children Consortium (2023), Briefing for parliamentarians on the use of Home Office hotels for unaccompanied children seeking asylum

86. BBC (2021), Kent to turn away lone child migrants from Monday due to "extreme pressure"

87. Guardian (2024), Children missing from Home Office hotels likely to have been trafficked, report finds

88. Becky Morton, BBC (2023), 'Routine' housing of child asylum seekers in hotels unlawful, High Court rules

89. ECPAT UK (2024), Legal judgements and remaining challenges



"One [young person has] had three 18+ PAs in the time that I've worked with him, which is less than a year. And they've had varying qualities of relationship. None of them, this young person has seemed to think, are maliciously bad, but none of them have done much or achieved anything [for him]."

James*, Caseworker

The Becoming Adult project interviewed more than 100 unaccompanied young migrants as they transitioned to adulthood and found that *"significant stress and anxiety were associated... with transitions at 18 years. Mental health difficulties could impact all other aspects of young people's lives including sleeping and eating patterns, their educational pathways, relationships with friends and significant others, and their ability to function on a daily basis. Suicidal ideation and attempts at suicide were described by some young people in the study"* (90).

b. Absent support outside of the care system

Young adults who arrive in the UK after their 18th birthday to claim asylum are not able to access local authority support. Instead, they can apply to the Home Office for access to 'section 98 support' if they have no accommodation of their own. Historically, people on this support would be moved to 'initial accommodation' - short-term, full-board housing and then offered 'section 95 support', which historically meant being moved into 'dispersal accommodation', most commonly a type of shared housing with shared bedrooms and facilities. However, in response to the Covid-19 pandemic, the Home Office made widespread use of 'contingency accommodation' in hotels for people claiming asylum (91).

At the end of 2022, there were 105,522 people living in 'asylum accommodation'. Almost half of these - 56,029 - were in 'dispersal accommodation', while the remaining 49,493 were in 'contingency' accommodation in hotels. The Home Office has set a weekly allowance of £9.50 for those living full-board in 'contingency accommodation' in hotels and £45 for those in 'dispersal accommodation'. Neither type of accommodation offers youth-specific provision or additional support that young adults can access over the rest of the adult population. Therefore, lone young adults seeking asylum may be the same age as their peers who are former unaccompanied children who are also care-leavers, and may share the same additional needs, but will not receive any additional support.

90. Elaine Chase, Jennifer Allsopp, (2020), *Youth Migration And The Politics Of Wellbeing* (Bristol University Press)

91. Helen Bamber Foundation (2024), [Suffering and squalor: The impact on mental health of living in hotel asylum accommodation](#)

The poor quality of 'dispersal accommodation' was revealed in a recent report by the Byline Times, which FOI'd local councils and found that 75% have logged complaints about the conditions of asylum-seeker accommodation in their area. Across the thousands of complaints and inspections logged, hundreds concerned severe infestations of bugs or rats, or disrepair like damp and mould. Bradford Council alone recorded seven cases of collapsed ceilings at asylum-seeker accommodation in their area (92).

In a report published last year, refugee advocacy organisation Refugee Action examined casework and surveyed more than 100 asylum-seekers. It found that almost 50,000 people seeking asylum *"currently live in temporary or 'contingency' accommodation in hotels where they are held indefinitely in conditions that actively harm their physical and mental health. Their freedom of movement and basic liberties are restricted, they are held in rooms where they are unable to receive guests or arrange childcare, and they are told that if they leave for short periods, such as one or two days, they will not be able to return. They live in an environment of fear of attacks by racist groups... [they are] indefinitely segregated from communities, do not have access to legal or welfare services, and have limited contact with the outside world due to restrictions and the cost of transport and communications"* (93).

Similarly, the Refugee Council had previously identified that people in 'contingency' accommodation lived in *"conditions which are dehumanising and directly cause their health and well-being to deteriorate"* and reported that for many in this situation, their *"confinement feels like prison"* (94).

Responding to the backlash to the cost of their own increased use of 'contingency' accommodation, the government has promised to seek out alternatives to hotels. In a statement in Parliament in March 2023, then Immigration Minister, Robert Jenrick, said that *"accommodation for migrants should meet their essential living needs and nothing more"* and that the government intended to make use of disused military sites, barges, and other sites (95).

92. Andrew Kersley, Byline Times (2023), Most Asylum Seeker Accommodation 'Horrendous and Often Dangerous' as Government Plans to Legalise Hazardous Housing

93. Refugee Action (2023), Hostile Accommodation: How the Asylum Housing is Cruel by Design

94. Refugee Council (2021), "I Sat Watching Life Go By My Window For so Long": The experiences of people seeking asylum living in hotel accommodation

95. Peter Walker, The Guardian (2023), Asylum seekers will get the most basic housing possible, says Robert Jenrick

The Home Office sent a 19-year-old Eritrean young person named Yonas to live in the camp at RAF Wethersfield, despite detailing a history of torture. In an interview with the Independent, Yonas said he had been captured in Libya, held in an overcrowded warehouse with 250 other people, and beaten: *"I was detained and tortured for seven months in Libya. I came to the UK for a safe future, and when I arrived, the government sent me to a prison camp. It was so far away from anywhere. We were kept behind fences. We couldn't leave. I don't know why I, someone who has experienced torture, was ever sent there."* (96). Yonas is one of 676 asylum-seekers who have been sent to live at the airbase since it opened, and his case is an example of how vulnerable young people are forced to live in environments where their vulnerabilities go unsupported.

In January 2024, humanitarian organisation Médecins Sans Frontières (MSF) announced it had started providing primary healthcare to people *"held at the large-scale containment site at Wethersfield"* because their *"physical and mental healthcare are not being met"* (97).

Responding to the unmet needs of young adults living in the asylum system, a number of non-governmental organisations have called for the introduction of youth-specific provision and extra support for young people. Refugee Rights Europe and MEENA proposed the introduction of 'Youth Welfare Officers' in asylum accommodation to support the health and wellbeing of 18-25 year-olds. This led to a successful pilot project, run by a consortium of refugee organisations including Migrant Help. Following this, several organisations continue to have Youth Welfare Officers supporting young adults in a number of cities in England, though the coverage of the scheme is not universal (98).

c. Vulnerabilities and offending behaviours

"Young people are... being triggered into a behaviour and then they're punished for that behaviour by a foster carer or social worker: 'You were screaming and shouting at your foster carer. You threatened your foster carer. You smashed something up or you went off.' We are going, 'tell us everything', triggering a response and then punishing these children. Then we wonder why the outcome is dysfunctional behaviours, drink and drugs, poor coping strategies."

Sam* Accommodation Key Worker

96. Holly Bancroft, The Independent (2024), [Yet another asylum farce: Migrant camp condemned by home secretary moves 'torture victims' into hotels](#)

97. Medecins Sans Frontieres (2024), [MSF launches UK operations to treat people seeking asylum](#)

98. Migrant Help (2024), [Youth Welfare Project Report](#)

Within the distinct group of children and young people seeking asylum in the UK there are significant differences in culture and experience: a 24-year-old Iranian fleeing government persecution and entering Europe through the Western Balkans has different life experiences from a 15-year-old Sudanese child who has fled ethnic cleansing and travelled through Libya to reach Europe. However, both have an increased likelihood of having suffered adverse and/or traumatic life experiences and may be struggling with poor mental health as a consequence.

A 2020 review considered drug use and criminality among unaccompanied refugee minors in Europe (99). Most of these studies showed that unaccompanied children and young people seeking asylum *"constitute a particularly vulnerable group with regard to problems such as post-traumatic stress disorder, depression and anxiety... and that these problems are still present years after resettlement... This increased vulnerability is often explained by the minors' experiences of loss of family and friends, by trauma prior to and during their flight, or by a stressful asylum process and a fear of deportation... or experiences [of] racism and discrimination."* These issues constitute *"several coexisting risk factors... that might encourage substance abuse and criminality."*

Prolonged exposure to stress in childhood disrupts healthy brain development which can manifest as emotional and conduct problems in childhood, and risk-taking and criminal behaviours in adulthood (100). Two peer-reviewed studies (published in 2019 and 2020) by Martin Begemann and Jan Seidel (et al.) looked at the relationship between *"accumulated pre-adult environmental risks"* and *"violent aggression"*. The 2019 study found *"a strong, disease-independent relationship between accumulated preadult environmental risks and violent aggression later in life"* (101).

This hypothesis was then tested in the follow-up study, through interviews with 133 young refugees in nine German refugee centres. Risk factors for young asylum-seekers and refugees included traumatic experiences before/during/after flight (including war, genocide, human trafficking, torture, murder, slavery, terrorist attacks); physical and sexual abuse; and problematic alcohol and cannabis use during lifetime (102). The study found that more than 42% of study participants had more than three risk factors. The study authors interpreted this to mean that *"young refugees arriv[e] in hosting countries with alarming 'risk burden', [and] should be considered as highly vulnerable towards development of global functional deficits, behavioural abnormalities and neuropsychiatric disorders."*

99. Anna-Karin Ivert and Mia-Maria Magnusson, International Journal of Migration, Health and Social Care (2020), [Drug use and criminality among unaccompanied refugee minors: a review of the literature](#)

100. S. Levenson et al. (2016), [Adverse Childhood Experiences in the Lives of Male Sex Offenders: Implications for Trauma-Informed Care](#)

101. Marina Mitjanset al, Molecular Psychiatry (2019), [Violent aggression predicted by multiple pre-adult environmental hits](#)

102. Martin Begemann et al, eClinicalMedicine (2020), [Accumulated environmental risk in young refugees - A prospective evaluation](#)

The study authors intend to conduct follow-up research in several years to ascertain whether this risk burden results in *“the development of violent aggression, criminality and radicalism or of severe mental illness in this cohort”*.

Adverse Childhood Experiences (ACEs) – including abuse (physical, verbal and sexual), neglect (physical and emotional) and household adversities (including mental illness, incarcerated relative, domestic violence, parental separation and substance abuse) – have been linked to many factors that increase risk of offending, including substance and alcohol abuse, deprivation, poor educational attainment, and mental health problems.

Public Health Wales published the first Welsh ACE study in 2016, revealing that 47% of adults in Wales had suffered at least one adverse childhood experience, and 14% suffered four or more (103). Those with four or more were *“14 times more likely to be a victim of violence in the last 12 months; 15 times more likely to be a perpetrator of violence in the last 12 months; [and] 20 times more likely to have been incarcerated in their lives”*. A 2020 follow-up report (104) found that while it was difficult to estimate the prevalence of ACEs among refugee and migrant children based on existing literature, it was clear that *“child refugee and asylum-seeking populations have a high risk of experiencing multiple ACEs”*. The report highlighted how *“the conditions in which refugee families live post-migration influence whether negative outcomes are experienced following ACEs”*, including the asylum process itself, where stability is especially at risk.

Protective factors’ can support children who have experienced ACEs to develop resilience and place them at lower risk. The single most common factor for resilience is *“at least one stable and committed relationship with a supportive parent, caregiver, or other adult”* (105). The 2020 Public Health Wales study considered the ‘protective factors’ in the UK refugee context (106), highlighting the positive role of educational institutions where young people can build supportive relationships with teachers and school staff, as well as faith settings and peers, particularly those from the culture of origin, who may have shared experiences of loss, and those from the host culture, who can support adjustment and foster a sense of belonging.

103. Public Health Wales (2016), Adverse Childhood Experiences (ACEs) and their Impact on health-harming behaviours in the Welsh adult population

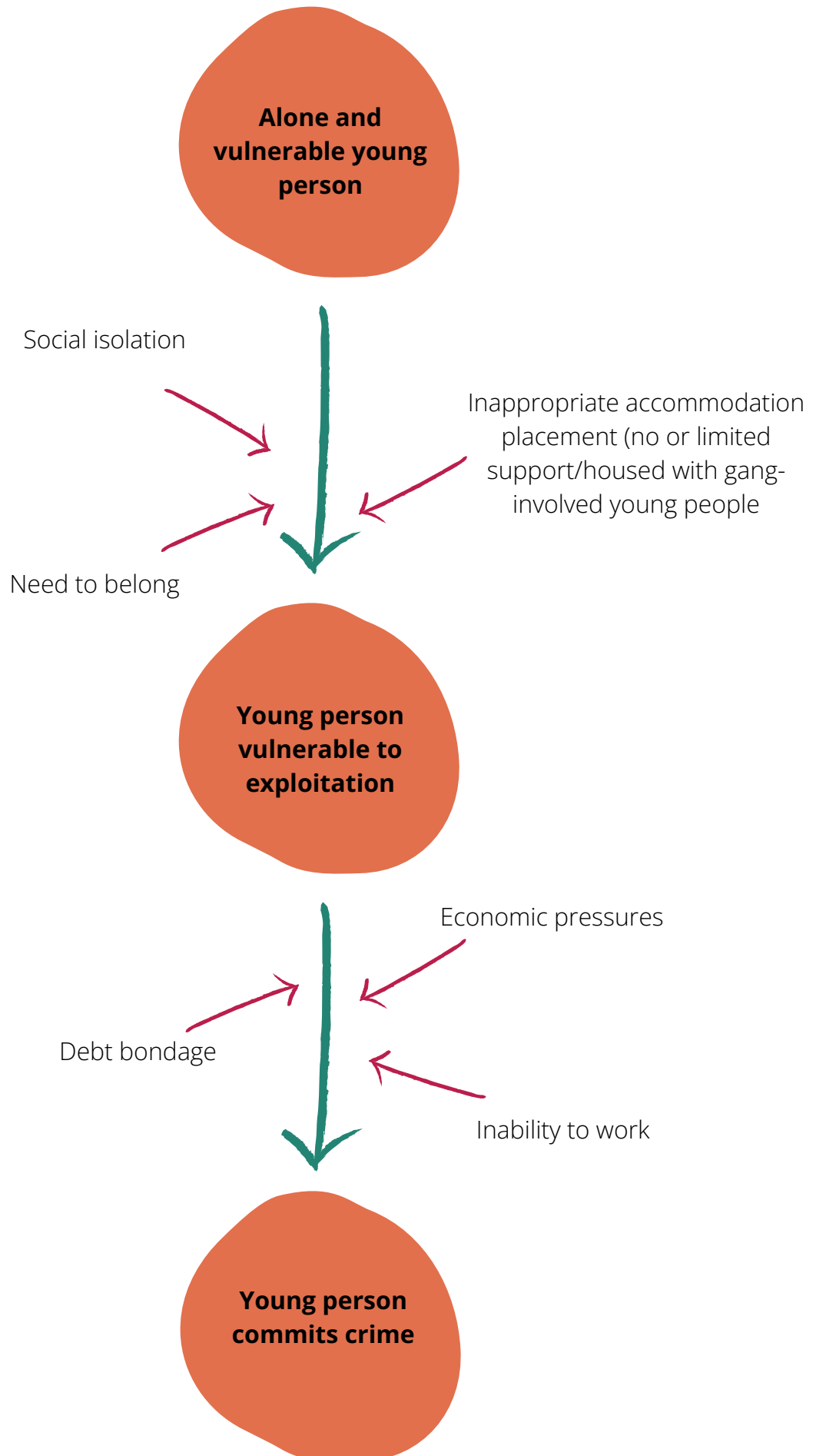
104. Sara Wood et al, Public Health Wales (2020), Adverse Childhood Experiences in child refugee and asylum seeking populations

105. Ross Whitehead et al, NHS Scotland (2019), The Relationship between a Trusted Adult and Adolescent Health and Education Outcomes, Edinburgh, NHS Health Scotland

106. Sara Wood et al, Public Health Wales (2020), Adverse Childhood Experiences in child refugee and asylum seeking populations

Foundation 63, in their guide for clinical psychologists providing mental health care to unaccompanied children seeking asylum, listed a number of protective factors taken from peer-reviewed academic research. These factors relate to both the individual and the community: "Community protective factors include same ethnic group contact, maintaining connections to their culture, stable accommodation and minimal moves, connections with mentors or community groups, peer friendships and other social support, and stability at school. Individual protective factors include coping and problem-solving skills, positive self-esteem, hope for the future, faith or religious orientation, language proficiency and [good] physical health" (107).

107. Foundation 63 (2020), Practice guidelines for clinical psychologists for supporting appropriate care and treatment for Unaccompanied Asylum-Seeking Minors in the United Kingdom



Traumatised young person



Reduced window of tolerance



Pushed into 'fight or flight' mode



Anger and aggression



Poor judgement and decision making



Substance abuse



Lack of knowledge of UK law



Young person commits crime

III - How behaviours resulting from vulnerability are surveilled and responded to

In Part I and Part II, we established that young people are especially vulnerable due to negative experiences before and after arriving in the UK and examined how this vulnerability can result in behavioural issues. In Part III, we consider how the state responds to such behaviours. Despite the lack of support received in Home Office and local authority accommodation, children and young people seeking asylum often live in environments where staff exercise discipline and control and they are also likely to be overpoliced in the community. This has a significant impact on the likelihood of them coming into contact with the police and the criminal justice system.

a. Surveillance of looked-after children and care-leavers

"The conditions that these young people are placed in... which are so unmonitored by social services, and where they subcontract to private housing providers and... you have key workers who don't require any basic training to be a key worker... you're not required to have youth work qualifications or social work qualifications... to work with such immensely vulnerable young people, there will be conflict... It's not fair on a staff member who's had no training to put them in a job where somebody could attack them and they have no idea what to do. It's [also] an understaffing issue. So very often, there has been one staff member on site alone on a night shift. If something breaks out, they're petrified, they call the police."

Maria*, Caseworker

While only 6% of children in care in England get in trouble with the law, they are six times more likely to be cautioned or convicted of an offence than other children (108). Although less than 1% of the population have been in the care system, around half of the children currently in custody in England and Wales have been in care at some point.

108. Lord Laming, Prison Reform Trust (2016), In Care, Out Of Trouble: How the life chances of children in care can be transformed by protecting them from unnecessary involvement in the criminal justice system

For children living with their parents, instances of poor behaviour are perhaps less likely to result in contact with the police when compared to children and young people living in staffed accommodation. Police were called out to children's homes 23,000 times in 2018 (109). Almost half of these calls were in response to a child going missing. The National Protocol on Reducing Unnecessary Criminalisation of Looked-After Children and Care-leavers (110) notes that *"unaccompanied asylum-seeking and migrant children who are looked after are especially vulnerable should they go missing from their care placement. Not only are they at risk of being exploited or mistreated, they are also often at heightened risk of being coerced into crime, including being radicalised."*

However, these homes are also calling the police in response to 'behavioural issues'. The National Protocol was published in 2018 by the government and is a recommended framework aimed at local authority children's services, local care providers (fostering services, children's homes and other arrangements), police forces, Youth Offending Teams (YOTs), the Crown Prosecution Service (CPS) and HM Courts and Tribunal Service. It strongly dissuades authorities from involving the police in incidents that occur in residential care placements. It asks that carers work to defuse and de-escalate as a first response, and to ask: *"Would I have called the police if this were my own child?"* This extends to care-leavers up to 25, as *"Care-leavers often remain vulnerable and all agencies should be aware that childhood trauma can continue to affect behaviour and behavioural and emotional development into early adulthood, including poor emotional regulation and impulse control."*

In 2021, the London Mayor's Office for Policing and Crime (MOPAC) produced a similar document, 'Reducing criminalisation of looked-after children and care leavers: A protocol for London' (111). The protocol notes that *"responses by carers and other agencies to children's difficulties can cause, contribute to, or exacerbate the problem [of criminalisation]... [by] for example, carers calling the police unnecessarily for a minor incident"*. Strategies employed within the protocol strive *"to ensure that the automatic response to a crime committed by a looked-after child is not a criminal one"*.

109. Howard League for Penal Reform (2019), [Howard League research finds children's homes calling the police 200 times a year](#)

110. Department for Education, Home Office, Ministry of Justice (2018), [The national protocol on reducing unnecessary criminalisation of looked-after children and care leavers](#)

111. MOPAC (2021), [Reducing criminalisation of looked-after children and care leavers: a protocol for London](#)

However, even with the National Protocol / the MOPAC Protocol, local authorities might struggle to implement policies that might de-escalate offending behaviour and reduce criminalisation of LAC and care-leavers for various reasons. For example until very recently, there were no national standards for 'unregulated' independent and semi-independent provision for looked after children and care leavers (112).

"I used to see a lot of the police being [called] when all other options haven't [yet] been exhausted... For example, a young person is going through really serious mental health distress, and they're really not happy with where they're living. And they refuse to return [home] or they refuse to leave.. they're shouting and screaming, and they're really unhappy. Really, really often you get a police officer called out in those situations... it's a threat that's used: 'If you don't do what we say, we're going to have to call the police, and if we have to phone the police on you, the police will let the Home Office know, if you keep having problems with the police, that will affect your asylum claim.'"

Serena*, Social Worker

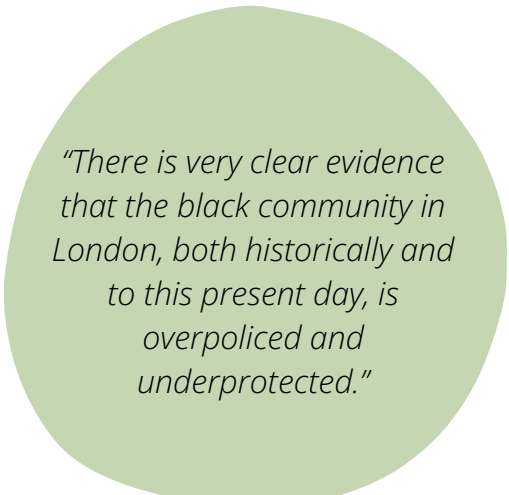
b. Surveillance of Young Adults living in Home Office accommodation

There is no protocol for reducing criminalisation of young adults seeking asylum living in privately-run hotels or dispersal accommodation – even though they are likely to be of the same age and to have similar experiences to their looked after peers. In such environments, disagreements between staff and young people – or between different groups or individuals sharing a small amount of space – can lead to arguments, anger and fights. The threat of criminal prosecution is used as a means of ensuring compliance in environments that are regularly far below an acceptable standard of living.

112. Since September 2021 it has been illegal to place under-16s in unregulated provision. The government consulted on introducing national standards for unregulated provision for 16 and 17 year olds. They recently announced all supported accommodation providers for looked after 16- and 17-year-olds will be required to register with Ofsted and meet standards from October 2023; Depart for Education and The Right Hon Claire Coutinho MP (2023), [Government bans unregulated accommodation for young people in care](#)

Three companies – Serco Ltd, Mears Ltd and Clearsprings Ready Homes – currently provide housing to all adult asylum-seekers. The Home Office, not the people seeking asylum, is the ‘customer’ of these companies. A ‘Statement of Requirements’ sets out the contractual requirements for how these accommodation providers “*shall manage antisocial and violent behaviour (including violent extremism) that occurs in accommodation [they] provide*” (113). The Accommodation Providers (APs) are expected to do this by investigating and recording all incidents, informing the police and reporting to the Home Office with supporting evidence. As noted, the ‘Statement of Requirements’ has no youth-specific provision, but does set the standards and training required for accommodation staff, including safeguarding, ethnic diversity and cultural awareness, suicide and self-harm awareness and prevention, vicarious trauma, and training related to required housing standards and relevant regulatory requirements. However, in public statements, Home Office ministers and officials have indicated a desire to use minimum standards of adult asylum accommodation as a means to deter the migration of asylum-seekers to the UK (114).

c. Over-policing in the community



“There is very clear evidence that the black community in London, both historically and to this present day, is overpoliced and underprotected.”

Baroness Louise Casey, author of the Casey Review of the Metropolitan Police Service, 2023

The majority of people within the UK’s asylum system are people of Black, Asian and other minority ethnicities (115). People of Black, Asian and other minority ethnicities in the UK are disproportionately in contact with the police. In the year to March 2021, Black people were seven times more likely to be stopped and searched than white people, Asian people were 2.6 times more likely, and those of mixed ethnicity were 2.3 times more likely (116). Black people are also disproportionately stopped by the police when travelling by other means: a pilot study in London found that Black people were 56% more likely to be stopped by the police while driving compared to white British people (117).

This over-policing increases the likelihood that people in these communities will be in contact with the police and therefore charged with an offence and criminalised.

113. Asylum Accommodation and Support (2020), [Statement of Requirements](#)

114. The Guardian (2023), [Robert Jenrick: asylum seekers' housing to meet 'essential living needs and nothing more'](#)

115. Home Office (2023), [Asylum and resettlement datasets](#)

116. StopWatch (2021), [Stop and search, a young person's burden](#)

117. Vikram Dodd & Mirren Gidda, The Guardian (2022), [Met to stop recording ethnicity of drivers stopped by its officers](#)

"[Asylum-seeking] young people... come into contact with the police, because they live in inner cities, and are more likely to be stopped and searched, and are more likely to be outside... So we [represent] a lot of people... who fit this group, who seem to disproportionately come into contact [with the police] for things like fare evasion and driving scooters without insurance, for example."

Jonathan*, Criminal Defence Solicitor

Already an over-policed community, young people seeking asylum are also in contact with the police upon arrival in the UK after arriving in small boats. Those who arrive in the back of lorries come to the attention of the police through Operation Innerste, the little-understood, multi-agency safeguarding initiative developed in 2017 by the Home Office to stop the trafficking of unaccompanied children. Police officers meet the children for a 'welfare conversation' and collect photographs and the child's fingerprints. Between 2017 and 2023, the programme collected the biometric information of 2,400 unaccompanied children (118). Whilst Operation Innerste has never been evaluated to assess whether it achieves its aims it does increase contact between children and the police, at a time when that child is perhaps feeling at their most stressed and vulnerable.

d. Pursuing young people through the courts

A key principle in the national protocol for reducing unnecessary criminalisation of looked after children and care-leavers is that *"restorative and diversionary approaches should underpin our response, whether the behaviour occurs in a child's placement or the wider community... In circumstances where informal, community resolution is inappropriate, police should, as a matter of routine, consider diversion from criminalisation/prosecution"* (119). The London protocol is even more emphatic: its key principle is that *"diversion from the criminal justice system should be at the heart of any response to offending behaviour"* (120).

Yet, in our review of the Commons casework data, it is clear that young people seeking asylum who commit minor offences are being pursued through the courts by the police and the CPS. This is costly for the criminal justice system, but also has a cost for the young person and their ability to recover from trauma and integrate into society in a new country.

118. Mirren Gidda, The Observer (2023), [Fears grow over police collecting data from lone child refugees in UK](#)

119. Department for Education, Home Office, Ministry of Justice (2018), [The national protocol on reducing unnecessary criminalisation of looked-after children and care leavers](#)

120. MOPAC (2021), [Reducing criminalisation of looked-after children and care leavers: a protocol for London](#)

The criminal justice system must get better at engaging children and young people on their own terms – rather than pulling them into a criminal justice procedure it is often difficult to disentangle themselves from, and which further entrenches vulnerability which, as discussed, is often a precursor for further offending. The multiple ways in which young asylum-seekers are surveilled in their home environments and overpoliced should be acknowledged. Discretion must be more actively used to not charge where it is not in the public interest to do so (where economic deprivation leads to fare evasion, or mental health difficulties leads to criminal damage).

Diverting young people away from the criminal justice system should be a key part of a strategy to reduce criminalisation for young asylum-seekers – and greater efforts could be made to engage police forces and the CPS in such a strategy. For example, the automatic charging by the police in London of young people using e-scooters could be replaced with a programme of education attached to a warning system.

Our research also indicates failures in recognising where a young person has been coerced into criminal activity. Another key principle in the national protocol is that *“all agencies should understand the specific needs of children and young people (both UK and foreign nationals) who have been trafficked or are victims of modern slavery. They should be able to identify where they may have been coerced into undertaking or becoming involved in criminal activity by their traffickers. This includes being aware of the non-prosecution principle in Section 45 of [the] Modern Slavery Act 2015”* (121).

In Scotland, the government has tried in recent years to address the root causes of offending by young people and to redirect them away from the criminal justice system: *“As far as possible, children and young people should be kept out of the criminal justice system, with proven alternative interventions delivered to address the behaviour and its causes”* (122). One of the key parts of the Scottish strategy is *“maximising opportunities to divert young people from prosecution”*. There are no juvenile courts in Scotland, unless the case involves the most serious crimes such as homicide or rape, which go into the mainstream legal system. Instead, children aged 15 and under, and potentially up to 17 in future, are referred to a panel within the children’s hearing system (123). These panels focus on the child’s behaviour and circumstances, looking at a root cause of the offence (124). The number of young people prosecuted in Scotland’s courts has reduced by 78% in the 10 years prior to the publication of the most recent progress report (125).

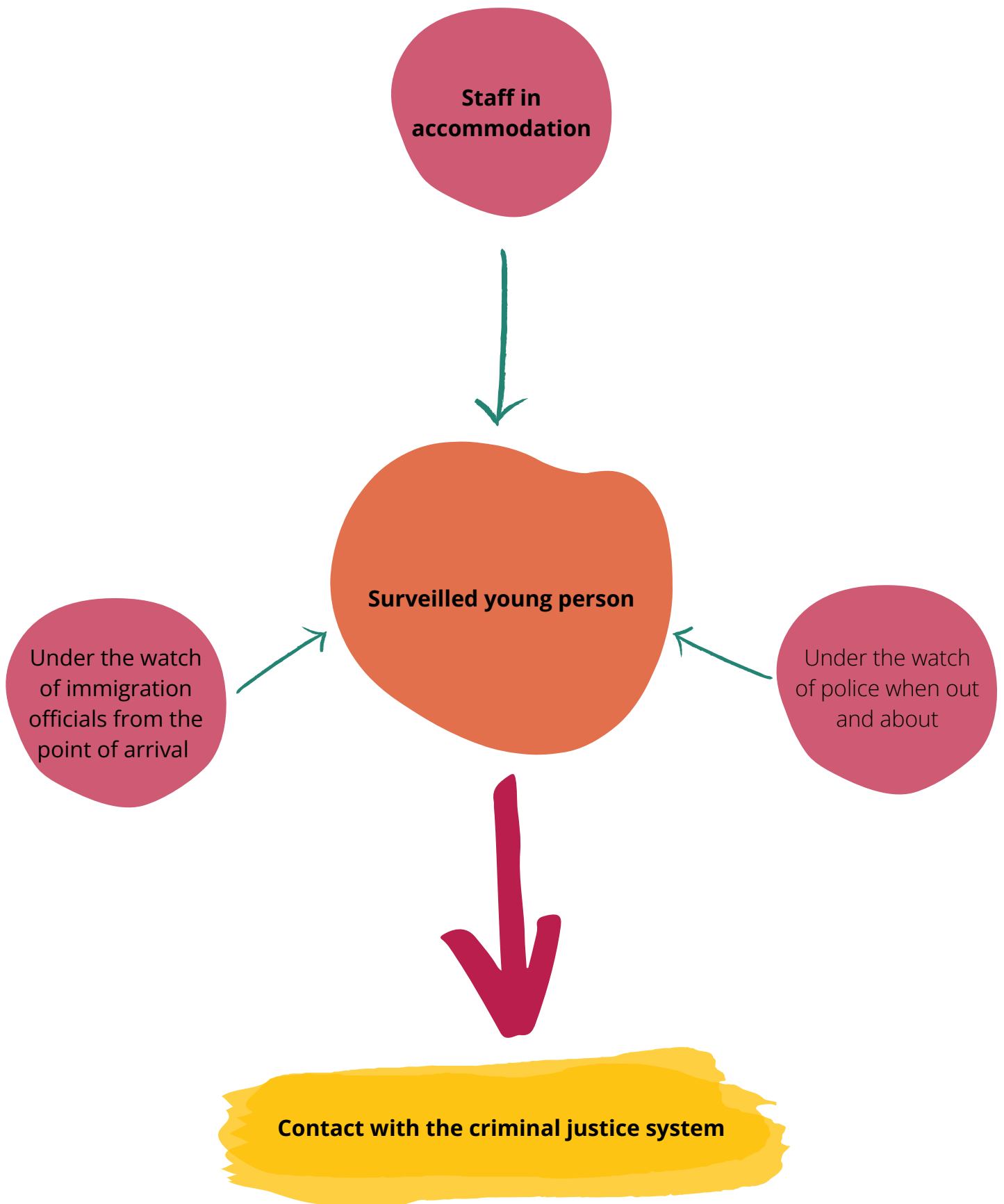
121 Department for Education, Home Office, Ministry of Justice (2018), [The national protocol on reducing unnecessary criminalisation of looked-after children and care leavers](#)

122. Scottish Government (2017), [Youth justice strategy: progress report](#)

123. The Children (Care and Justice) (Scotland) Bill would mean some changes to the Children’s Hearings System, most significantly raising the age of referral to the Children’s Reporter from 15 to 17 years of age. It is expected to come into force in April 2024.

124. Severin Carrell, The Guardian (2019), [How Scotland’s youth justice system puts welfare at its heart](#)

125. Scottish Government (2017), [Youth justice strategy: progress report](#)



4. Conclusions

This study looked at the experiences of young people seeking asylum who have sought criminal legal representation for criminal offences, such as driving offences, immigration offences, non-payment of fines, drugs possession, violent crime, and criminal damage. Some key patterns emerged.

1. Young people seeking asylum are being criminalised for minor offences – riding e-scooters, not paying train fares, failing to pay a fine on time – but the consequences could be far greater for them than for other young people.

Such minor offences will have to be declared during the asylum application process and during further applications for status and citizenship – and could be disqualifying.

2. There are economic pressures that increase the risk of young people seeking asylum undertaking illegal work.

Asylum-seekers cannot normally legally work for the duration of their asylum claim – which can take years. They rely on small amounts of money from the Home Office or from local authorities during this time. Some young people are under pressure to provide for their families living in abject poverty abroad, or need money for medical issues or to (re)pay smugglers and move across borders. As a result, some young people do 'black market' or cash-in-hand work or become involved in the drugs trade.

3. Young people seeking asylum who are victims of exploitation are still at risk of criminalisation.

Young asylum-seekers in London are being criminalised for possession of drugs with intent to supply and other crimes associated with criminal exploitation. In at least one case, the young person had a positive reasonable grounds decision in response to a referral to the National Referral Mechanism (NRM), and was still charged and required to attend court, before charges were later dropped.

4. Some young people seeking asylum arrested by the police and charged with a crime are innocent of any offence.

In a large proportion of the casework undertaken by Commons Law CIC involving young asylum-seekers who needed to attend court either the defendant was acquitted in court by magistrates or a jury, or no evidence was offered by the prosecution during trial (6 out of a total of 15 cases).

5. The Nationality and Borders Act 2022 has rendered the main route to claim asylum, which was previously legal, a criminal offence.

Entering the UK by clandestine means (inside of a lorry or on a small boat) to lodge asylum upon arrival has until recently been the main lawful route for asylum-seekers. Now, changes in the law mean that the majority are breaking the law and risk criminalisation simply by arriving on UK shores without leave to enter.

6. Young people seeking asylum are highly vulnerable due to their experiences before arriving in the UK.

Unaccompanied children and lone young adults who travel to the UK to claim asylum are often fleeing from conflict, oppression and human rights abuses. They are experiencing family separation. When crossing the external and externalised borders of Europe and the UK, they regularly experience abuse and deprivation.

7. By failing to provide stability and a sense of security, the UK's immigration system makes people seeking asylum more vulnerable.

Adults regularly wait years for a decision on their asylum claim and children face an even longer wait. The asylum process compounds trauma through its adversarial nature, and by requiring young people to declare traumatic experiences and have those experiences questioned by authority figures. Use of barges, military sites and 'prison-like' hotels as accommodation for asylum-seekers, particularly young people, is inappropriate and only increases their vulnerability.

8. Young asylum-seekers exhibit a number of coexisting risk factors for committing criminal offences.

They are likely to have had adverse childhood experiences, a high incidence of trauma and trauma-related mental health issues, or to have experienced bereavement; and to be young/adolescent; to be male; without legal status; alone and feeling a need to belong.

9. Trauma and poor mental health are key factors in understanding why some young people seeking asylum come into contact with the criminal justice system.

The majority of Commons' casework involved clients who either had formally diagnosed mental health conditions or were presenting with symptoms typically associated with a mental health condition. Research identified during the literature review indicates trauma and poor mental health as a risk factor for criminality.

10. A care system defined by a lack of resources, inappropriate accommodation placements and inadequate levels of support for care-leavers increases the likelihood of young people seeking asylum committing criminal offences.

The deteriorating mental health and wellbeing of children in care and care-leavers increases risks around criminality. Protective factors are likely to include having positive relationships with adult role models (such as teachers, youth workers, social workers, and accommodation key workers). Lack of support – due to lack of resources, a lack of intervention post-18, poor accommodation placements, and limited access to treatment for mental health difficulties – increases the risk of criminality and criminal exploitation.

11. Young people seeking asylum are more likely to come into contact with the police than their peers, which increases the risk of criminalisation.

This is due to living in staffed accommodation (in care or in the adult asylum support system) and due to being mostly from Black, Asian, and minority ethnic backgrounds. Both result in higher contact with the police and thus a higher risk of criminalisation.

5. Recommendations

In order to reduce criminalisation, central and local government should:

centre healing from trauma.

Young people seeking asylum are almost always survivors of violence and/or traumatic experiences. Reducing criminalisation means ensuring that these young people are supported to heal and recover from their trauma. This does not just mean access to mental health services and evidence-based treatments for their difficulties but also to other things important to wellbeing, such as good quality housing, access to community and familiar culture. In turn, this also means ending systems that result in re-traumatisation, including within the immigration and asylum system, and, where possible, allowing young people to reunite with their family.

address barriers to economic access.

Young people seeking asylum are normally not able to work for the duration of their asylum claim. Living on meagre amounts of money provided by the Home Office or local authorities, they face economic pressure to undertake illegal cash-in-hand work – and are at an increased risk of criminal exploitation. Reducing criminalisation means lifting the ban on work – but also ensuring access to skills-based education and training, apprenticeships and other opportunities that smooth entry into well-paid employment.

prioritise support for what research shows are ‘protective factors’ for mental health and wellbeing of young people seeing asylum.

Giving young people access to positive relationships with adults in their home environment and in places of education would reduce criminalisation. Allowing them to sponsor their family members to the UK is one way to ensure they can experience love and care from adults. Within homes where behavioural problems exist, adults should work to resolve matters without resorting to using the criminal justice system. A strategy to reduce criminalisation must also strive to improve young people in care's relationships with support workers, social workers and personal advisers. The introduction of Youth Welfare Officers in Home Office accommodation could provide similar support for young adults as exists for those in care. Other important ‘protective factors’ that should be supported through policy include ensuring young people seeking asylum have same ethnic group contact; are able to maintain connections to their culture; experience stable accommodation and minimal moves; and have access to religious or faith-based community; as well as stability in education.

not criminalise young people just for seeking asylum.

The law should not unnecessarily criminalise young people seeking asylum. As it stands, the Nationality and Borders Act 2022 puts all asylum-seekers at risk of criminalisation simply for accessing a fundamental human right: the right to claim asylum. Hundreds of young people have already been imprisoned under this flawed new legislation, further traumatising very vulnerable individuals, many of whom go on to be granted asylum and then to live in our communities.

ensure the children's social care system and the police are better able to redirect young people away from the courts and criminal prosecution.

Young people seeking asylum live in environments (in care and in Home Office accommodation) in which their behaviour is surveilled and disciplined through contact with the police. Systemic change is necessary to ensure that all professionals working with these young people - from carers to keyworkers to social workers, and the police themselves - are taking action at all times to reduce police contact and divert young people away from the courts and criminal prosecution.

The criminal justice system must be better at engaging young people on their own terms. Discretion must be more actively used to not charge where it is not in the public interest to do so. Education should be prioritised over punishment. The Single Justice Procedure (SJP) should change so that young people aren't criminalised for failing to respond to mail that they perhaps don't fully understand. Recognising where a young person has been coerced into criminal activity - even where it does not meet the high threshold set by the Modern Slavery Act defence - would prevent unnecessary criminalisation of young migrants at risk of trafficking or other forms of criminal exploitation.

finally, more research needs to be undertaken that can better inform policy.

The research that informed this report was small-scale and exploratory. We hope that further research will be undertaken that might better illuminate the mechanisms by which young asylum-seekers end up in touch with the criminal justice system – and can propose specific policy solutions that reduce and prevent criminalisation, and promote the wellbeing of these young people.

6. Appendices

a. Methodology in detail

Literature Review

A literature review was undertaken to understand what academic research had been undertaken on the topic of “crime”, “criminalisation” and “young asylum-seekers” using Google Scholar and other online databases. Studies returned by this search were then assessed as to their suitability, and included in this report when relevant. In addition, this research drew on publicly-available information, including news articles, legislation, reports commissioned by third-sector organisations, policy documents and parliamentary committee reports. These documents were not drawn from a systematic review of the literature but identified through extensive reading of a broad range of material related to the lives of children and adults seeking asylum.

Analysis of Casework Data

This research made use of casework data collected by Commons Law CIC, with the consent of clients. The data from the casework analysis is as follows:

Country of origin	Number of cases
Afghanistan	4
Albania	8
Eritrea	11
Ethiopia	2
Kuwait	2
Iran	1

Country of origin	Number of cases
Iraq	4
Sudan	3
Unknown	1

	Number of cases
Looked-after child, living in local authority accommodation	7
Care-leaver, living in local authority accommodation or independently	14
Young Adult, living in Home Office accommodation or independently	9
Unknown	5

Interviews with Young People

To gain a fuller understanding of how young people seeking asylum experienced the criminal justice system, and to fully understand their criminalisation, it was essential that those individuals who had been in contact with the criminal justice system were able to talk about their experiences. Six young people took part in in-depth interviews. They were all male and all over 18 years of age at the time of their interview.

The interviews lasted between 30 minutes and 90 minutes. Questions were posed about each person's experiences of the police and criminal justice system in their home countries, on their journeys to the UK and here in the UK. Where the interviewee had particular experiences within the criminal justice system, such as having been arrested or been in court, further questions were posed.

This research has undergone an internal ethics approval process to minimise any risks to the young people interviewed. Due to concerns about re-traumatising young people, intrusive questions about their histories and the potentially traumatic events of their past were not posed. Young people were made aware that they could stop the interview at any time and there was no requirement to answer every question they were asked.

Country of origin	Number of young people
Afghanistan	2
Albania	1
Eritrea	2
Kuwait	1

Interviews with legal professionals

This research included interviews with legal professionals. In total 10 legal professionals working in immigration, criminal and community care law participated in the research through semi-structured interviews. All those interviewed had recent experience of working with and representing young asylum-seeker clients in their relevant area of law.

The interviews lasted between 30 and 90 minutes. Questions covered practitioners' experience of working with young asylum-seekers who had come into contact with the criminal justice system. Further questions looked to illuminate the different reasons young asylum-seekers come into contact with the criminal justice system, difficulties they experience in that system, what the outcomes are like for criminalised young asylum-seekers and what could be done to reduce criminalisation and ensure better outcomes. In addition 1 academic researcher was also interviewed about their knowledge of the issue of criminalisation of young asylum-seekers. These interviews provide subjective analysis of the experiences and issues affecting criminalised young asylum-seekers.

Legal professionals	Number of interviews
Immigration Solicitor	3
Criminal Defence Solicitor	4
Criminal Barrister	1
Community Care Solicitor	2
Academic Researcher	1

Interviews with supporting professionals

This research interviewed eight supporting professionals who support children and young people seeking asylum, including social workers, key workers and charity caseworkers. The interviews lasted between 30 and 90 minutes. Each person was asked about their experience of working with young asylum-seekers that had come into contact with the criminal justice system, why they thought these asylum-seekers had come into contact with the system, what role the care system can play in supporting young looked after children and care leavers who are seeking asylum, and what factors shape the likelihood of them entering the criminal justice system, and what systemic issues are at play in the lives of these young people. These interviews provide subjective analysis of the experiences and issues affecting criminalised young asylum-seekers.

Supporting professionals	Number of interviews
Social Worker	2
Third-Sector Caseworker	4
Accommodation Keyworker	2

Observations of court proceedings at Canterbury Crown Court

The researcher observed court proceedings involving the prosecution of young asylum-seekers for immigration offences, attending hearings at Canterbury Crown Court on the 27, 28 and 29 June 2023. The purpose of this visit was to watch court proceedings in cases involving the prosecution of young asylum-seekers for immigration offences. The researcher observed part or all of five cases, including the opening of a trial of a teenager charged with facilitating entry to the UK of those without leave to enter and four counts of manslaughter, and the sentencing hearing of four other young asylum-seekers, prosecuted for piloting small boats across the Channel. These subjective observations about court proceedings helped to better understand how changes brought about by the Nationality and Borders Act 2022 are resulting in the criminalisation of young asylum-seekers.

Limitations of research

This report relates to a small-scale, exploratory research project. Interviews were primarily with persons based in London (but also Kent and Birmingham), a large and highly diverse urban environment in which the issues facing this client group might differ from those who live in more remote or rural settings. For example, in London, there are many refugee charities and community groups supporting newly-arrived migrants, and more settled migrants who work as interpreters and can perhaps be more easily accessed when in court or in police custody.

Interviews conducted for this research were limited in scope. In ideal circumstances, many more interviews would have been conducted, to capture a fuller breadth of experience. For example, interviewees came from only four nationality groups, and all were male. This research did not include interviews with any young people who had experience of prison in the UK and therefore this is not an area that is explored in this report.

Casework data may be skewed by the way in which cases are referred to Commons Law CIC. Commons represented clients that they met while acting as duty solicitors at police stations. They also independently received ad hoc calls from people who had their contact details from word of mouth. Lastly, Commons also received clients who were referred to them by London-based community organisations, including Da'aro Youth Project and Shpresa. Da'aro Youth Project is a charity that supports young asylum-seekers, primarily from Eritrea, while Shpresa predominantly works with Albanian asylum-seekers – therefore those nationality groups and the concerns stemming from their experiences may be overrepresented in the research. This research is purposefully broad, in that we set out to answer a number of questions about crime and migration, and to consider the experiences of diverse young people, from different countries of origin, with different experiences of the UK immigration system, local authority care systems, and the UK criminal justice system. The intention is to provide an overview and to encourage further, more targeted research on this broad topic whilst also offering some conclusions and recommendations.

b. Terminology

Asylum-seeker A person who has sought refugee protection in the United Kingdom by way of an asylum claim.

Care-leaver A young adult aged 18 to 25 who was previously a looked-after child.

Caseworker For the purposes of this report, a charity worker who provides support to young asylum-seekers, including advice, referrals and advocacy.

Corporate Parent An individual with shared responsibility across a council or local authority to provide the best possible care and safeguarding for children who are looked after and those who are care-leavers.

Criminalisation The process by which a person receives a criminal conviction or caution.

Criminal exploitation Where a person is persuaded or forced into criminal activity by another person or persons.

Crown Prosecution Service (CPS) The body that prosecutes criminal cases that have been investigated by the police and other investigative organisations in England and Wales.

Humanitarian Protection What might be granted instead of a refugee status when an applicant does not qualify for protection under the Refugee Convention because they would not be persecuted for the Convention reason (race, religion, nationality, membership of a particular social group, political opinion), but they are still in need of international protection because they may be at risk of serious harm if they are returned to their country of origin.

Key Worker Local authorities have responsibilities to looked-after children and care-leavers. These responsibilities can be outsourced to key workers, who are staff that might be employed by a private company, and who may or may not be working in the child or young person's accommodation.

Legal Aid The provision of assistance to people unable to afford legal representation and access to the court system. Legal aid is regarded as central in providing access to justice by ensuring equality before the law.

Looked-after Child A child who has been in the care of their local authority for more than 24 hours.

No Recourse to Public Funds A person will have no recourse to public funds when they are 'subject to immigration control', as defined in Section 115 of the Immigration and Asylum Act 1999. They cannot claim public funds such as benefits or housing assistance unless an exception applies.

Personal Advisors (PAs) An individual responsible for working with young people who have left the care of the Local Authority (care-leavers). The PA will hold a pivotal role in the planning and review of services as set out in the Pathway Plan. The PA must be suitably trained in carrying out their role, and will maintain regular contact with the young person until they reach 21 (or 25 for those who request continued support). Where a PA loses touch with a young person, relevant agencies must be notified and all immediate practicable steps must be taken to re-establish contact.

Refugee For the purposes of this report, someone who has had a positive grant of leave following an asylum claim. This might be Refugee Leave to Remain or Humanitarian Protection Leave to Remain.

Remand Pre-trial custody. If a magistrate or a judge decides to deny bail, a criminal defendant will be sent to prison on remand until their trial can be heard or they are sentenced.

Section 20 Accommodation Under Section 20 of the Children Act 1989, local authority children's services must provide accommodation to certain children in need in their area. Section 20 is used to accommodate children who are unable to live with their parents.

Section 45 Defence Section 45 of the Modern Slavery Act 2015 offers a defence to victims of slavery or trafficking who commit a criminal offence. The defence is available to any person compelled to commit an offence where this "compulsion is attributable to slavery or to relevant exploitation, and a reasonable person in the same situation as the person and having the person's relevant characteristics would have no realistic alternative to doing that act."

Section 95 Support If you have claimed asylum, and do not have anywhere to live, or have somewhere to live but do not have the money to support yourself, you may be able to get section 95 Support, a.k.a. "asylum support". This is provided by the Home Office and, depending on your circumstances, can include housing and/or basic living expenses (money). This is provided under Section 95 of the Immigration and Asylum Act 1999. More information about this kind of support is provided in section 3, Part II - a.

Section 98 Support Temporary, emergency support for people seeking asylum who have applied and are waiting for section 95 support. Often called 'initial accommodation', this is provided under Section 98 of the Immigration and Asylum Act 1999.