

Written Evidence by Refugee and Migrant Children’s Consortium Introduction (ASU0028)

1. The Refugee and Migrant Children’s Consortium is a group of over 70 organisations working to promote and protect the rights of young refugees and migrants. Over recent years we have seen the government significantly erode the rights of children seeking asylum not just by making the asylum system less accessible and more punitive but by also excluding them from the child protection and welfare frameworks that *should* apply to all children in this country, regardless of nationality, ethnicity or immigration status.
2. The Home Office has a duty to safeguard and promote the welfare of children in the United Kingdom under Section 55 the Borders, Citizenship and Immigration Act 2009. It is through section 55 that the UK aims to ensure its obligation to ensure that the best interests of the child is a primary consideration in all law, policy and decision-making – as set out in Article 3 of the UN Convention on the Rights of the Child 1989 – has been translated into UK law.¹ Over the last decade,² 86,436 children claimed asylum in the UK – almost a quarter (23%) of all asylum main applicants and dependents; 25,759 (7%) of these were recorded as unaccompanied asylum-seeking children under 18 while an additional 60,677 (16%) were children who claimed with their families.³ Children, young people and families are a significant part of the asylum-seeking population. Yet current government policies and practices in relation to children simply do not protect them *as children* nor do they take their best interests into consideration. This response looks at the impact on the rights of children of detention, age disputes, delays, lack of legal advice and inappropriate accommodation and support.

Detention

Are the rules on detention and processing, and the treatment of detained asylum seekers, consistent with the UK’s human rights obligations?

3. Unaccompanied children should not generally be detained, and children and families should only be detained as a last resort with strict limits on the length of time they are detained. As past research by RMCC members has shown, immigration detention is incredibly damaging for children even for short periods of time.⁴ However, in 2021, 515 children entered immigration detention – a staggering 492% increase from 87 children in the previous year and more than in 2010 when the government changed its policy to stop routinely detaining large numbers of children.⁵ 454 (88%) of those children had arrived in the UK in small boats after crossing the Channel.⁶ In 2022 lower numbers were recorded⁷

² 2012 to 2021

³ Analysis of Home Office quarterly statistics – Asy_D01

⁴ Medical Justice (2010) 'State Sponsored Cruelty': Children in immigration detention; The Children’s Society (2011) What have I done? The experiences of children and families in UK immigration detention: Lessons to learn

⁵ British Politics and Policy at LSE, The UK asylum backlog and increased use of immigration detention are negatively impacting children's welfare

⁶ *ibid*

but not all detention facilities are listed in published statistics, including Manston short-term holding facility in Kent which detains individuals arriving by small boats and opened that year. An HM Prisons Inspectorate report on the Western Jet Foil, Lydd Airport and Manston revealed that 40 children had been detained there between April to June 2022 alone, five of whom were unaccompanied.⁸ These figures are not currently part of published statistics.

4. Recommendations:

- **Children should not be detained for the purposes of immigration control and should not be detained because there is no appropriate accommodation available.**
- **The government should provide transparent, accurate and clear data on the numbers of child entering detention, their stated age upon entry, the length of time they are detained for and whether they are detained with family members or alone.**

Legal aid, accommodation, and subsistence

Is the support available to asylum seekers under the legal aid, accommodation, and subsistence rules compliant with the UK's human rights obligations?

Age disputes

5. One way in which the government denies children their rights is by denying they are children in the first place. Many children who come to the UK on their own from countries such as Afghanistan, Sudan and Eritrea are unable to show official identity documents, such as passports or birth certificates, because they have either never had them; they've been destroyed, lost or taken; or the child has been forced to travel on false documentation. Without ID it is extremely difficult to determine a child's age and many will have their age 'assessed' by the Home Office and/or local authority children's services.
6. To date, there has been an 212% rise in 'age disputes' on 2022 compared to the same period two years ago.⁹ This is because 2022 figures now also include children who are being incorrectly treated as adults by the Home Office following a short visual 'assessment' by officials at the border – Home Office policy on this was revised in January 2022 so that those who strongly look 'significantly over 18' are treated as adults.¹⁰

⁷ 21 children were recorded as having entered detention in January to September 2022. Analysis of detailed data table (Det_D01): <https://www.gov.uk/government/statistical-data-sets/returns-and-detention-datasets>

⁸ HMIP, [Report on an unannounced inspection of the short-term holding facilities at Western Jet Foil, Lydd Airport and Manston by HM Chief Inspector of Prisons \(25–28 July 2022\)](#), November 2022

⁹ From Jan to September 2020, 604 age disputes were 'raised' – for the same period in 2022, 1,885 were raised. In 2020, age dispute figures only covered those who were disputed but referred to a local authority for further assessment. Now they also include those simply treated as adults by the Home Office and not referred. See [Immigration statistics, year ending September 2022](#)

¹⁰ This is a return to previous policy following the Supreme Court decision in *BF (Eritrea) vs Secretary of State for the Home Department*, [2021] UKSC 38. See Home Office, [Assessing age for asylum applicants](#)

Children as young as 14 are then placed in immigration detention or alone in adult accommodation at significant risk.

7. The government's published data does not disaggregate to make clear how many children are treated as adults by Home Office officials, nor how many are subsequently placed in hotels or immigration detention, despite repeated calls from civil society and parliamentarians for this information.¹¹ Data collected by Helen Bamber Foundation through Freedom of Information requests shows that in January to March 2022, in 64 local authorities 211 young people were referred to children's services after having been sent to adult accommodation/ detention. Two thirds were found to actually be children - meaning that in just three months nearly 150 children already had been placed in adult accommodation or detention and would at that time have been at risk of removal to Rwanda.¹² Of the 233 young people referred to the Refugee Council in 2021 who had initially been determined by Home Office to 'certainly' be adults, 94% were later found to be children.¹³
8. The government has emphasised the threat posed by asylum seeking adults who pretend to be children if they are placed in schools. But it ignores the real risk of serious harm a child faces when wrongly assessed as an adult and placed in adult accommodation or – horrifyingly, there have been a number of reports of incidents of violence and sexual assault against children in hotels.¹⁴ The Joint Committee on Human Rights (JCHR) has already recognised that treating a child as an adult could result in trauma which may reach the threshold of violating Article 3 of the European Convention on Human Rights (ECHR) and earlier this year the European Court of Human Rights *Darboe & Camara v Italy* found violations of Articles 3 and 8 after a child was treated as an adult (due to a wrist x-ray) and placed in an adult reception centre.¹⁵
9. Children wrongly treated as adults receive no information or support on how to address what has happened to them and struggle to access legal advice.

10. Recommendations:

- **Age assessments are a sensitive matter and a complex process. Age assessments should be conducted by skilled social workers, whose practice is trauma-informed and child-centred, rooted in child protection.**
- **The Home Office should amend its policy on visually assessing age and ensure that all those claiming to be children whose ages are disputed are referred to child protection experts for a further assessment. In the interim it**

¹¹ See Stuart McDonald MP in Home Affairs Select Committee evidence session on 'The work of the Home Secretary', 23 November 2022

¹² The Observer, UK accused of attempting to deport children to Rwanda, 5 June 2022. This issue was debated in detail in the House of Lords on 21st July 2022.

¹³ Refugee Council, Identity Crisis, September 2022

¹⁴ The Independent, Labour MPs raise concerns over welfare of child migrants, 7 November 2022

¹⁵ Darboe and Camara v. Italy (coe.int)

should publish separate statistics on how many children are treated as adults following a Home Office visual ‘assessment’.

Unaccompanied children in hotels

11. The government’s practice over the past year and a half of placing unaccompanied children seeking asylum alone in hotels has undermined the very statutory framework established to protect children.
12. Local authorities in England have a legal duty to safeguard and promote the welfare of children within their area who are in need, under the Children Act 1989 – this includes caring for and accommodating unaccompanied children seeking asylum in their area as soon as they are referred or found.¹⁶ Central government must ensure local government budgets are sufficient to meet their statutory obligations.
13. In June last year, Kent County Council refused to take any more unaccompanied children into its care citing ‘extreme pressure’ on its services.¹⁷ The Home Office started to accommodate children in hotels while they were awaiting placement in other areas via the National Transfer Scheme but even when Kent eventually resumed responsibility for unaccompanied children the practice of placing children in hotels outside of the care of local authorities continued, despite the concerns raised by charities.¹⁸ 3,256 children, including almost 1,000 14 and 15 year olds, were accommodated in such hotels between October 2021 and October 2022.¹⁹
14. Due to the abject failure in safeguarding these children, between July 2021 and Oct 2022 there were 391 missing episodes and currently 222 children placed in hotels are missing.²⁰ Children as young as 10, including girls aged 12 and 13, have been placed alone in these hotels with no access to legal advice or mental health support, and little access to healthcare. Hotel staff without DBS checks have stayed overnight in hotels and opportunities to protect children from trafficking have been missed due to the working hours of the hotel social workers. Some children have spent up to 60 days in a hotel before being accommodated by a local authority.²¹
15. There is no lawful basis for the Home Office to house children in hotels and this is a very dangerous precedent which leaves some of the most traumatised and in-need children at risk and outside of our child welfare and protection system.

¹⁶ Department for Education, Care of unaccompanied migrant children and child victims of modern slavery: Statutory guidance for local authorities, November 2017.

¹⁷ BBC News, Kent to turn away lone child migrants from Monday due to "extreme pressure", 11 June 2021. BBC News, Kent council in child migrant legal threat to Home Secretary, 7 June 2021.

¹⁸ BBC News, Kent County Council resumes taking unaccompanied minors, 9 September 2021. <https://www.thetimes.co.uk/article/officials-warn-home-office-of-risk-to-child-refugees-in-hotels-279z0c2cz> <https://www.childrenengland.org.uk/news/vulnerable-children-must-receive-care>

¹⁹ <https://questions-statements.parliament.uk/written-questions/detail/2022-10-11/61091>

²⁰ <https://questions-statements.parliament.uk/written-questions/detail/2022-10-18/65898/>

²¹ Inspection of Country of Origin Information

16. **Recommendation: The government must, as a matter of urgency, ensure that local authorities are sufficiently funded to care for this group of children and cease the practice of putting them alone in hotels.**

Children and families in asylum accommodation and receiving Asylum Support

17. Children who claim asylum with their families are also being placed in hotels for extended periods of time, often without access to or extremely limited cash support (£8 a week). This type of accommodation, particularly where families are powerless to meet children's needs without any cash support where they are unable to buy basic things like clothes, nappies, wipes and appropriate food for their children, can severely impede on children's well-being, as numerous reports have shown.²²
18. Parents with children who are claiming asylum are generally not permitted to work which means they are dependent on low levels of financial support provided via the Home Office Asylum Support system which places families well below the poverty threshold. Even if families have been waiting a long time – as is increasingly the case – only the main applicant can apply for permission to work in a shortage occupation list after 12 months.
19. There are more than 37,000 people seeking asylum currently living in hotel accommodation and the number of families in hotels has continued to increase.²³ At the end of 2021, over 10,000 people in hotels had been there for over 3 months, and 10% (2,569) of all those staying in hotels were children.²⁴ Alongside poor nutrition, lack of appropriate activities or resources to support children, and serious welfare challenges due to a lack of access to cash, hotel stays have also meant children have been missing out on vital education, access to healthcare including routine immunisation programmes, social and developmental opportunities. The Independent Chief Inspector's report on contingency accommodation in 2022 showed that senior Home Office officials recognised that the use of hotels was “absolutely not appropriate for families”.²⁵ Yet the growing backlog in asylum decision-making means that more children and families are remaining on Asylum Support for longer and this in turn means longer periods in initial and contingency accommodation.

20. Recommendations:

²² For example, National Audit Office, Op. cit. Public Accounts Committee, Asylum accommodation and support transformation programme, 20 November 2020.

²³ BBC News, Colchester council criticises government over asylum seekers in hotels 4 November 2022

²⁴ Refugee Council (2022) 'Lives on Hold: Experiences of people living in hotel asylum accommodation. A follow-up report.' London: The Refugee Council: <https://media.refugeecouncil.org.uk/wp-content/uploads/2022/07/21080057/Lives-on-hold-research-report.-July-2022.pdf>

²⁵ Independent Chief Inspector of Borders and Immigration and HM Inspectorate of Prisons (2022) 'An inspection of contingency asylum accommodation May 2021 – November 2021': <https://www.gov.uk/government/publications/an-inspection-of-contingency-asylum-accommodation>

- **Hotels should only be used to accommodate families for the shortest possible time and families must be provided with cash support in line with Section 95 support rates.**
- **The government should publish comprehensive data on the numbers of children staying in hotels – either on their own or with their families – as part of its quarterly statistics, including length of stay.**

Access to legal advice

21. The historically strong legal framework for children and young people has been significantly eroded in recent years. This is particularly the case for children and young people seeking advice and representation on immigration and asylum matters. There has been a negative impact on the legal aid system due to the Legal Aid, Sentencing and Punishment of Offenders Act 2012, freezing of legal aid rates since 2013, and an increasingly complex system under-resourced by the Home Office. Many organisations have raised concerns over the viability of the system in the short and long term, as well as the struggle for children and young people, whether unaccompanied or accompanied, to access their rights.²⁶ There is insufficient capacity within the sector for immigration, asylum and age assessment matters and there is a risk of market failure. Recently, one of the largest providers of legal aid representation has stated it is unable to take further appeal work, and there are large parts of the UK where there are no legal aid providers. Without urgent intervention on legal aid rates and capacity within the sector, children and young people will be unable to realise their rights in the UK and receive the protection and support they desperately need.

Nationality and Borders Act 2022

To what extent has the enactment of the Nationality and Borders Act 2022 had an impact on the human rights of asylum seekers?

Inadmissibility, differentiation and delays

20. We are still in the earlier stages of seeing the impact of Nationality and Borders Act 2022 (NABA) on decision making, but it is clear that the existing backlog and delays can only be worsened by the ‘inadmissibility’ and ‘differentiation’ processes introduced into legislation by NABA.

21. The Home Office, if it decides a person has travelled through a ‘safe country’ on their way to the UK, may consider their asylum claim ‘inadmissible’ and try to send them to a different country – but often is unable to and instead there is a six month long delay

²⁶ See, Refugee Action, [No access to justice: how legal advice deserts fail refugees, migrants and our communities](#) and Coram Children’s Legal Centre, [Rights without remedies, Rights-without-remedies_Final.pdf \(childrenslegalcentre.com\)](#)

before that individual can enter the asylum system. Unaccompanied children are exempt from the inadmissibility process (unless they are being treated as adults of course)²⁷ but children claiming asylum with their families are not exempt. In 2021 (when the inadmissibility process was in the Immigration Rules but not primary legislation) 920 children – 10% of all those affected – were identified on inadmissibility grounds and 777 were issued with a ‘notice of intent’. 422 children (46%) had subsequently been admitted in the UK asylum process, enduring an additional six-month delay for no purpose. It is assumed that these children will be claiming asylum with their families.²⁸

22. The backlog in cases awaiting an initial decision is at a record high. The number of children who are main applicants awaiting an initial decision on their asylum claim for more than a year increased from 563 children in 2010 to 9,220 in 2022. 1,898 children had been waiting for more than three years for an initial decision at the end of June 2022, and 155 of these had been waiting for more than five years.²⁹ In addition, more children will be waiting on the determination of their family’s asylum claim as a dependent. Generally, children struggle to access the support and services they need while living in limbo waiting for decisions and this has a significant impact on their mental health and increases the risk of exploitation.³⁰
23. Although there is no comprehensive data on how long young people and families spend in the asylum system end-to-end, the length of time spent by families with children on Asylum Support gives a better indication of this as they are supported even after refusal and until they leave the UK or obtain a status and are integrated into employment and mainstream benefits. 83% of families with children in receipt of Section 95 support at the end of 2020 had been receiving that support for over 1 year while 19% had been receiving this support for over 5 years.³¹
24. Under the new ‘differentiation’ scheme, after granting refugee status the Home Office must now make *another* decision as to whether someone is a group 1 or group 2 refugee (depending on how they entered the country) – the latter being given a shorter grant of leave (permission) to remain in the country and fewer rights. There is no timeframe for this decision, leaving people in another unknown period of limbo.
25. The RMCC is also concerned that current guidance on deciding what length of leave to be granted to group 2 child refugees states that it is “very unlikely that best interests

²⁷ [Nationality and Borders Bill: children factsheet - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/91111/nationality-and-borders-bill-children-factsheet)

²⁸ British Politics and Policy at LSE, [The UK asylum backlog and increased use of immigration detention are negatively impacting children's welfare](https://www.lse.ac.uk/Policy-and-Programmes/Briefing-Papers/Pages/the-uk-asylum-backlog-and-increased-use-of-immigration-detention-are-negatively-impacting-childrens-welfare)

²⁹ [Annex-A-Data-for-FOI-71905.xlsx \(live.com\)](https://www.live.com/Annex-A-Data-for-FOI-71905.xlsx)

³⁰ See <https://miclu.org/assets/uploads/2021/10/Into-the-Arms-of-Traffickers-Main-Report.pdf>; and findings from ‘Lives on Hold: Our Stories Told’ – The Legal and Social Impacts of Covid-19 on Young Unaccompanied Asylum-Seekers in the UK’: https://www.liverpool.ac.uk/law/news/stories/title_1368671.en.php and <https://vimeo.com/770709142>; ‘Stories too big for a case file’ by young researchers as part of the Children Caring on the Move project: <https://www.ccomstudy.com/index.php/2021/11/29/film-stories-too-big-for-a-case-file/>

³¹ Pinter, I. (2021) [Children and Families Seeking Asylum in the UK](https://www.ccomstudy.com/index.php/2021/11/29/film-stories-too-big-for-a-case-file/). CASEbrief/41. Centre for Analysis of Social Exclusion, LSE.

considerations in an individual case will override” the general policy of granting just 2 ½ years’ leave. We believe this is unlawful and fails to recognise the negative impact of short term of leave on children.³² RMCC members have already shown how damaging current policies for granting temporary forms of leave are for children and young people in migrant families through the ten-year route to settlement³³. In Praxis’ recent report Ahmed describes the ten-year route as “*a punishment for people and children who are building their lives in this country*”³⁴ This policy is now being applied to asylum-seeking young people and families who already spend many years in limbo and deep poverty while waiting on the asylum determination process.

26. Recommendations:

- **The government must adequately resource decision making to ensure that the backlog of asylum claims is cleared, with the most vulnerable prioritised (including children’s cases) and decisions made on the papers (without the need for an interview) where possible.**
- **The government should remove processes that cause further delay in decision making and leave refugees in less secure positions, including provisions on inadmissibility of asylum claims and differential treatment.**

Age assessment

27. Under the NABA the UK government has also introduced a National Age Assessment Board – this is not yet in place but the model has been widely criticised as lacking independence and removing power and responsibility from child protection experts.³⁵ Having commented on draft guidance for the Board, RMCC members remain concerned. NABA also sets out powers to use ‘scientific methods’ to determine age – these methods have been widely condemned by medical bodies and NGOs as being inaccurate, unethical and potentially harmful.³⁶ The RMCC agrees with the JCHR’s previous suggestion that “where holistic assessments already exist as an alternative, it would not be in the best interests of the child to subject them to scientific procedures.”³⁷

14/12/2022

³² see *SM & Anor v Secretary of State for the Home Department* [2013] EWHC 1144 (Admin) which found that the Home Office policy on discretionary leave to remain, which was in force at the time the decisions in question were made, was unlawful as it failed to consider the welfare and best interests of the child before deciding the period of time for which leave to remain should be granted.

³³ We Belong (2019) *'Normality is a Luxury' Report - How 'limited leave to remain' is blighting young lives.*; We Belong (2020) *We Belong Mental Health Check.*; The Children’s Society (2020) *A Lifeline for All: Children and Families with No Recourse to Public Funds*

³⁴ Praxis (2022) *Briefing for MPs: shorter routes to settlement*

³⁵ *Refugee and Migrant Children's Consortium briefings on Part 4 (age assessments) of the Nationality and Borders Bill* | Helen Bamber

³⁶ *ibid*

³⁷ *Legislative Scrutiny: Nationality and Borders Bill - Committees - UK Parliament*, para 34