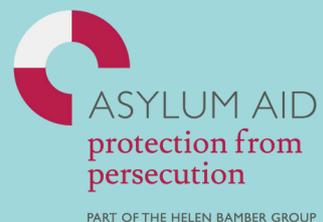


# Understanding Criminalisation

## Report B: The Experiences of Young People Seeking Asylum in the Criminal Justice System

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A report for practitioners and policymakers



October 2025

## **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 works 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 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 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 provides 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**

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# 1. Key themes

**Young people seeking asylum enter the UK with a history of particular experiences of the police and criminal justice, in their home countries and on journeys to the UK. These experiences and a lack of knowledge about the UK legal system impact on their behaviour.**

Some young people will arrive in the UK with prior experience of being mistreated by the police – or of minor crime being dealt with outside of a bureaucratic system of criminal justice. Young people seeking asylum may have a strong sense of what is right and wrong – but they are likely to not know the full extent of what constitutes a criminal offence in the UK.

**Negative experiences of victimhood in the UK can impact on young people seeking asylum, causing them to lose hope in systems of justice and act out.**

Having no recourse to justice as a victim of a crime, either because the crime is not investigated or charges are not brought, and especially where their status as a victim is doubted, can make young people feel like they are not a valued part of society or that they are being discriminated against. The consequence for some might be a decision to act out or having less concern for criminal prosecution.

**Young people seeking asylum with experience of stop and search and being strip searched feel mistreated and abused by the police.**

They reported feeling humiliated and confused in their interactions with the police in the UK. Young people who experienced stop and search felt targeted. Young people who were strip searched described this as a traumatic event.

**Some young people seeking asylum struggle to trust the solicitor that they meet for the first time in custody.**

Not having trust in legal representation might make young people seeking asylum more likely to act against the advice they receive. Solicitors should undertake more training to understand the asylum system and in order to quickly build trust with this client group.

**Issues with interpreters blight criminal proceedings involving young people seeking asylum, negatively impacting upon access to justice.**

Courts were observed failing to book an interpreter for a hearing; the interpreter not turning up; the wrong language being booked by court administrators. These issues created further delays and created pressure on young people to continue with planned court hearings without interpreters they needed.

## **Age is an issue that the criminal justice system often struggles to manage.**

The age given by unaccompanied children is regularly doubted by immigration officials, the police and others in positions of authority. This can create issues with these children accessing their rights. Where it is necessary for a court to adjudicate on age, procedures that would not be lawful outside of the criminal system are being relied upon.

## **Being in criminal court and being held in custody is likely to be retraumatising for young people seeking asylum with previous negative experiences of arbitrary detention, torture and abuse.**

Traumatised young people seeking asylum are likely to respond differently to other young people in environments where their liberty is at risk or has been withdrawn.

## **Young people seeking asylum are routinely denied bail on the basis that they are at a perceived risk of absconding.**

There was evidence from court watching that young people seeking asylum charged with immigration offences were regularly remanded to prison and denied bail.

## **Young people represented by Commons Law CIC mostly experienced positive outcomes to the criminal matter they sought representation for.**

This is likely because Commons (a) has specialised expertise and a funding structure to deliver social justice outcomes; (b) often receives clients through third sector referral pathways; (c) is working in London. Criminalised young people seeking asylum might experience different outcomes if, for example, they faced criminal proceedings unrepresented.

## **The immigration system is being used as a secondary criminal punishment for foreign nationals – but this is not necessarily being considered by criminal courts in sentencing.**

Criminal charges and criminal convictions can have serious impacts on the immigration status of young people seeking asylum, preventing them from accessing secure status and putting them at risk of detention and deportation.

## **Young people seeking asylum in contact with the criminal justice system experience a negative impact on their mental health that can be devastating.**

While contact with the criminal justice system is likely stressful for anyone, it seems likely that the vulnerability of young people seeking asylum and the risk of a knock-on impact on immigration status mean that the mental health impact of criminalisation is accentuated.

**Young people seeking asylum in contact with the criminal justice system can experience negative secondary impacts on access to housing, work, benefits and education.**

Even young people seeking asylum who have not been criminalised, but are waiting for the outcome of a trial, can experience homelessness and an inability to access work as a result of the criminal matter they are being tried for. Losing immigration status as a result of a criminal conviction, puts young people seeking asylum at risk of destitution.

**Young people seeking asylum are high-needs clients for criminal defence practitioners, resulting in a risk of unequal access to justice and a need for remedial support.**

Often young people seeking asylum appear to professionals to lack maturity compared to other young people of the same age. Some young people display low self-confidence, which is likely to be important when navigating the criminal justice system. Having limited knowledge of the law or of the criminal justice system is another key barrier that must be overcome in order to self-advocate. In addition, working with survivors of trauma is challenging for criminal practitioners. Providing a good legal service to them requires skill and experience which isn't always available. Furthermore, the life instability and lack of resources that these young people have access to is an additional barrier.

**A broken criminal justice system compounds inequality, as the negative impact of an underfunded system and institutional racism especially impacts this group.**

The impact of austerity is widely felt within the criminal justice system, resulting in delays at every stage. Deficiencies in the legal aid system mean that criminal practitioners working under legal aid contracts are often juggling many cases and have less time available to devote to high needs clients. Systemic and institutional racism within the criminal justice system then further impacts on this group.

**Whilst young people seeking asylum who are looked-after children or care-leavers are entitled to statutory support whilst in touch with the criminal justice system, that support is inadequate due to a lack of resources.**

Looked-after children and care-leavers are entitled to statutory support from children's services when in touch with the police and the criminal courts. However, when local authority budgets have been cut, social workers and personal advisers will find themselves unable to provide the necessary wrap-around support – including for those engaged in the criminal justice system – or might otherwise gate-keep important support. Young adult asylum-seekers who have not been in care, though the same age and also without parental support, are provided with no statutory support.

## 2. The current research

### a. Introduction

17-year-old Ammanuel\* was in South London, walking home from football practice with his friends, when the police approached him. His friends ran so Ammanuel started running too, before realising he should stop and speak to the police as he had done nothing wrong. A Metropolitan Police officer detained and searched him but found nothing on his person. Ammanuel didn't fully understand what was being said to him in English but felt upset that he had been stopped, and that it had likely been because he was young and Black.

The police, using Ammanuel's ID card, ran further intelligence checks and identified that he was wanted under a European arrest warrant for human trafficking offences indicated to have taken place in a European country. He was arrested and brought to the local police station where he was kept overnight, then arraigned before an extradition court. Ammanuel had no idea what was happening to him or why he was in court as he had not been provided with an interpreter or translated documents. Upon his arrival in court, it became obvious to the district judge that Ammanuel would need an interpreter, so the hearing was postponed until one could be found.

Ammanuel had explained to police that he was a minor when he was first arrested and gave them his ID, an official UK Biometric Residence Permit, as evidence of his date of birth. While at first he was treated as a juvenile by police, Ammanuel was later treated as an adult, with European court documents indicating he was an adult taking primacy over the UK ID card. The confusion about Ammanuel's age in police custody then resulted in a confusion in court: Ammanuel was denied bail, but rather than being remanded to youth detention accommodation was sent to an adult prison.

Alone in his prison cell, Ammanuel looked at the documents that had been provided to him in English. One indicated he had been charged with human trafficking, and that the offence carried a 20-year sentence. He began to panic.

A youth worker who had worked with Ammanuel was contacted by his friends to say they had witnessed his arrest the day before, but that he still hadn't been released from custody. The youth worker phoned the police station three times and spoke to a custody officer each time, asking about Ammanuel's whereabouts. On the first call he was informed that no one by that name had been arrested the previous day. On the second it was confirmed a person by that name had been arrested but had been released the following morning. This was confirmed again on the third call.

He had in fact not been released but had been taken to the extradition court without anyone having contacted the local authority — who, acting as his corporate parents, had responsibility for his wellbeing.

The next day, Ammanuel returned to the court from prison. There, he was informed that the charges against him had been withdrawn by the court in Europe and was then released from custody, with no explanation as to why he had been arrested or what had happened for him to be released.

In a complaint made to the Metropolitan Police he said that in custody he *“cried”* and *“felt humiliated”*. The complaint also stated that he is now *“scared of the police and terrified that he will be arrested and detained again without justification... This incident has impacted on his mental health”*.

Ammanuel's experience of the police, custody, and courts is illustrative of a wide number of issues that affect young people seeking asylum who are in touch with the criminal justice system. These issues include challenges with proving one's age; issues around language and interpretation; adverse reactions based on previous experiences of the police; and the long-term impact of contact with the system on mental health and wellbeing.

Other young people, whose experiences are included in this report, spent even more time in touch with the criminal justice system than Ammanuel. They experienced problems such as strip-searches by the police; struggles trusting the legal advice of their solicitors; years-long delays in having their case heard in court; and denial of criminal bail. These negative experiences, in turn, led to further issues with their immigration status, ability to access housing, and with finding and keeping work.

This report is part of a research series focussing on young people seeking asylum and their experiences within the criminal justice system. In **Report A**, we sought to understand why some young people seeking asylum come into contact with the police and the criminal court system. In this, **Report B**, we are seeking to give voice to the experiences of young people seeking asylum within that same system. These experiences are important to understand for those working within the criminal justice system — and also those professionals working outside of it, in support of young people seeking asylum.

We hope this report will inspire further research, starting a wider conversation about how policy changes can reduce the criminalisation of young people. Ultimately, we want every young person who comes into contact with the police or courts to experience equity and justice, and to ensure that these experiences do not cause lasting harm or limit their ability to live full, productive lives in the communities where they have sought safety.

## b. Methodology

**Report B** focuses on the experiences of asylum-seeking and refugee children and young adults within the UK criminal justice system.

The research is based on:

- A literature review
- Analysis of legal casework data of clients represented by Commons Law CIC 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 have been covered by legal aid. With prior consent, this data was anonymised and analysed for use in this report.

	<b>Number of cases</b>
<b>Concluded</b>	31
<b>Ongoing</b>	5
<b>Total</b>	36

Six asylum-seeking young people 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 legal professionals.

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

See **Appendix A** for more detailed 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**<sup>1</sup>, 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 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

For more information on the demographic of young people this research focuses on, see **Report A**, Section 2.

1. To reflect the breadth of experiences of unaccompanied children and young adults, the age range of 25 years old and younger was selected for this research. While there is no legal definition of young adulthood, some legislative provisions apply to young adults aged 18-25, such as those 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.

### 3. The experiences of young people seeking asylum:

#### a. with policing and criminal justice system in their home country

Young people seeking asylum arrive in the UK with a diversity of previous experience with the police and other criminal justice systems. These experiences will undoubtedly create expectations about what does and doesn't constitute a crime; what crimes are punishable in a court; and how the police might react to criminality. Some young people might arrive in the UK expecting that minor infractions will be dealt with outside of a bureaucratic legal system, while others might be used to criminal justice systems that rely more strongly on restorative justice procedures. Others might expect a more draconian approach due to negative experiences of policing in their home country. This will all impact on the way they engage with the UK criminal justice system if they are to come into contact with it.

*"The police [in Kuwait] are very bad. Very bad. The police are very good with the Kuwaiti people, but not with me, not with Bedoon<sup>2</sup>. When I go to a demonstration for my freedoms the police arrest me. I was with my father, but my father ran away. I was 14 years old. The police said you have to move out from Kuwait."*

**Abdullah\***, 21, Bedoon from Kuwait

*"In Eritrea, everybody is the police. Your mother and father are responsible for you, but the whole village brings you up... If there is minor crime – it is punishable, but punishable by the community themselves... For example, two neighbours fight and one person loses a tooth. The person that lost a tooth would get a sheep, or some kind of gifts and [they would say] we're so sorry for what my son has done. [This would happen] instead of criminal proceedings... Whereas here [in the UK], everything is formalised, everything is within [a system] of law. Here, everything is serious."*

**Salam\***, Caseworker

2. The Bedoon, or Bidoon, are stateless people based in several Middle Eastern countries, but particularly present in Kuwait, where there is a large population of stateless people who lack access to many of the country's basic services.

*"There are three places that you get to know about crime [in Afghanistan]: In the madrasa, anyone that goes there gets a free education, you get to know about what are crimes; In the school, [that is] if you go to the school; [Then] basic crimes, like stealing, you get taught by your parents, obviously... If it is a big crime, [like] you stabbed someone, something like that, the elders in that community or the village, they come together and they sit together, okay, you done this, you done that. This is the punishment for you. And so nobody can say anything. They're like the chosen ones. They know about the rules, they are respected, they don't cross the limits, and they don't break the law. That's why those people are there. They take their time, and then they make the decision. And once the decision is taken. That's it. That's the village system."*

**Hamed\***, 22, from Afghanistan

*"I think that the law is the same everywhere, at least as much as I understand. But the thing is, they don't follow up the law [in Albania] – if you have got money, you can get away with anything... I can't blame them in a way because the wage, the salaries they get [as a policeman], no, it's not a lot. So they try to make some money on the side. Everyone is trying to make money for their family to provide for their kids or wife or whatever... [Because] the police are corrupt, most families here have got weapons or guns... Because people have weapons in their houses, it's very easy for them, if they see you in the street, to go home, get something and come back and kill you. It's not that hard."*

**Alteo\***, 22, from Albania

## **b. with policing and criminal justice systems on journeys to the UK**

Young people seeking asylum regularly come into contact with the police or other authorities in the countries that they transit through before reaching the UK. Every young person interviewed for this report recounted negative experiences of the police on their journeys to the UK. This negative impression of police will undoubtedly impact how young people might react to the authorities in the UK.

*"In Denmark, after one year they give me a refusal. After that, they put me in the jail. Denmark is more, more bad. They put their boots on my neck."*

**Abdullah\***, 21, Bedoon from Kuwait

*"I've seen a lot of police [on my journey] and I was beaten up by the police. I was young at that time as well. It was very difficult when I left my country to get here. I nearly lost my life twice. I used to cross the borders. I was 13 years old when I was in Bulgaria. [There] they don't treat anybody like a child. Bulgaria is a very bad country, man. They are racist as well. The police caught me three times. I have seen German police, French police, Hungarian police and Bulgarian police. They are the border police and they don't care about nobody. I see someone – the police let a dog on him. The dog bit every part of his leg. And the meat from his calf was taken off. It was crazy, man. I could see him crying, screaming. Oh my days... Before I came here, I had the same feeling. Like I've seen the police in different countries and thought the police would be the same here as well. That they would come and take you down and step on you like a dog."*

**Jameel\***, 19, from Afghanistan

*"In France, [asylum-seekers] have faced [police] there, who are not the nicest.... pepper spray being sprayed on them, their beddings being stolen, taken away and burnt, their shoes [being taken] so that they can't move. So they're already having a negative experience from authorities. It is police officers doing this to them, instead of helping. And also they would have come illegally, when you say illegally, that means in hiding so the authorities won't catch them. So that means they've got a fear already about being caught by authorities. And when they get here, that's the only understanding they have."*

**Salam\***, Caseworker

### **CASE STUDY - HAMED\***

One young person interviewed as part of this research spoke about his own experience of being charged, prosecuted and imprisoned as an unaccompanied child, while transiting through Europe. That experience was traumatising for him.

Hamed† was 16-years-old when he fled Afghanistan. He entered Europe through Turkey and the Eastern Mediterranean route, arriving first in Bulgaria before travelling to Hungary. There he was placed in a detention camp, where he witnessed a security guard abusing a child and became involved in an altercation with the guard which involved a larger group of people.

*"The police came, they arrested us all. They took us to a police station. You don't know the language. Whatever you are asked to do, you can't do it, because you don't understand. So they start hurting you. Once you get a slap, then you go 'okay, this guy is serious'. They start kicking you, boxing you, whatever they could do. You are inside a cell and there is no cameras. I was in the cell for 24 hours. After that the translator came. They did ask me 'were you involved in the fight?' They played the video, they had it on camera. We were involved, but we were trying to defend the little guy. We were there for like seven days in the police station. After seven days they took us to court. We were not understanding a word what the judge is saying, what the lawyer is saying, only the translator is saying this is what is happening to you. I went to jail for four months. But truth be told, the whole time I didn't know when I am coming out. I was 16 years old. The people who were in the prison were adults. They were not from my country, they were Hungarian. I didn't know the language. You get stripsearched in front of everyone, when you first arrive. It was a big room with four or five people. You are scared shitless."*

*Someone is talking to you with a gun on them and you don't even know the language. They are just talking to you in their sign language. They are doing stuff to you that has never happened to you before. That's a different, horrible story. Inside the prison, you start missing everyone, your family, your friends, the freedom you had. First of all you get bullied by the adults. They tell you what to do [and] you do it otherwise you get beat. Or you get raped. So to avoid that, you listen to them. Some of them are there for murder. Some of them are there for stabbing someone. They are bigger than you, obviously, you're 16. I couldn't speak to my family. They thought I'd died, after four and a half, five months. They all told me they thought I was dead. I cried all day. I cried in the night times, during the first week. You start missing your freedom. The first night in the cells, you can't breathe. But you get used to it. Okay this is my life now. Wake up. Go to breakfast. Come back. Go gym. Come back. Sleep. I thought am I gonna die every day, when you look at the other people in there, with muscles 10 times bigger than you. They were hurting everyone. Mental people, murderers, kidnappers. Any types were inside. If a person was inside for murder, he knows he's going to be there for his whole life. He doesn't give a shit about you. Then one day you get a knock on the door of your cell. And you're out. We started walking into the city. We got arrested again. They took us to the 'closed' camp again. But my one friend started crying in the car because he thought we were going back to the jail. After 24 hours in the 'closed' camp they put us in the 'open' camp. And then I got out. From Hungary I went to Austria. In Austria I got a train to Italy. From Italy, I came to France. And from France to the UK."*

### **c. as victims of crime in the UK**

Casework data and interviews with young people and supporting professionals provided evidence of how young people seeking asylum experienced being victims of crime in the UK. Many felt let down by the police, with their experiences of victimhood not being dealt with appropriately or the crimes against them never being properly investigated. Negative experiences of the police by victims of crime led to some young people feeling discriminated against.

One young person represented by Commons was violently assaulted by another driver after being involved in a road accident, leaving him with missing teeth and other injuries. Body-cam footage evidence showed the police mocking him as he asked for their help to find his missing teeth. The young person was arrested on suspicion of affray before later being charged with failure to provide a breath specimen (for which he was later acquitted in court). The other driver was present at the scene when police arrived but was not arrested.

One caseworker interviewed for this report spoke about how the criminal justice system in the UK had failed a number of her clients who were seeking asylum and were also victims of crime.

*"I've worked with several young people who have been victims of violent crime, and either the police or Crown Prosecution Service (CPS) have not brought charges because the young people [who were victims] have also been engaged in criminality... because the young person has a record, the CPS position is [that they are] unlikely to be a believable or credible witness. And so they don't believe that a jury would convict if they were [to go] to court. And so charges have been dropped. There was an instance where a young person had been stabbed. For that particular young person, the message that he got from that and said very clearly was that his life doesn't really have any value here in the UK to the people that are supposed to protect him... it kind of contributed to this feeling that he needs to protect himself through some kind of unlawful means."*

**Louise\***, Caseworker

Most young people seeking asylum come to the UK from countries in Asia, the Middle East and Africa and are racially minoritised, with a large number being Black. Evidence shows that adults from Black and mixed ethnic backgrounds are less likely than White and Asian adults to have confidence in the police: Office for National Statistics figures for the year to March 2025 show that, overall, 67% of White adults in England and Wales have confidence in their local police compared to 71% of Asian/Asian British adults, 64% of Black adults and 50% of Black Caribbean adults. While much research has considered trust in the police among racially minoritised groups, there has been less consideration of trust among newly immigrant groups.

The 2023 Casey Review of the Metropolitan Police service also found evidence that Black and minority ethnic communities were regularly being failed by the police and that victimisation was high for these groups.

*"While the Met are very active in areas of London with higher Black and minority ethnic communities, this does not mean that those communities are better protected from crime, and victimisation is in fact higher for certain crimes."*

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

3. Office for National Statistics (2025), 'Perception and experience of police and criminal justice system, England and Wales'

4. Baroness Casey (2023), 'An independent review into the standards of behaviour and internal culture of the Metropolitan Police Service'

With young people who are victims of trafficking or modern slavery, there is often an overlap between victim and (accused) perpetrator. The young person in question might be, on the face of it, committing a criminal offence such as helping to farm cannabis. But they could also have been forced into that work through a system of abuse and are therefore also a victim.

Section 45 of the Modern Slavery Act 2015 creates a statutory defence for people who are compelled to commit certain crimes as a result of their experience of modern slavery. However, because no quantitative data on its use is collected, it is impossible to know what proportion of victims are benefiting from its existence. The experience of some in the criminal justice system would indicate that the Section 45 defence does not adequately protect victims of trafficking or slavery. The 'reasonable person test' — meaning a jury must consider whether a reasonable person in the defendant's position would have had no realistic alternative but to do what was done — requires that vulnerable child victims go through the ordeal of a criminal trial, which may mean years of waiting before being in court<sup>6</sup>.

As mentioned on page 28 of **Report A**, lawyers at Commons represented one young victim of trafficking against whom the CPS only agreed to end protracted and stressful court proceedings after being threatened with judicial review. Commons was also instructed in an appeal against conviction in which a young person was not advised of this defence by their solicitor, despite them giving clear instructions that they were a victim of modern slavery. Moreover, neither the prosecution nor the Crown Court judge raised it when their account of acting out of coercion was put forward as mitigation during their sentencing hearing.

A social worker working with child and young adult survivors of human trafficking raised the issues she experienced in getting the criminal justice system to take the victimhood of the young people she worked with seriously:

*"In the six years that I've been doing this work, and I've worked with... dozens of male victims of forced criminality, forced labour, I've never once seen a prosecution against anyone for [modern slavery]. And I've seen young people who have been really, really hideously abused... serious physical abuse... sexual abuse... And [I'm] having to break it to these young people that 'you're not going to get justice, no one's going to do anything, no one's going to find the people who did this to you'. And that [news] can be really, really traumatic."*

**Serena\***, Social Worker

5. Wilberforce Institute, University of Hull (2022), '[Evidence Review of Section 45 of the Modern Slavery Act: Background and Context](#)'

6. Youth Justice Legal Centre, '[Statutory defence for child victims of trafficking and slavery – section 45 Modern Slavery Act 2015](#)'

## **CASE STUDY: AS<sup>7</sup>**

AS entered the UK as an unaccompanied child having spent a significant period in the Calais Jungle, a refugee encampment. He escaped from Afghanistan following several of his family members being killed by the Taliban. Having arrived in the UK, his smugglers used debt bondage to trap him and force him into selling drugs having 'cuckooed' his flat. Out of fear of repercussions towards his family who remained in Afghanistan, AS complied. He was routinely terrorised by his smugglers, who would come to his flat with machetes and threaten him if he showed indications of non-compliance. Later AS was trafficked into forced labour in the building industry.

AS ended up in Crown Court charged with assisting an offender. The case followed a robbery where several adults were jointly charged and subsequently convicted. Following a positive National Referral Mechanism<sup>8</sup> decision (which confirmed that AS was actively targeted due to his vulnerabilities) an application was made to vacate the original plea. Representations were made relying upon trafficking convention, definitions within the Modern Slavery Act 2015, and published policy guidance.

Following a successful application to vacate the original plea, the Crown Prosecution Service offered no evidence and AS was acquitted, having already spent several years within the criminal justice system, with a particularly negative impact on him.

### **d. of the police in the UK**

First impressions of the police in the UK can shape how young people seeking asylum view them later on. Young people who arrive in the UK in order to claim asylum, either by small boat or in the back of a lorry, are likely to have direct contact with either police or border force officers at the point of entry. One young person spoke about this experience:

7. No. 5 Barrister Chambers (2019), '[Chloe Ashley acts pro bono in modern day slavery case](#)'

8. The National Referral Mechanism (NRM) is a framework for identifying and referring potential victims of modern slavery and ensuring they receive the appropriate support. Under Section 52 of the 2015 Modern Slavery Act, if there are signs or indicators of Modern Slavery first responders must submit an NRM referral. Adults must consent to being referred into the NRM, while consent is not required for children. If an individual is confirmed as a victim, they are given a 'Positive Conclusive Grounds' decision, and may be eligible for longer-term support.

*"When I got off the boat, that's when I first saw the police. There were six, seven people who were there on the shore – there were people recording. Maybe two minutes, three minutes later, big police vans came. And [they had] the yellow gun for electricity: a taser. After he say 'You are arrested.' I said 'I claim for asylum'... They take everything out. They searched here, here (he gestures). He take your clothes down. He checked everywhere. Then he put you in the cage, in the car, in the van. He take me to a place very far away. A place where they deport people. Oh my god, there were very bad people [at that place]. The Officer said "don't come here". He said "you're not welcome". He's rude. The detention people said "now you have to go to Norwich, to a hostel [for asylum-seekers]."*

**Abdullah\***, 21, Bedoon from Kuwait

However, one accommodation key worker felt that unaccompanied children on the whole had a good view of the police when they first arrived in the UK. She noted that many would say to her that they wanted to be police officers themselves.

Police have the power to stop and search (with force if necessary) anyone they reasonably suspect of possessing drugs, weapons, stolen items, or something which is intended to be used in the commission of an offence. The experience of being stopped for this purpose was traumatic for some of the young people we interviewed. It has been well documented how stop and search by UK police can lead to feelings of shame or embarrassment<sup>9</sup>. Language or cultural barriers create additional confusion for young people seeking asylum, preventing them from understanding why a stop and search is happening and what the future repercussions will be for them.

9. The Guardian (2022), ['More than half of black people searched by UK police felt humiliated, survey finds'](#)

One young person spoke about the humiliation of being pulled over by the police while with his friend. nother young person was left fearing for their life. The use of handcuffs was referenced by several young people in their interviews.

*"I got handcuffed. They took us outside [the car]. One thing I experienced, the more you talk when the police are there, the more you're in trouble. Even if you haven't done anything. If you swear at them you're in trouble. If you don't listen to them, you're in trouble... This guy checked my immigration [status] while he had my card on him. He checked my friends. He thought we had fake ID, fake licences, everything. [For] about 20 minutes I was in handcuffs. He called the insurance company. Is it legit? They did their best, but they couldn't find anything. Then they let us go. You get stopped on the side of the road, everyone is looking at you. Imagine you got a family, you got a girlfriend, you got friends. Your own dignity is gone. You're just there handcuffed and you haven't done anything."*

**Hamed\***, 22, from Afghanistan

Many of the young people who spoke about their experiences of stop and search said that they had been stopped on numerous occasions. This reflects data from 2023/24 which indicates that 61% of searches are of males aged between 10 and 34, and that Black people are 3.7% more likely to be searched than White people<sup>10</sup>.

One young person interviewed as part of this report did understand the position of the police officers who arrested him and felt that they were fair in their approach.

*"When I was arrested, it was about 10 police officers who jumped me. They were pushing my chest against the floor. That really did hurt. I did think about taking it further but the solicitor they gave me, I tried to explain to her about this, but she didn't care. I was scared they were going to kill me. I said to them "I can't breathe. I can't breathe. I'm not even trying to hurt you. Why are you doing this to me?". I was not resisting."*

**Samson\***, 19, from Eritrea

10. House of Commons (2025), [Research briefing: Use of stop and search](#)

*"The police handcuffed me. He put me in the back of the van. The handcuffs were so tight... my wrist was nearly broken. I'm calling the police saying please stop the vehicle and uncuff me, because my hands are gonna be broken. But they didn't say anything. They didn't care. They took me to a police station. And I was there for 30 minutes waiting in the van. I'm calling the police, please untie this because my wrist is gonna be broken. It was very tough, I can't lie."*

**Jameel\***, 19, from Afghanistan

Some professionals working with young people emphasised how previous experience of the police shaped the ways in which young people seeking asylum felt about and interacted with the police in the UK.

*"Refugees [leave] their country because they fear for their lives. [They] fear authorities. They come here for safety reasons. But when they are faced with authorities [in the UK], it is that fear that kicks in. Sometimes they're accused further because they're not cooperating or they're not answering questions, because they're scared shitless because of why they've come here in the first place. Whereas if you were to be stopped, you have nothing to fear, you haven't got anything in your head, to worry you, about any bad experience you might have had with authorities. You are going to be cooperating and then that helps you."*

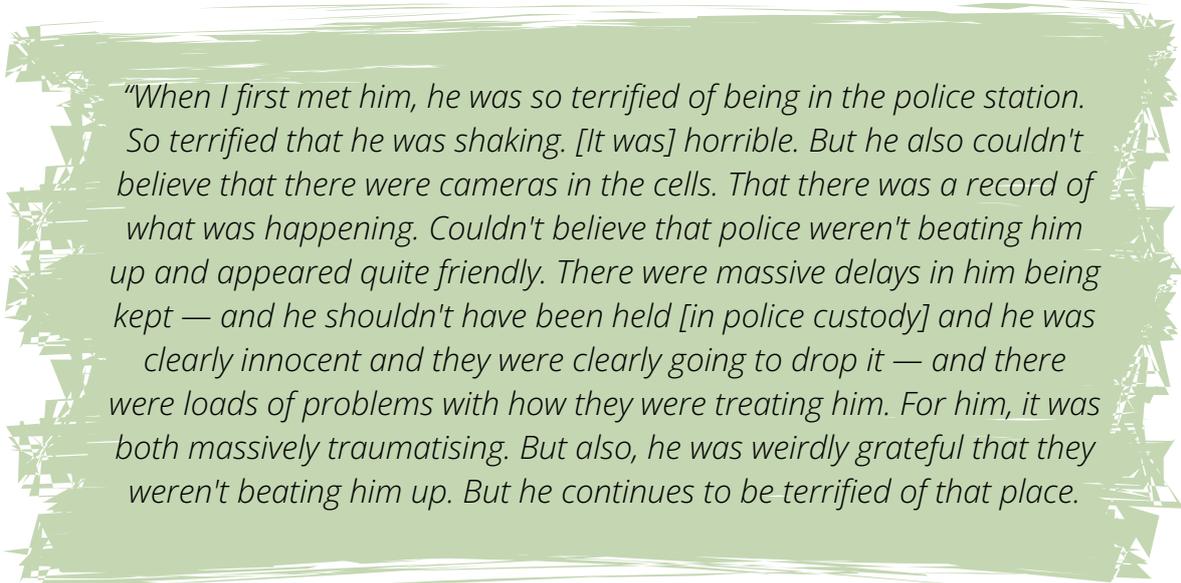
**Maria\***, Caseworker

Finally, interviewees noted the regularity with which these young people were arrested for riding private e-scooters. Although technically an offence, at the time that this casework was being conducted many people were unaware of this, and it was common to see professional Londoners using them to commute. It appeared to lawyers and support workers that police were using their discretion to single out young people for criminalisation.

## e. in police custody in the UK

When a person is arrested on suspicion of committing a criminal offence, they must be brought to a nearby police station for their detention to be authorised. In normal circumstances they can be held for up to 24 hours. There are no special custody suites for children or young people — all suspects are kept in the same block of cells. Everyone is entitled to legal advice, though funding limitations mean that solicitors almost never attend until the police are ready to interview, often 10 to 15 hours later. Parents (as well as social workers who are acting as corporate parents) are almost never entitled to wait with child detainees, so they are alone for the majority of their time in custody. A number of professionals spoke of their concern about the mental health impact of being in police custody for young people seeking asylum.

There was also a sense that the impact would be greater for young people with previous experiences of arbitrary arrest or imprisonment, who might be confused or scared and less able to understand information shared with them about being in custody, who might understand being held in custody as a threat to their ability to stay in the UK and thus a threat to their long-term safety. When a British child is in police custody in the UK, they might be able to seek out the support of a parent or speak to a loved one on the phone — but for these children and young people there is little, or sometimes no, pastoral support available to them.



*"When I first met him, he was so terrified of being in the police station. So terrified that he was shaking. [It was] horrible. But he also couldn't believe that there were cameras in the cells. That there was a record of what was happening. Couldn't believe that police weren't beating him up and appeared quite friendly. There were massive delays in him being kept — and he shouldn't have been held [in police custody] and he was clearly innocent and they were clearly going to drop it — and there were loads of problems with how they were treating him. For him, it was both massively traumatising. But also, he was weirdly grateful that they weren't beating him up. But he continues to be terrified of that place.*

**Fiona\***, Criminal Defence Solicitor

Recent data collected by the Children's Commissioner for England found that Black children in England and Wales were 11 times more likely to be strip searched than their White counterparts – and that appropriate adults were not present in more than half of cases recorded<sup>11</sup>.

11. Children's Commissioner (2023), ['Strip search of children in England and Wales – analysis by the Children's Commissioner for England'](#)

A number of young people interviewed as part of this research spoke of negative experiences in police custody, including use of strip searches. This was particularly traumatic for young people seeking asylum who were often coming into contact with the UK police for the first time, and had never encountered this kind of response before.

*"They took me to a police station, they strip searched me. I didn't want them to, you know? They wanted to see everything. It was crazy, man. That had never happened to me before. That made me feel very embarrassed. Very, very embarrassed and very shameful. They shouldn't be doing this to me, man. That's crazy. This was because of not having insurance and because of [driving while] being [high] on cannabis [and possession of cannabis]. I was 19. It was my first time being arrested. I was feeling nervous. When they took me for a strip search, I was trying to not let them take my pants off. And the two police officers were very aggressive with me. He was nearly beating me up then... They were big and massive. And they nearly tried to punch me because I was not trying to take my pants off. Because I've never done that before. And it was the first time that I've been arrested. But the policeman who were [later] talking to me after this. He was very nice to me, bro. He was nice to me, like very nice. He sat next to me, that policeman, he gave me advice. He said 'just say the cannabis was yours because if you say the cannabis was your friends, they might say oh you've been supplying cannabis'. And it was like less than a gram man, it was 0.1g or 0.2g."*

**Jameel\***, 19, from Afghanistan

The ability of young people to access their own rights and to self-advocate in police custody was an area of discussion in interviews. Unaccompanied young people in care or who are care-leavers might struggle with self-advocacy and be more reliant on the support of social workers or care professionals — but one caseworker raised concerns that they would be less accessible after office hours. One young person, however, felt that he was given enough information to know how to access his rights in police custody.

*"Yeah [in custody] they gave me a leaflet. On the leaflet, everything was written there. So I read that. So I think most of the things were explained there. What are my rights. What I could ask for. What I could not. It was in English but I could understand enough English."*

**Alteo\***, 22, from Albania

## f. of legal advice in the UK

Some of the young people who were supported by Commons struggled with the process of receiving legal advice whilst in police custody. Other professionals also noted in their interviews that this was an issue they had witnessed.

Young people seeking asylum sometimes struggled to trust duty solicitors assigned to them at the police station<sup>12</sup>. This is consistent with other research showing low levels of trust between unaccompanied young people and those in positions of authority. For example, a report commissioned by the Children's Commissioner for England on the subjective wellbeing of children subject to immigration control found that "*children's lack of trust in authorities is likely to be reinforced by their experiences in the immigration system*" and other "*highly negative experiences with authority in the past*"<sup>13</sup>. In addition, these young people "may come from cultural contexts where confiding personal information to professionals is not accepted or practised".

If a young person doesn't trust the solicitor they meet at the police station, this might result in them choosing to act against legal advice — which, in turn, can have negative consequences for young people later on if they are subsequently charged with an offence. One criminal defence solicitor noticed a particular reticence by her young asylum-seeker clients to offer "no comment" in police interviews, even when the advice given was for them to do so. One solicitor also felt that for some young people it may "*even be tempting to put forward an account which is not credible in the hopes that it will all go away*".

Young people in their interviews spoke about how important trust was for them when speaking with legal professionals:

*"Them [duty] solicitors, they're not good. They work with them [(the police)]. They're not helpful. They don't hear what you say. They're not helpful... The [duty] solicitor that they gave me was trying to say I wasn't following what she was saying. That's because you weren't listening to me. I was trying to tell her, when the police arrested me, they pushed my chest against the floor. That didn't feel right. I was trying to explain to her and she wouldn't listen to me."*

**Samson\***, 19, from Eritrea

12. Where a person has opted to receive legal advice during their time in custody, they have a choice of their named solicitor or the solicitor who is currently "on the duty rota" at that particular police station.

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

*"I got involved with the police... I think it's something that lots of people my age get involved with. It's not like we want to. I think the situation that led me to this was bad. So the moment I got in trouble with the police, I felt like I didn't have anyone there to help me. So they brought me a solicitor, but it's not like I knew him or anything. So he was very, very serious. He didn't explain a lot. He just said, Don't worry, I'll take care of this, I'll take care of that. But he didn't explain anything to me. So it's not like I trusted him a lot. When he left, I didn't have any way to contact him. I've had bad experiences with solicitors before as well. So it's not like I trust them a lot. So I asked someone I knew for help with how to find a good solicitor [as a replacement]. And [my Commons solicitor] was the one that was assigned to me. She's been [doing a] very, very good job. I respect her a lot... I think they will be way too overloaded with cases and everything else. So it just makes them not work on the cases as hard as they could, for example, because I think that they get too many cases."*

**Alteo\***, 22, from Albania

Police station legal representatives might need to be alive to the particular worries that these clients may have. Being in possession of basic knowledge of immigration law could assist in considering, pre-interview, the possible relevance of a criminal conviction or caution on an asylum application. Knowledge of the cultural factors that may also have been at play in young people's responses to allegations of serious offending would also assist. There might therefore be a benefit to young people in receiving the advice and support of a solicitor who has specialist experience in working with young people or with migrant communities, over a duty solicitor who might not have that experience.

However, once a young person signs up to the duty solicitor they are offered at the police station, it is then much more difficult for supporting professionals to later find them a specialist solicitor and change their legal representative. One issue that came up in interviews with charity caseworkers was the young people they were supporting being 'stuck' with a less-experienced solicitor they had met at the police station.

One solicitor spoke about how some solicitors might not be aware of the refugee background of their clients or of the need to be trauma-informed in their approach, when that information wasn't forthcoming from the client themselves:

*"If you're representing someone as a duty solicitor and you've got six other people you need to represent that day... And you see it as a fairly minor offence. You might not ask them "So how did you end up in this country?" It might even seem weird. If someone's there for a driving matter. And you go "Are you a [survivor] of trauma?" They might even think, actually, that it is inappropriate to be asking. Even if a person is a good solicitor, it might just not be something that they see is relevant to bring up – and that young person won't know that it's relevant."*

**Fiona\***, Criminal Defence Solicitor

It is especially important that a young person trusts their legal representative when they are advised on a plea in court. Going against advice at this stage can result in the young person either pleading guilty to something they did not do or losing the reduction in sentence that they are entitled to following an early guilty plea.

Extra time and consideration may need to be given when offering legal advice to young people seeking asylum, due to the greater impact of a criminal conviction on immigration status, and also due to cultural and language barriers to young people being able to make fully informed decisions in the context of the UK justice system.

*"Someone whose first language is not English... you do need to explain a lot more about the process... I will spend a lot longer on certain things, on giving certain advice, because I can't assume that they share the same kind of cultural assumptions or knowledge of the system... Making sure people understand why lying would be a really bad idea. I imagine that in order to have come to the UK [irregularly] you have to be a bit of a fighter, you have to essentially [have] managed to not follow systems in the traditional way they're meant to be followed. And at times, [you] maybe lied. You have to push and push and push. And so I imagine people would carry that [forward] into interactions with the police. And so I've had quite a few [young asylum-seeker] clients [where] I've had to deal with the fact that [they] have told lies [in police questioning] which they've accepted that they've told, rather than have given 'no comment'. I have to try to make [these young] people understand, whilst trying to gain their trust, that that is not a sensible approach in the context of what we're doing."*

**Fiona\***, Criminal Defence Solicitor

## **g. in a criminal court in the UK**

All criminal prosecutions begin in the magistrates' court, where proceedings are heard before a single District Judge or three lay people supported by a legal advisor. Approximately 15 plea or sentencing hearings will typically be listed in a particular courtroom during a single morning or afternoon session, with cases being heard as and when the defendants and their lawyers are ready. Various professionals wander in and out of the courtroom during proceedings. The drive to get through as many matters as possible creates a (sometimes) rushed, stop-start environment.

In the Crown Court — where more serious matters progress — proceedings move more slowly. The rooms are large and the Judge sits high above the defendant. Except in circumstances where the defendants are under 18, all of the professionals wear wigs and gowns.

In both courts, the defendant is usually made to sit in a locked glass box some two or three metres behind or to the side of their lawyer (if they have one) who will be facing away from them. It is common for defendants therefore not to be able to hear well what is being discussed. Legal jargon is commonplace. The setup discourages their participation during proceedings (even just to whisper something privately to their advocate). These issues are all exacerbated further when defendants appear over videolink from prison<sup>14</sup>.

Interviews with young people and professionals demonstrated that young people seeking asylum generally experience being in criminal court as confusing and fear-inducing. As may be the case for many young people who end up in court, young asylum-seekers entered the magistrate's court or crown court with little knowledge or understanding of what would happen inside the court building.

A young person charged with assault talked about his experience of court.

*"I had to go to Crown Court... The first time when I had been to court, I was looking around the room because I've never seen such a thing. And it's about your life. You go in there. If the judge makes a decision that you go to prison. And I saw the judge was wearing a wig. My social worker went with me. I had good support then but now I don't have any good support from anyone. When you're independent you have to do everything on your own."*

**Jameel\***, 19, from Afghanistan

14. For more about the experience of the courtroom see Transform Justice's 2024 report "[Courtwatching in London magistrates' courts](#)"

One young person, who was autistic and was struggling with a number of mental health issues, spoke in his interview about legal issues that came as a result of a Covid-19 fine that was not paid on time. As a result he was required to attend court four times.

*"They gave me a £400 fine. I don't know how you pay. I got help. The person [helping] say "I did for you, don't worry." But after a couple of months, came the post saying you have to pay £3700 now. My support worker from Salvation Army, he help me to do one form. Then I go to court one time. Then I go to a second court. Then my support worker made contact with [my lawyer]. They send me to one court in Westminster... In Westminster, I have anxiety, my heart goes boom, boom, boom. You have to swear [an oath]. Then next time in Ipswich court, they put me in a cage with windows. A glass cage. My body is shaking. I said "please, I need to go." They say "stay". The lady they have as an interpreter is from Morocco. I speak more English than the interpreter. She don't explain what I said properly. She was very rude. I said I need to hear what [the judge] is saying. She said "You have to wait". I said "I understand what he said in English and you explain it wrong". It was 45 minutes and then they kick me out from the court. They said "you have to wait for another court". They said to me "any problems that you make and you will go inside of a jail. If you spit in the street or do anything, you will be arrested." I didn't want to go outside for one month. I'm not eating. 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

Being in court can have an adverse mental health impact on young people who are survivors of trauma. Being in court might trigger a response for young people who have been previously detained arbitrarily or faced violence from the authorities in another country. There may be an expectation that the outcome of being court might impact a young person's ability to stay in the UK, and thus it may feel destabilising or a threat to one's safety even when that is not the case.

This mental health impact was described in an interview with Vicky Taylor, who researched criminalisation for immigration offences.

*"Increasingly [the defendants] are being seen in the magistrate court via video link, and the interpreter could be in the courtroom with the [magistrate] but the client is in a cell somewhere via video link, and has never met the interpreter before. There's so many different barriers to communication. And they're also obviously confused and distressed that they've been singled out of a boat of [potentially] 45 people. And they've been the one that's been arrested under very like tangential evidential means. There's a lot of distress. I've seen people cry out [asking] not to be sent to Rwanda. I've seen people in full on tears. One guy who was arrested, had a really bad panic attack had to go to hospital because of the stress of being arrested."*

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

At the end of March 2025, the backlog of cases waiting to be seen in a Crown Court was at a record high of 76,957<sup>15</sup>. In a number of cases supported by Commons, individuals charged with serious offences waited for court hearings that were then cancelled at short notice and relisted for many months later. The systemic delays present in the criminal justice system – where trials might be scheduled several years after a criminal offence is alleged to have occurred – compound the mental health impact.

Some young people lack pastoral support from a responsible adult while in court. British children and young people attending criminal court might expect to be supported by their parents or family. For unaccompanied children in care, care-leavers and lone young adults seeking asylum, it will be more difficult to access pastoral support. This might have a detrimental impact on the outcome of being in court, as young people will be less likely to speak out about their needs (such as a need for an interpreter) or to bring to the attention of their solicitor important information about their background (important context for why an arrest occurred or important mitigation during sentencing). Even when social workers or foster carers are available to provide pastoral support in court, unaccompanied children might be less inclined to ask for that help due to distrust or embarrassment or otherwise failing to understand.

15. Ministry of Justice (2025), [Criminal court statistics quarterly: January to March 2025](#)

## **h. of age assessment in the criminal justice system in the UK**

Issues around age determination are also present within the criminal justice system.

### **CASE STUDY – YEMANE\***

Judge Simon James began his sentencing remarks at Canterbury Crown Court to a room empty of any defendants. The young person to whom the remarks were addressed was visible only on a small TV screen hanging in the corner. Yemane was actually in a prison elsewhere in Kent, slumped in a chair in a small room, connected to the court via a video link.

Originally from Sudan, Yemane was being prosecuted for a crime that did not exist a year previously: arriving in the UK “without a valid entry clearance”. He had admitted to boarding a small boat in France and crossing the English Channel into UK waters in order to be brought to shore and claim asylum. He had been initially accused of piloting the boat he travelled in, but this charge was later dropped due to lack of evidence.

Yemane told the court that he was 16 years old. However, the court’s own attempts to assess his age, based on his visual appearance and demeanour, had resulted in him being treated as an adult within the criminal justice system. This confirmed the Home Office’s original assessment when he first arrived (also based on visual appearance and demeanour) that he was over 18 years old.

Yet decision-making about age based on visual assessment of appearance and demeanour is widely recognised as problematic, including in the Home Office’s own guidance<sup>16</sup>, which calls it “notoriously unreliable”.

During the sentencing hearing Yemane continued to attest that he was a child, while he feared that any lawful assessment by social workers (known as Merton-compliant age assessment) would delay court proceedings beyond the expected sentence, preventing him therefore from being able to leave prison, where he was being held on remand.

Defence counsel suggested that the judge could offer a third off the sentence in mitigation, because the defendant had entered a guilty plea at the earliest opportunity – meaning that he would have walked free today on time he has already served.

But James took a different tack, instead offering only a quarter off the sentence because, in his view, the young man had disrupted proceedings by attesting that he was a child – something that, in the court’s opinion, was untrue. He had to stay in prison – but only for a few more days. This decision made only the slightest difference to the actual sentence (nine months rather than eight, of which half must be served in custody).

16. Home Office (2023), [National Age Assessment Board: caseworker guidance](#)

The judge rose and exited the courtroom. Yemane in the video didn't look up. He continued to sit, occasionally wiping his eyes on his T-shirt as his solicitor and the court interpreter attempted to console him via the in-court microphone.

Even though the court treated him as an adult, when he was finally released from adult prison, it was into the care of children's services, who would themselves decide the veracity of his claim to be a minor.

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Many unaccompanied children arrive in the UK without documentation to prove their identity or their age. This creates difficulties for their access to various spaces, for example the children's social care system. It also is a problem when unaccompanied children come into contact with the criminal justice system (as the above case study shows) because the youth system is distinct in terms of process, aims and possible sentencing outcomes. Being correct about the age of defendants is therefore incredibly important.

Association of Chief Police Officers guidance states that "no decision to progress charges against such individuals should be made until all relevant assessments have been undertaken", and that "*where official records, or other reliable evidence, are not available to confirm age, a Merton-compliant age assessment should be carried out by the local authority*"<sup>17</sup>. A Merton-compliant age assessment is the legal standard for determining the age of an individual. These assessments are conducted by qualified social workers and must not be based solely on appearance but should consider all relevant factors, including medical, family, and social history, as well as the individual's background and experiences.

The Crown Prosecution Service (CPS) guidance states that if the victim states they are a child, they should be viewed as such until their age can be verified by identification, a court determination, or an independent age assessment carried out by the local authority<sup>18</sup>.

However, some children whose ages are in dispute may still end up in court without having had a Merton-compliant age assessment undertaken. In such circumstances criminal courts can, for their own purposes, make a determination on the age of a defendant. This power is provided by the Children and Young Persons Act 1933, Section 99. In determining age, they can "*take such evidence as may be forthcoming at the hearing of the case*"<sup>19</sup> and need not follow the typical local authority process for determining age.

17. Association of Chief Police Officers of England, Wales and Northern Ireland, 'Position from ACPO Lead's on Child Protection and Cannabis Cultivation on Children and Young People Recovered in Cannabis Farms', (2010)

18. CPS Guidance (2023), Modern Slavery and human trafficking: offences and defences, including the section 45 defence

19. Children and Young Persons Act 1933, Section 99

No standardised practice for undertaking age assessments where age disputes arise has been established in criminal law. The court may postpone proceedings for further investigations to be carried out (i.e. an age assessment by a local authority)<sup>20</sup>. However, some young people who appear in court (including those charged with offences stemming from the Nationality and Borders Act 2022), do not want to delay proceedings whilst they remain in custody, and so the evidence available to a judge deciding on age may only be the view of Border Force officials.

In recent years, hundreds of unaccompanied children have been wrongly assessed to be adults by Border Force officials at the time of their arrival into the United Kingdom. These assessments are primarily on the basis of visual appearance and demeanour. Wrong decisions about age are often rectified (sometimes much later) by children's services social workers undertaking case-law compliant age assessments (known as Merton-compliant age assessments). During an 18-month period (January 2022 to June 2023) at least 1,300 children were wrongly placed in unsupervised adult accommodation or detention following an age determination at the border, before being later referred to children's services and then found to be children following a full Merton-compliant age-assessment<sup>21</sup>. A further 678 were then found to be children in 2024<sup>22</sup>. These numbers clearly illustrate a very large margin of error for age assessments based on appearance and demeanour.

There are a number of factors that might explain why state authorities treat migrant and asylum-seeking children as older than they are. The vast majority of unaccompanied children arrive in the UK at either 16 or 17 years of age, and so during or following their adolescence. The margin of error for assessing the age of children at this period of growth and physical change is presumably very large. Race and racism also factor in how these young people are perceived – with the appearance and demeanour of white British children not being comparable with adolescent boys from the Middle East or Africa, who have experienced upheaval and a period of time without adult care or supervision. 'Adultification' is a type of bias which skews the perception of certain children – particularly black children – leading to others – including professionals and state authorities – viewing them as more 'grown up' or, 'adult'. In addition to these issues, researchers at Harvard University have established that children who experience violence or trauma seem to age faster, going through puberty earlier and showing greater signs of ageing in their cells<sup>23</sup>. Therefore, being assessed by Border Force at the point of arrival, when the young person is likely tired, stressed, hasn't eaten or slept for some time, purely based on visual appearance and demeanour is very unlikely to allow for an accurate reading of age.

21. Helen Bamber Foundation, Refugee Council and Humans for Rights Network (2024), [Forced Adulthood: The Home Office's incorrect determination of age and how this leaves child refugees at risk](#)

22. Helen Bamber Foundation (2025) [Serious safeguarding scandal: new data shows that hundreds of child refugees continue to be wrongly treated as adults](#)

23. Psychological Bulletin (2020), [Biological Aging in Childhood and Adolescence Following Experiences of Threat and Deprivation: A Systematic Review and Meta-Analysis](#)

Unaccompanied children might experience disbelief about their age at any point in the criminal justice process. As previously illustrated in the case study for Ammanuel in the introduction to this report, police officers might refuse to accept evidence provided by unaccompanied children about their age at the time of arrest, even when provided with official UK identity documents. This disbelief about age was also raised as an issue by one social worker who was interviewed for this report.

*What I've found is, whenever our children are arrested, the police always have something to say about their age. But that doesn't ever happen when a child's arrested who is a British born child. But [when it is an asylum-seeking child] all of a sudden, everybody has got an opinion on their age, their entitlement to this and that. They suddenly become immigration officers, as well as police officers... What mindset are you in when you're then interviewing them, if right from the off, there's a culture of disbelief in that room? If you think 'is this 16 year old actually 21?' – how are they then going to be treated?"*

**Denise\***, Social Workerr

In her interview, one community care solicitor shared their own view of how age is being determined in criminal cases under the Nationality and Borders Act 2022, where someone who claims to be a minor is arrested for a crime related to navigating the English Channel in a small boat. At the time of writing, she was representing a number of age-disputed young people prosecuted for immigration offences, including one who was treated as an adult within the criminal justice system, sentenced to prison, and later determined to be a child by a local authority age assessment.

The process involved social workers employed by the Home Office being invited by the Crown Court Judge to give evidence in court on their view of the defendant's age, having not completed a lawful Merton-compliant assessment, but only having assessed them by appearance and demeanour. As an alternative to this process, efforts were being made to get the local authority to provide a bail address, so that the defendant could be bailed into the community, and then be subject to a lawful age assessment:

*"We have been requesting that a bail application is made, and that the local authorities provide a bail address so that a lawful age assessment can be completed... The prisons don't even know what that is, they just [accept] the age that the Home Office has given. Often the criminal solicitors don't actually understand it either... At the start... the local authorities were accepting their duties... [they agreed they] will provide bail addresses and [undertake] lawful age assessments. But recently, they're trying to push back... saying they want to do welfare checks first, where they're [instead] doing a visual assessment. It's framed as a welfare check [but] they're just visually assessing appearance and demeanour in the same way as the Home Office does."*

**Natasha\***, Community Care Solicitor

The organisation Humans For Rights Network has identified 26 cases where children wrongly treated as adults have been charged with offences under NABA, with at least 16 individuals spending periods of time held with adults in adult prisons<sup>24</sup>. One was believed to be 14 years old when he spent 7 months at HMP Elmley in Kent. Most of the cases involve Sudanese or South Sudanese children who travelled to the UK via Libya, with most appearing to have been trafficked or having experienced some form of exploitation<sup>25</sup>.

The Home Office has recently updated the 'Assessing Age' guidance to introduce a new process for individuals claiming to be children who may be prosecuted for criminal offences<sup>26</sup>. From 30 June 2025, individuals facing criminal investigation who maintain they are children will be offered an abbreviated age assessment, which will be conducted by the National Age Assessment Board (NAAB), a public body that has been criticised by BASW, the professional body for social workers, who say they are *"deeply concerned that any agency that is part of the Home Office, and is therefore accountable to central government, risks age assessments being influenced by political priorities, such as reducing immigration, as opposed to child welfare and human rights"*<sup>27</sup>.

24. Refugee and Migrant Children's Consortium (2025), [Lost Childhoods: The consequences of flawed age assessments at the UK border](#)

25. The Guardian (2023), [Children reaching UK in small boats sent to jail for adult sex offenders](#)

26. Home Office (2025), [Assessing Age version 11](#)

27. BASW (2025), [BASW insists government's immigration bill must abolish the NAAB](#)

## **i. of interpreters**

Non-english speakers, and those who speak English but not as a first language, are at a disadvantage in the criminal justice system as they rely upon interpreters. Problems arising from the use of interpreters in the criminal justice system was a common theme that was present in interviews and in the casework that make up this research.

*"There are challenges in terms of even just getting instructions and be[ing] able to communicate. Clearly with an asylum-seeker client, [language] is something that's definitely an added barrier."*

**Joelle\***, criminal defence solicitor

When non-English speaking people are released from police custody, following a police interview, their ability to make contact with and to communicate with their solicitor is impaired. It is likely that they will exit custody with many questions. They might need information about what happened to them in custody repeated a second time. They might need information written down so they can communicate this with other professionals working with them, including professionals working with them in the care system or their immigration solicitor. They might want advice on whether to share further information or material with the police which they did not recall or have access to whilst in custody. However, Legal Aid is not available to fund an interpreter during this pre-charge period, meaning that none of the above is possible for them.

In a number of environments within the criminal justice system it was observed that young people seeking asylum were discouraged to utilise an interpreter when they should have been provided with one. This was observed by research participants as having happened both in police interviews and in court.

*"They do miss words. And if you're embarrassed about that, you're going to guess words from context. And so especially in the stressful context of a police station, interpreters should be used a lot more, and [there should be] push back against police saying they don't need one. [But] also the clients say they don't need one. I've heard that a lot where I've had a client who just wants to get it over with quicker, and I've just put my foot down and insisted [on using an interpreter]."*

**Fiona\***, criminal defence solicitor

Young people with limited but not fluent English often felt pressure to proceed with a hearing without an interpreter. Administrative errors in the booking of court interpreters might mean that a young person has waited many months for a hearing but turns up to find the wrong — or no — interpreter has been booked. This was observed as having happened on a number of cases Commons worked on.

Proceeding at this stage is not likely to be in the interests of justice. But it is easy to understand why a young person might choose to do so if the alternative was a further three months wait to resolve a matter, and that during that wait they would not be able to progress their asylum claim and would be no closer to accessing work or benefits.

*"The majority of these young people require an interpreter because whilst they may speak brilliant English, they don't speak the legal language. And context is everything in language, as we all know. [Plus] they're stuck in this glass box where they can't hear anything properly."*

**Yvonne\***, criminal barrister

*"If you can't [get an interpreter then you can't] make progress on a matter... [the client] might be under stringent bail conditions. They may be losing trust in the whole process, because they're thinking: what on earth is going on... the negative impact of it sort of spreads everywhere. We're in London. There are plenty [interpreters]. It's not as though we're in rural Devon, where there probably actually may be an issue with securing [interpreters]."*

**Ilona\***, criminal defence solicitor

In one case, a Commons client was arraigned in court with no interpreter provided, though the district judge wished to proceed as the client had admitted drug possession in his interview. In response to a request to delay the plea hearing, the judge issued strict bail conditions that required the young person to sign-on at a police station three times a week until his next hearing after previously having no conditions. His solicitor left with the impression that the client was being punished for wanting to understand what was happening around him.

Sometimes the wrong language interpreter is booked by the court. One research participant observed that it is not always well understood by court administrators that there are different dialects within the Arabic language and that a Sudanese Arabic speaker, for example, may not understand a Levantine Arabic speaker.

There was an observed failure across the criminal justice system to understand the primacy of language in self-advocacy — and that a failure to provide interpretation to asylum seeker defendants denied them access to justice.

*"I was in magistrate's court... They put an interpreter for me. And the interpreter. I swear to God – my English was better than his English... I was saying something and he was saying something completely different... I said this is about my life. If you can't explain shit properly, Don't come. Don't fuck up somebody's life. I'm saying something else. And you are saying completely different stuff. After [my lawyer intervened] they never brought an interpreter. And that was good. The way the judge speaks in court is different. Some words I understand. Some words I have no idea what we're talking about, you know, long words. When you write [a definition of] that word, it's like 20 words you have to do... But the things I did understand were helpful. The rest of what he said: no idea."*

**Jameel\***, 19, from Afghanistan

*"The language he spoke was really hard to find an interpreter for... So they were always interviewing him in Arabic, which I was then stressing the point that that was a language he'd learned on his journey. He'd never been educated in that language. It was like banging my head up against a brick wall. And there was no empathy. I kept pushing back. [Saying] 'imagine you lived in France for a bit and then you got arrested and then you were being questioned in French.'"*

**Denise\***, social worker

A 2025 report of the House of Lords Public Services Committee quotes representatives of magistrates, lawyers and court interpreters who point to the same issues raised by interviewees above, noting that *"numerous contributors indicated that problems in interpreting services could lead to miscarriages of justice"*<sup>28</sup>. The Committee concludes that these problems likely stem from the regular use of non-qualified interpreters, inadequate quality assurance and complaints processes, and low remuneration.

28. House of Lords Public Services Committee (2025), 'Lost in translation? Interpreting services in the courts', para. 64.

## j. of bail in the UK

In their interviews, several professionals noted that their young clients were unable to get bail due to their position as asylum-seekers and so were remanded to prison awaiting trial or sentence. This appeared as unfair to interviewees, who felt that the criminal justice system was prejudiced against asylum-seekers.

*"There is an issue around refugees being more likely to be held on remand and not given bail. I've literally heard a magistrate say that [the reason for refusing bail] is because they're a refugee, they've got no connections in the UK, therefore they are a flight risk. On that occasion, with one of the young people who was being held on remand, I was sat next to his wife and child. So the sweeping assumption, that all asylum-seekers and refugees are a flight risk, is used against them."*

**Sam\***, accommodation key worker

Bail has been routinely denied in observed cases involving Nationality and Borders Act immigration offences related to navigating across the English Channel in small boats. This was often on the basis that the *"defendant is here illegally with no ties and no address"* and the view that the defendant *"knows that if he returns to court that there is a chance he will be deported and potentially receive a custodial sentence"*<sup>29</sup>. This has been the case even when such ties, including the existence of family in the UK, had been mentioned. Frequently, the fact that they *"have already shown the wherewithal to enter and exit the country at will"* is also relied upon.

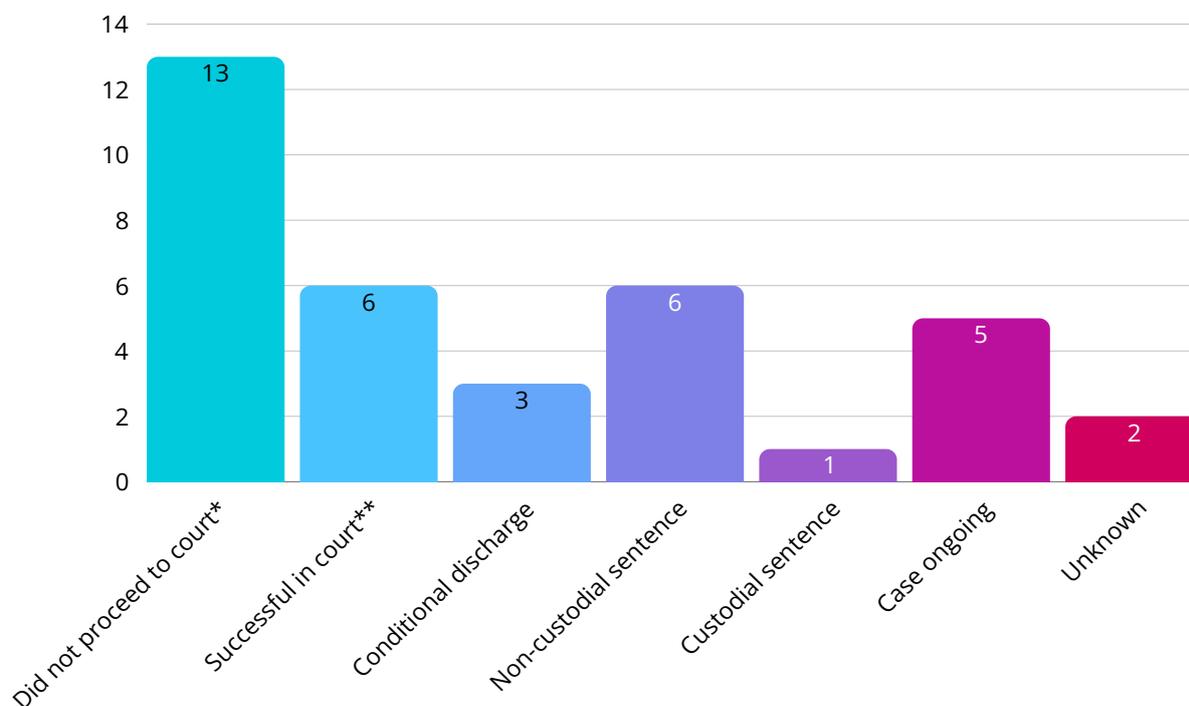
Recent investigative reporting has noted a racial discrepancy in who is bailed and for what criminal offences. Figures obtained by the Guardian and Liberty Investigates through the Freedom of Information Act show that Black defendants spend on average more than 70% longer in prison awaiting trial and sentencing in England and Wales than their White counterparts.

One of Commons' clients was arrested in relation to a protest at Napier Barracks. Following this he was detained in an immigration removal centre under immigration powers. However, as part of his police bail conditions, he was required to remain at his home address, which at the time was the immigration removal centre. This impacted on the ability of his public law solicitor to challenge the legality of his detention and have him moved to asylum housing - because of the overlap between the bail conditions and the decision taken by the Home Office under immigration powers. Although case-specific, this highlights how the experience of criminalisation – such as bail restrictions – can have a knock-on effect on lives already made difficult by other 'hostile environment' policies.

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

## k. of case resolution in the UK

Many young people represented by Commons experienced positive case outcomes in relation to the offences discussed in Report A. Not every crime investigated resulted in charges being brought, and pre-charge legal support from Commons (such as letters to the CPS) often prevented such an outcome. Of all of the casework completed, only one criminal case resulted in a custodial sentence.



\* Advice only / No Further Action following representations

\*\* Acquitted / Conviction overturned / No evidence offered in court by prosecution

There are a number of possible explanations for the largely positive case outcomes:

- Commons solicitors have expertise in working with clients who are in the asylum system.
- Commons received additional funding for what must usually be entirely unpaid pre-charge work.
- Many of the cases Commons worked on as part of this study concerned minor offences that did not risk a custodial sentence.
- Cases were often referred to Commons by charity caseworkers who could assist by providing supporting statements and by connecting Commons with their client's personal adviser or immigration solicitor, allowing them to make use of collected evidence to provide context for the offending behaviour as mitigation during sentencing (for example making use of psychiatric statements collected for an immigration case).

Solicitors at Commons noted that the additional time they could commit to preparing these cases, and the additional background information made available by other professionals, helped with changing the minds of police officers, magistrates' and judges, helping them to put the individual's offending in its proper context of extreme trauma and social and economic deprivation.

*"When you tell a court [about] all the awful things that person has been through. They're hopefully going to give them the least possible sentence they can. Which [in this case] they did. I think that in terms of actual sentencing, I think that there seems to be a fairly good recognition of the relevance [of mitigating circumstances]."*

**Fiona\***, criminal defence solicitor

*"In terms of the young person who was 14... in the end, the fact that he was an asylum seeker meant that the CPS did eventually recognize his vulnerabilities and discontinue that case after we made representations. But [it] took quite a while to get there. He was positively impacted at the end."*

**Ilona\***, criminal defence solicitor

However, this may not reflect the wider reality. A number of example cases where young people seeking asylum received custodial sentences have been offered during this report and in Report A. Young people prosecuted for offences introduced by the Nationality and Borders Act 2022 were observed receiving custodial sentences of between 8 and 36 months at Canterbury Crown Court. In addition, many professionals interviewed for this report spoke about working with imprisoned young people. There have also been many reports in the media of serious offending by young people seeking asylum that have resulted in custodial sentences<sup>30</sup>.

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

A caseworker working with young people seeking asylum shared their view on this:

*"I've worked with many young people, I've been really surprised about the... surprisingly long custodial sentences for pretty minor offences. I think perhaps, that relates to a lack of a support system, or kind of parental figures, or of authoritative figures that can advocate for young people throughout the process, or to testify to their good character. Or perhaps it is also just racism and xenophobia, which prejudices judges, the CPS and the police in terms of what charges are being brought and so forth."*

**Louise\***, caseworker

Although it is not possible to make any assessment of unequal sentencing of foreign nationals within the scope of this report, this was mentioned as a possibility by research participants. According to statistical analysis by the Ministry of Justice (MoJ) conducted in 2011, the odds of non-UK nationals being sentenced to prison were at that time approximately 56% higher when compared with UK nationals<sup>31</sup>. The MoJ noted that this may have been due to a perceived greater absconding risk and because the previous criminal history of non-UK nationals may have been unknown, thus limiting practitioners' ability to conduct valid risk assessments or provide mitigating circumstances.

The disproportionate custodial sentencing of ethnic minorities has been widely understood for some time now, though there is disagreement about the cause. The most recent statistical analysis available, provided by the MoJ in 2015, showed that White adults, across the board for a number of different offences, were less likely to be imprisoned than non-White adults. Offenders from an ethnic minority background had approximately 39% higher odds of being sentenced to prison than offenders who were recorded by police officers as coming from a White background<sup>32</sup>. This is more acute for particular offences. For example, offenders from an ethnic minority background are far more likely to be sent to prison for drug offences than other defendants according to research commissioned by the Sentencing Council<sup>33</sup>.

The absence of similar research for sentencing outcomes for non-UK nationals — and in particular those who came to the UK in order to claim asylum — is a particular problem. Without the ability to diagnose whether there is a problem within the system, no policy solutions can emerge.

31. Ministry of Justice (2011), Associations between police-recorded ethnic background and being sentenced to prison in England and Wales

32. Ministry of Justice (2015), Associations between police-recorded ethnic background and being sentenced to prison in England and Wales

33. Sentencing Council (2020), 'Investigating the association between an offender's sex and ethnicity and the sentence imposed at the Crown Court for drug offences'

## **I. Experiences not examined in detail within this research**

There are other parts of the criminal justice system that some young people seeking asylum are likely to have experience of that it is not possible to fully address within the scope of this report, partly because of the lack of evidence available in the casework undertaken by Commons.

For example, some young people seeking asylum will have experience of the youth justice system, the part of the criminal justice system that only deals with children. Of the 36 young people seeking asylum that Commons supported, only 7 were known to be children (with the rest being young adults or their circumstances unknown). Of this number, not all would have had contact with the youth courts, as some will have not been required to due to the nature of the offences they were charged with. Therefore, experiences of those parts of that system — such as youth courts, Youth Rehabilitation Orders (YROs) and Youth Offending Teams (YOTs) — were less explicitly discussed by young people seeking asylum or those working with them. Whilst they might not have had experience of those youth justice procedures, young people seeking asylum might benefit from them as is discussed later in the report.

Only one young person represented by Commons received a custodial sentence following contact with the criminal justice system, and this occurred right at the end of the research period. Therefore, the experiences of young people seeking asylum in prison or in Youth Offending Institutes are not considered in detail. However, young people seeking asylum will likely experience custody in a way that is unique to them, borne from the fact that they are less likely to speak English fluently; are more likely to suffer from mental health issues; and are not going to have family visits or other forms of support in prison.

Finally, the experiences of those young people seeking asylum who end up in court unrepresented are also not included within this report. Legal aid representation in criminal court is subject to both a merits test (assessing the 'interests of justice') and a means test (assessing financial eligibility). The 'interests of justice' test assesses the seriousness of the case, potential consequences (like imprisonment), and the likelihood of success. Cases in the Crown Court automatically satisfy this test. Therefore, some young people seeking asylum charged with less serious offences will end up in court unrepresented.

One caseworker interviewed for this research spoke about supporting a young person whose refugee status had been allowed to expire and who was in the process of applying for further leave when he was arrested for possession of cannabis. He was unable to secure legal aid representation because the charge was not considered serious enough — and he was not otherwise allowed by a Magistrate to explain his circumstances in court, resulting in a criminal conviction and a refusal of his immigration application.

## 4. Impact of being criminalised on young people seeking asylum

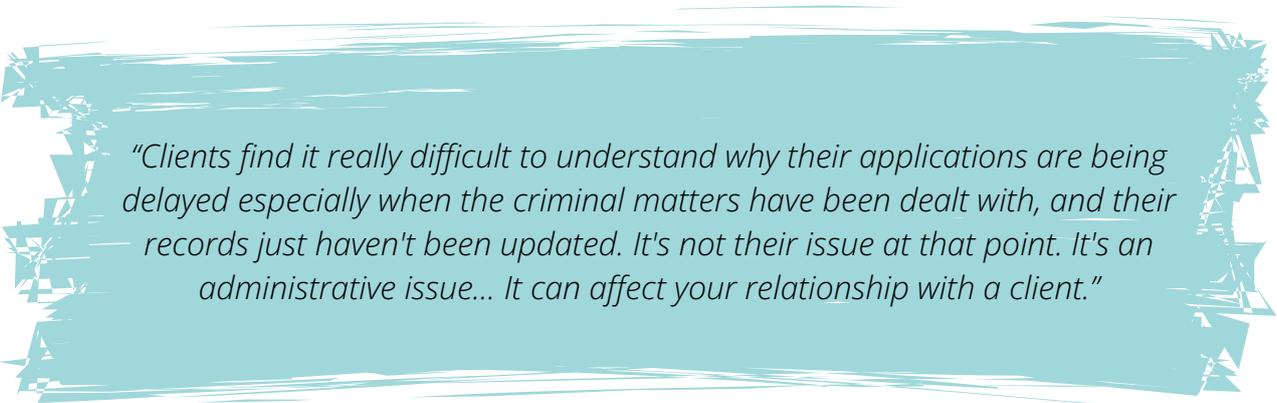
Whilst many Commons clients officially experienced positive outcomes in relation to their criminal matter, they still experienced various negative impacts due to contact with the criminal justice system, including on their immigration applications and immigration status; on their mental health; and on their ability to work and access benefits, housing and education.

This section will consider some of these wider secondary impacts on the lives of criminalised young people seeking asylum. This does not only represent a negative impact on the offender and their quality of life, but also a broader impact on society as criminal justice processes increase the likelihood of reoffending, social isolation, or further exploitation.

### a. Impact on immigration applications and status

Police investigations into criminal offences can have an impact on immigration applications — including applications for asylum; for indefinite leave to remain; for travel documents; or for family reunion. Any such application will typically be frozen by the Home Office until the relevant police force conclude their investigation and indicate No Further Action (NFA) will be taken.

The police will sometimes not update their records — or not inform the Home Office that the record has been updated — and so it can be necessary for immigration solicitors to follow up with the police in order to clarify at what stage the investigation is at, or even if the investigation has ended with no charges being brought. This often causes considerable, avoidable delay to that application.



*“Clients find it really difficult to understand why their applications are being delayed especially when the criminal matters have been dealt with, and their records just haven't been updated. It's not their issue at that point. It's an administrative issue... It can affect your relationship with a client.”*

**Darya\***, immigration solicitor

If the person concerned has their asylum claim outstanding, then they will continue throughout this period to live on £9.95 a week if in catered accommodation and £49.18 if not catered for, with no right to work<sup>35</sup>. For context, a Zone One only daily travel card now costs £16.60. The accommodation they are required to stay in is often substandard (see **Report A**). They cannot travel outside of the country and higher educational study is off limits due to student loans not being available to them. Life is therefore essentially on hold until a decision on their claim is made. This decision would be further delayed by a criminal investigation.

*"Since [changes brought in] a couple of years ago... instead of someone being arrested and then being released [on bail] and told to come back to police station in three months, or 28 days, they're just told 'go away, forget about us, we'll contact you at some point in the future, when we've got an update [on the criminal investigation], or we've decided what to do about your case'. And so often, months and months... and even years will pass... and in that time often cases are closed but the police haven't told the suspect and they also haven't updated their system. So the Home Office will see [on their asylum casework system] that says something [criminal is] outstanding, but actually it is closed [with No Further Action] like months ago."*

**Fiona\***, criminal defence solicitor

When someone under investigation is then charged with a crime, this continues to block progress on any immigration applications. Home Office guidance states that only where the pending prosecution could have a material impact on sentence should the asylum decision be put on hold<sup>36</sup>. However, in the cases Commons worked on, even minor alleged offences were used to justify delaying immigration applications.

Because of the backlog in the criminal courts, cases regularly take many months or years to be heard following charges being issued. If an interpreter hasn't been booked, or for some reason fails to attend then there will be a further wait.

*"There are [often] massive delays in the criminal courts. We can be talking years, even for a case that's not particularly serious... And for some people, when they're awaiting [immigration] decisions they don't have access to public funds. Or benefits. They can't work. So that's massive compared to if I'm on trial for theft in two years time. To some extent, I can just put it to the back of my mind and get on with my life. They can't do that."*

**Fiona\***, criminal defence solicitor

35. UK Visas and Immigration, '[Asylum Support](#)'

36. UK Visas and Immigration (2023), '[Guidance: Pending prosecutions in asylum claims](#)'

A criminal conviction or caution can, and usually does, impact on any immigration applications made by these young people — whether that is an asylum claim or (following a grant of refugee Leave to Remain) an application for Indefinite Leave to Remain. There are a number of ways in which this impact can be felt.

In normal circumstances, if these young people are granted a positive decision on their initial claims they will receive five years leave to remain (refugee leave or humanitarian protection). At the end of that five years, many still have an ongoing risk of persecution or violence were they to return to their country of origin, and so will make an application for Indefinite Leave to Remain (ILR) at this point. If ILR is granted, it is then possible for them to apply for British Citizenship and a British passport 12 months later.

However, when applying for any form of Leave to Remain, applicants need to disclose all convictions and cautions even if they are spent. Current guidance states that those who have been convicted and sentenced to 12 months imprisonment or more, or are considered a persistent offender or to have caused serious harm, will be refused. Additionally, even if they do not meet this threshold, their application could be refused if the Home Office thinks their criminal record indicates 'bad character'. This means that repeated minor convictions could result in refusal. A young person's current status can also be revoked on similar grounds.

An application for Indefinite Leave to Remain is likely to be refused following a criminal conviction but can be granted following submissions from an immigration lawyer explaining the circumstances surrounding it. With minor offending or short custodial sentences, often a smaller period of Leave to Remain will be granted instead, such as three years. This means that the applicant will have to make a further application for Leave to Remain thereafter. Even very minor offences, such as driving offences or cautions, can result in Indefinite Leave to Remain being refused.

*"The way [criminal convictions] impact [on these young people] is [when applying for] ILR. You [might] have to advise them that they will not be [getting] Indefinite Leave to Remain after five years. And there is a whole element of shame in relation to that... [sometimes] they're so full of shame that you're not able to take witness statements [for the application]."*

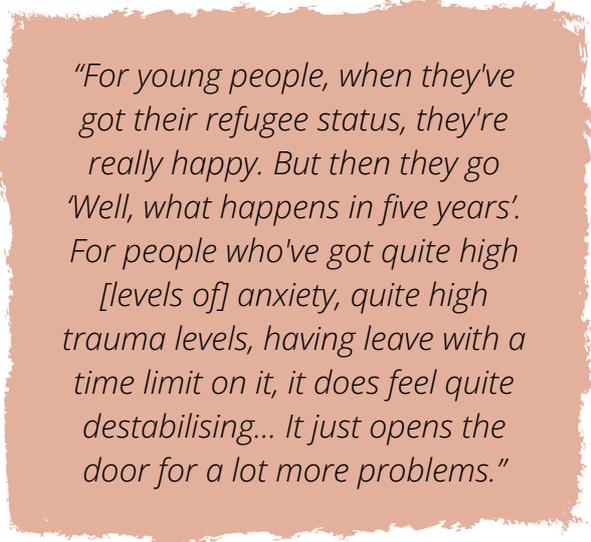
**Emily\***, immigration solicitor

The UK Borders Act 2007 states that a foreign national (not a British citizen) will be automatically deported if convicted of an offence for which they receive a prison sentence of 12 months or more. If someone does not meet this threshold, they can still be deported under the Immigration Act 1971 if the Home Office deems it to be 'for the public good'.

The government announced in August 2025 that they would be bringing primary legislation that would allow them to deport Foreign National Offenders immediately after sentencing<sup>37</sup>.

There are some exceptions to automatic deportation, such as where the removal of an individual would breach their rights under the European Convention on Human Rights or the UK's obligations under the Refugee Convention. In these circumstances, the young person is given a limited form of leave, sometimes without the right to work or access public funds.

Being granted indefinite leave to remain or making a successful application for British citizenship provides a feeling of stability after what can be a very long period of flux. The emotional or mental health toll can be heavy for those young people denied that stability.



*"For young people, when they've got their refugee status, they're really happy. But then they go 'Well, what happens in five years'. For people who've got quite high [levels of] anxiety, quite high trauma levels, having leave with a time limit on it, it does feel quite destabilising... It just opens the door for a lot more problems."*

**Susan\***, immigration solicitor



*"For one of my clients, getting citizenship is the ultimate [goal]. 'I have succeeded, I've moved beyond my traumatic past. I'm fully welcome in this country, I'm British'. That's really important for him."*

**Fiona\***, criminal defence solicitor

One young person spoke in his interview about why it was so important for him to be successful in his application for a refugee travel document and to travel outside of the UK – a type of passport that is granted by the Home Office to recognised refugees following an application.

37. UK Government (2025), ['News Story: Foreign criminals to face immediate deportation'](#)

*"One of my brothers is missing. I have to get my travel document and go and look for my brother. Every country I'm gonna go to. As soon as I get my indefinite leave to remain, I'm gonna apply for a travel document. And I'm gonna go to France. I'm gonna go all the way to Turkey to look for my younger brother who is missing. He is 13 years old. He was with my other brother, who is here [in the UK] now, but the other one is missing. They got separated. I'm worried that this criminal matter might affect my ability to do that."*

**Jameel\***, 19, from Afghanistan

Another young person had given up on his asylum claim and returned to his home country, following criminal charges, and having been unable to regularise his immigration status.

*"My family is in a blood feud with another family. It's been years. It's not like I'm safer here [in Albania]. At the time [I left the UK], I didn't care if I died. The amount of stress I had at the time, it was a lot. So I couldn't bear it anymore, to be honest. And then I said, I don't care. What happens, happens. I'm a grown up now. It's better to live like one year or two years, at least you're doing what you want to do, then living the rest of your life [fighting the immigration system], getting told what to do, like move there, move here, go to this meeting, go meet this [person], go meet that [one]. So that's one of the factors that I'd say lead me to take the decision [to return to Albania]. It's not like I always did good, but I did good enough I think."*

**Alteo\***, 22, from Albania

One social worker spoke about the fight she had to prevent a young person in her care from being detained under immigration powers and deported following a prison sentence.

*"He served his sentence for the offence [he committed]. But then he was being doubly punished with a deportation order... He was due for release, but then he was held in custody under immigration powers. And the police were getting involved and advising the Home Office of their views [that] he shouldn't be released... We really struggled to get him bailed, but we did [eventually]. I can imagine that that's happening probably a lot more — and social workers who don't realise what that process is just kind of accept it."*

**Denise\***, social worker

## b. Impact on mental health

*"It had a negative impact on me. Even to this day, I find it really hard. I don't really stress about it anymore, but I do think about it. It's just memory, isn't it, it's hard to get rid of. I found it hard to focus. I lost about two jobs since that time. I was going through depression. I found it so hard to wake up early morning. It wasn't like that until the police situation happened, it was never like that. I used to wake up at half-six to go to school. I'm getting better now, but when that police situation happened, it was crazy man... Things like this, don't let it get into your head. Because I've seen my best friend... I get emotional talking about this... he took his own life. Things like this got into his head. I wish I'd known at that time what he was going through."*

**Samson\***, 19, from Eritrea

It might be obvious that being stopped by the police or being arrested or being in court could be a stressful or upsetting experience. But it is clear from interviews and casework that the mental health impact of contact with the criminal justice system for this group is heightened because of the existing vulnerabilities, and because of the risk of a destabilising knock-on impact to immigration status. Tragically, one client amongst the research cohort died by suicide during the period of this study.

*"I think [criminalisation] can bring uncertainty and a feeling of being unsafe, when they're meant to be in a country of safety. I think that's where it is different to the experiences of British-born young people [in the criminal justice system]."*

**Florence\***, accommodation keyworker

*"I think that [it] massively affects their mental health. And if they've already got psychological or psychiatric difficulties, it just exacerbates them... a number of my clients, who I've represented several times... they've ended up being sectioned. And I'm sure that's as a result of being criminalised. It has exacerbated that."*

**Yvonne\***, criminal barrister

Often there can be a very serious impact on the life of the young person who is being criminalised, and the concern might therefore be justified. But, equally, sometimes the level of fear and worry experienced by the young person is disproportionate to the crime itself and any expected or worst-case scenario outcome, as described by two solicitors in their interviews.

*"With a lot of them, the moment that you say the word 'court' their expectations... are 'Oh, I'm gonna go to prison. [This] really horrific thing is going to happen' [even when] it's, at worst, going to end in a fine... We had one kid, I think he dropped out of school, thinking about the proceedings, and the stress of it and everything. And then it was already sort of a little bit further down the line that we realised this is because he thought he was gonna go to prison for this [minor] traffic offence."*

**Joelle\***, criminal defence solicitor

*"They are often very worried about the impact on their asylum claim and often they have a perception that because I've got this [charge], there is nothing more that can be done and I might as well go underground... I had one client who had been homeless for a period of time. He had a very unpleasant social worker, who had just sort of said, Oh, you're 21 now, off you go. Threatened to call immigration, even though at the time, he hadn't had an [asylum] decision. He had been caught with a tiny bit of cannabis on him. It should never have gone to magistrates court if he'd been [properly] represented, but it went to court. But he'd been too frightened to turn up. So then it [became] a bigger issue. He was so terrified. In the end, he got a £20 fine. But every time I spoke to him [about his asylum claim] I couldn't take a witness statement from him, I couldn't do anything, because he was like 'If I get sent to prison, will you come and visit me? If I get sent to Rwanda, will you come visit me?'"*

**Emily\***, immigration solicitor

### c. Further impacts of criminalisation

*"This is a population that has more things stacked against them already, in terms of [building] stable and fulfilling lives, so they are less likely to ride out the storm. Criminal prosecution is more likely to set you back if you lack the resources and the connections, than it maybe would do if somebody had [those] resources and connections... Particularly, when there are other issues, including trauma... to overcome in your life. 'Clustered injustice' is an expression that my colleague sometimes uses."*

**Jonathan\***, criminal defence solicitor

From access to housing, services, and education and work: the nexus of immigration and crime can have a serious and lasting impact that goes beyond the criminal charges or the criminal punishment itself.

*"I think some young people feel a sense of having let somebody down [or] let themselves down by entering into the criminal justice system having already arrived in a different country. I think people carry with them a huge amount of shame... which I think is a real barrier to people building relationships with professionals [and] organisations. It makes people reluctant to really engage with services. [Criminalisation] has such a massive impact on ... housing, their access to work... [people] really worry about their ability to earn money. [It increases] the likelihood of having to earn money through means that are at least informal, if not criminal, and that creates a whole other level of stress. Housing has been probably the biggest challenge [I've seen]. Across the board, people's housing needs are just being wildly unmet. But for this group, it's especially acute. I think people are denied access to accommodation they should have a right to access. [This results in] literal homelessness or relying on friends or staying in places that they know they're not really allowed to stay and just dodging surveillance."*

**James\***, caseworker

Issues with access to, and retention of, housing was something which Commons' clients experienced during the course of this study. When a person is held in prison on remand pre-trial their housing benefit is paid for up to 52 weeks. However, it stops the moment that they are sentenced to any term of imprisonment.

In one case, a young refugee risked losing his council house as a result. The relevant council did not have any policy in place for helping prisoners to retain their accommodation whilst inside (in fact, Commons only found one council in the country with such a policy). It was only through determined advocacy and the work of a supportive personal adviser that the council eventually agreed that a friend could live in the flat and cover rental payments in the young person's absence. This is an issue that would potentially affect anyone in council housing who serves a prison sentence.

Professionals also reported that prison and probation services do not, in their experience, comply with their requirement to refer prisoners to their local authority's homelessness scheme prior to their release.

Even those not imprisoned are sometimes penalised. Any person applying to their Local Authority's house register or registering as homeless must report previous convictions. This can lead to housing support being refused, reduced or delayed on safeguarding grounds.

Smaller bureaucratic pitfalls appear for young people who have been criminalised and who hold a criminal record — or who are waiting for the outcome of criminal proceedings. One client had his trial rescheduled the day before it was due to start, to a date 14 months later. When the new date came around it was again rescheduled the day before commencing for a further five months later. At the time of writing it has still not been heard, even though it has been several years since he was charged with the crime.

A lack of closure on his criminal case has had a mental health impact on him, but has also delayed the defendant being granted Indefinite Leave to Remain. While he still retained the rights he had before his Leave to Remain expired, he was unable to prove his legal right to work to employers because a new Biometric Residence Permit (BRP) was not provided by the Home Office. If someone's immigration status expires whilst awaiting for a criminal matter to be resolved, the Home Office might not issue a new BRP in such circumstances. Even with letters provided by his immigration solicitor, employers were reluctant to offer him work. So, even though in theory he had the right to work, in practice he was unable to evidence that right.

All employers can ask prospective employees about unspent convictions, and many do discriminate. Being unable to work might result in an individual not having the means to pay rent, creating a risk of destitution. These problems in turn can exacerbate mental health issues.

One interviewee identified how a lack of support at this stage, or neglect by local authority children's services or care-leaver services, can lead to an increased risk of further criminalisation, described as a "vicious circle".

*"Certainly [criminalisation] is disruptive of social services [support] in my experience. If someone goes into prison, if they're a care leaver, their [social services] case tends to be closed, rather than support offered whilst they're in prison... You'd hope that there'd be increased support when someone is released from prison. That's not my experience. If the young person has immigration issues and can't work, they [can] remain vulnerable to many of the issues that put them at risk of criminality in the first place. ... after being released they might have nothing to do... and they don't have any kind of increased support, then the risk of engaging in criminality, again, is pretty high... especially if it was gang related [criminality]... I just see it as a bit of a vicious circle... I think the lack of support that young people often get makes it much harder for them to give any other options [a go]."*

**Louise\***, caseworker

## **CASE STUDY: FB**

Within the period of this study, an unaccompanied young person seeking asylum, previously in the care of Kent County Council, died in a prison in Kent. In order to protect anonymity, we have used their initials only. We provide here the record of inquest, written by the relevant coroner, which touches on many of the concerns and themes present in this part of the report:

*"[FB] took his own life but his intention in doing so is unclear. Factors relevant to the death but which cannot be concluded to have caused or contributed to the death include: There was failure to address [FB]'s accommodation concerns. There was failure by Kent County Council for appointments not being met regarding his care needs assessment. There was a lack of support regarding [FB]'s mental health issues, lack of psychiatrist support all of which needed to be more frequent and consistent. ACCTs<sup>38</sup> were closed too quickly without actions being completed. There was a failure to ensure that [FB] understood all the information that was provided to him. His mental health issue deteriorated because the IS9IR form<sup>39</sup> was served to [FB]. The timing of release and prospective [sic] of accommodation should have been better. The probation service failed to source accommodation. There was failure at times from immigration to give relevant parties and release date for [FB]. At times there was a failure from all parties to communicate in aspects relating to [FB]."*

38. ACCT stands for Assessment, Care in Custody and Teamwork, a process used in prisons to support people at risk of suicide or self-harm.

39. The IS9IR form is a form served to prisoners who are likely to be kept in immigration detention following the end of their prison sentence.

## 5. Understanding the systemic and structural

In the previous sections of this report, we looked at how young people seeking asylum experience the various aspects of the UK's criminal justice system.

To understand why they experience it in this way, it is necessary to consider the wider systemic and structural issues that shape their lives. These issues fall under three key themes:

### **Part I – Young asylum seekers are often high needs clients**

Once in contact with the police and the criminal justice system, young people seeking asylum appear as high-needs clients to criminal practitioners tasked with representing them. Some of the research participants felt that the background and experiences that young people seeking asylum bring with them were a contributing factor to the struggles this group had with accessing their rights, defending themselves, self-advocating, and overcoming criminalisation.

### **Part II – A broken criminal justice system compounds inequalities**

Young people seeking asylum experience the criminal justice system as a bewildering, chaotic and impossibly difficult system to navigate. Overwhelmingly the analysis of casework and interviews with young people and professionals points towards a very negative experience, from feelings of mistreatment by the police to struggling to trust appointed legal representatives, difficulties with interpreters and issues with bail and sentencing. For some young people these negative experiences will result in unnecessary criminalisation, poor outcomes, and secondary impacts. These difficulties are compounded by the underfunding of the criminal justice system and by racism.

### **Part III – Care system often fails to provide necessary support**

Other participants talked about the way in which the care system fails to sufficiently support young people who are looked-after children or care-leavers when they first come into contact with the criminal justice system. Once in contact with the criminal justice system, it can be very difficult for young people seeking asylum to remove themselves. Failure to provide support at this stage can result in criminalised young people re-offending and being further criminalised, with ever-worsening outcomes.

# I - Young people seeking asylum are often high-needs clients

Research participants identified a number of ways in which young people seeking asylum are high-needs clients for criminal practitioners to represent.

- Often these young people appear to professionals to lack maturity compared to others of the same age, perhaps due to a lack of parental influence and support at the key life juncture of adolescence (section a).
- Furthermore, some displayed low self-confidence and unwillingness to self-advocate for their rights and entitlements, both of which are likely to be important when navigating the criminal justice system (section b).
- Young people seeking asylum also enter the UK with very limited knowledge of the law or of the criminal justice system, another key barrier that must be overcome in order to self-advocate (section c).
- In addition, a high proportion of those young people seeking asylum coming into contact with the criminal justice system appear to be traumatised; working with survivors of trauma can be challenging for criminal practitioners. Providing a good legal service in a trauma-informed way requires skill and experience which isn't always available (section d).
- Furthermore, the life instability and lack of resources that these young people have access to is an additional barrier to overcoming criminalisation (section e).

## a. Maturity and developmental age of young asylum-seeker clients

Young age and lack of maturity impact how young people experience the criminal justice system. Not only is it relevant in relation to understanding why a crime is committed or to mitigating what sentence is appropriate, but also in understanding how young people engage with the police, courts, and legal representatives.

*"My 20 year old refugee client, is maybe a bit more similar to my 16 or 17 year old British client – for lack of a better words – in terms of how reliable they are in getting to [meetings on time] and engaging with me, their concentration in meetings. I would say, very often, they're bad at concentrating and go on their phones all the time, in a way that, I would expect maybe more from a 14 to 15 year old as opposed to someone in their late teens, early 20s. And I don't take it personally. I don't know what's behind that, whether they're stressed or they're bored, or whatever it is. But I would say the kind of behaviours that I see [indicate] maybe interrupted or delayed development."*

An accommodation key worker interviewed for this research spoke about how she observed an “immature” view of the criminal justice system from some of the young people she supported. This naivety about how the system operates could lead to certain decisions being made that might be detrimental to the young person involved.

*“One [thing] that was said to me by a young person when I was supporting them and I believed them to have been criminally exploited: we were discussing the process and they said “The judge is like my father, we’re in the UK now, it’s all going to be okay.” In my view, it was an [immature] outlook on justice... I guess from a young person’s experiences in certain countries – there is a lot more obvious corruption, a lot of police bribery – and so the UK has this honourable, non-corrupt system. That is the perception.”*

**Sam\***, accommodation key worker

Since 2013, the Crown Prosecution Service’s (CPS) Code for Crown Prosecutors has also included maturity as a factor for consideration of culpability as part of its public interest test in deciding whether to charge a suspect<sup>40</sup>.

However, the fact that the relevance of maturity is officially recognised on paper does not mean that it is always considered in practice. Sentencing Council research, conducted in 2016, found that the inclusion of ‘age and/or lack of maturity’ was only taken into account for 28% of young adults aged 18 to 21 a figure that dropped to just 6% for young adults aged 22 and over<sup>41</sup>. More recent research by the Magistrates’ Court Association from 2021 found that *“it is not raised often in the magistrates’ courts”, and that, even when it is raised, “magistrates often felt they were not receiving enough information for it to be effectively considered in their decision-making”*<sup>42</sup>.

A solicitor interviewed for this research spoke about how some young people seeking asylum she worked with displayed “avoidant” behaviours. She observed that age and maturity might be relevant to why sometimes young people from this client group were reluctant to engage with the criminal justice system, to their own detriment.

The criminal justice system does formally recognise that age and maturity are important in understanding criminal responsibility and the experience of criminalisation. This has been the case for children for some time, but is increasingly becoming more relevant for young adults.

40. The Crown Prosecution Service, [The Code for Crown Prosecutors](#)

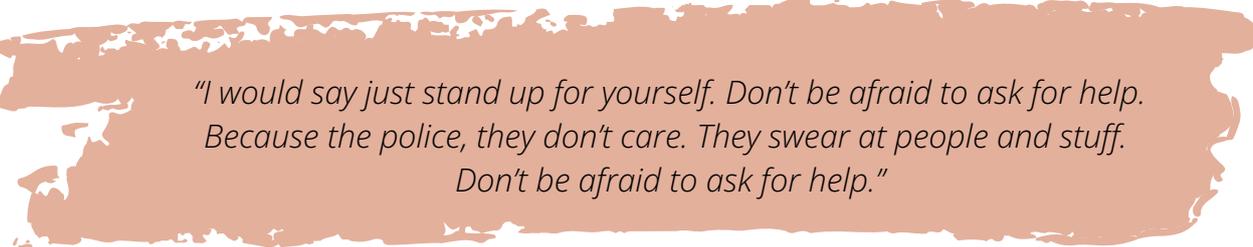
41. Howard League for Penal Reform (2017), [Judging Maturity: Exploring the role of maturity in the sentencing of young adults](#)

42. Magistrates’ Association (2021), [Maturity in the magistrates’ court](#), p.5

In Scotland, young people (i.e. those under 25) are subject to an entirely separate sentencing guideline. This avoids the risk of ‘maturity’ being lost within a long list of other potentially relevant mitigating factors set out within the adult guideline for England and Wales. Scotland also goes further in terms of its differing treatment of those under and over 25. For young adults in Scotland, there is a requirement that the *“best interests of the young person [...] be considered in every case”*<sup>43</sup>.

In relation to the police, the relevance of maturity — particularly of young adults — to how a person experiences and behaves during formal interactions does not yet appear to be at the forefront of guidance and practice. For example, it is not mentioned in the College of Policing’s Authorised Professional Practice on stop and search<sup>44</sup> or the PACE Codes of Practice which address requirements for the treatment of individuals during stop and search, arrest, detention and interview. The National Police Chiefs’ Council’s Children and Young Persons Policing Strategy 2024-2027 does note that whilst young people are *“adults in law, Child Centred Policing recognises maturity takes time to develop and vulnerability can remain”*<sup>45</sup>. Time will tell whether this filters down to practical guidance or to the daily practice of individual officers.

## **b. Lack of self-confidence and unwillingness to self-advocate**



*“I would say just stand up for yourself. Don't be afraid to ask for help. Because the police, they don't care. They swear at people and stuff. Don't be afraid to ask for help.”*

**Samson\***, 19, Eritrea

A lack of self-confidence or unwillingness to self-advocate for rights and entitlements impacts on the ability of young people to effectively negotiate their way through the criminal justice system. When young people seeking asylum don't feel they can speak up for themselves or feel comfortable to demand a good service from their legal representatives or support workers — or they don't know how or what to say — it can impact on the outcome of the criminal justice process.

Several professionals raised in their interviews the issue of self-confidence as a systemic barrier to young people within the criminal justice system.

43. Scottish Sentencing Council (2022), *‘Sentencing young people, Sentencing guideline’*, P.4

44. College of Policing (2016), *‘Stop and search: authorised professional practice’*

45. National Police Chiefs’ Council (2024) *‘Children and Young Persons Policing Strategy 2024 - 2027’*, p.6

“Lack of a sense of entitlement means that people don't end up getting equivalent service... I think this client group is more likely to be reliant on in our line of work, for example, on the quality of a particular duty solicitor, who they encounter because they're not going to have the networks and the knowledge to be able to be referred to somebody as a recommendation, they're more likely to find themselves as being offered the service of a duty solicitor. And then obviously there is a huge range within the duty solicitor cohort in motivation and expertise. It's a group of people who are extremely overworked and underpaid and dwindling, as well, and ageing.”

**Jonathan\***, criminal defence solicitor

*“I was very, very shy when I first came here. I was a teenager. The support they gave – 30 pounds student allowance they gave [me] per week. My teacher forgot to put my name forward for [the allowance for] six months. And then on pay day would I ask that teacher [why I hadn't received the grant]? No, I was too shy to do that. When I [eventually] pointed it out to him, after six months, he was so mad. He said ‘why didn't you tell me when you were here for six months? Why didn't you say sir, I'm not getting this. How come?’ And that was like a learning point for me. At that time [in my life], that amount of money, it would have changed my life so much. Because I was so poor, I had nothing. So without self-confidence you miss out on so much.”*

**Salam\***, caseworker

## **b. Lack of understanding of UK's legal system**

In addition to being young, lacking maturity, and having low self-confidence and self-entitlement, young people seeking asylum often have no knowledge of how the legal system in the UK works and limited understanding of what is happening to them when in contact with that system. This creates further barriers to young people accessing their rights.

*"On the day of the court, they didn't have the correct interpreter. He also was very confused why it was a different solicitor, and not his asylum solicitor. And he kept on asking that. It was very confusing for him, because he kind of thought every single person in the UK has a solicitor and they deal with everything."*

**Florence\***, accommodation key worker

*"Their understanding of the legal system [is not good]... you have to spend a lot longer with them and trying to help them understand things and why things are the way they are."*

**Yvonne\***, criminal barrister

Across the board, legal professionals and supporting professionals raised a lack of understanding about the law and about the criminal justice system as a key issue impacting young people seeking asylum. It was noted by several research participants that, while there is a real lack of understanding about the legal system within the general population, this is even more pronounced for these children and young adults who may not fluently speak the language and who are likely to have different cultural expectations and limited ability to ask questions and learn.

This lack of knowledge and lack of understanding impacts on this group from the beginning. Several research participants pointed out that not knowing about the law can lead to young people making mistakes that can have an enormously large impact on their lives. Even laws that might seem obvious to a person with knowledge of UK law might be less obvious to someone from a different social context.

*"The amount of times young people who've had like a very small amount of weed on them... [and they're] stopped and searched because of it... [and] arrested... They genuinely didn't know that a small amount like that, because it is smoked everywhere. In certain parts of London, you walk down the road, and it is everywhere."*

**Florence\***, accommodation key worker

Some research participants also commented on a general lack of understanding amongst young asylum-seekers of how policing functions; what happens when you are arrested; and what rights you have whilst in police custody.

Similarly, several professionals commented on poor knowledge of the judicial processes that occur within a magistrates' or crown court. Not understanding this prior to being charged means that it might be necessary for solicitors and barristers to educate their clients about the process as it is happening. This can create further issues.

*"They sit in court, you leave the courtroom, they have no idea what's just happened... Everyone's speaking too quickly – defence, prosecution, probation, social workers and the judges, everyone – because there's an attitude that we just need to get in and out... There are 20 cases listed in that courtroom or that on that day."*

**Ilona\***, criminal defence solicitor

Many professionals felt that education on the criminal justice system was not given enough attention by statutory professionals such as foster carers, social workers and personal advisors. Without proper avenues to learn about the law, it seems inevitable that misunderstandings would result.

*"When you go to Sweden... you get given at least three months of orientation classes, [on important issues including] how the criminal justice system works, what are your rights, you need to pay for your bus ticket, [etc]."*

**Salam\***, caseworker

*"I have seen social services templates of the things that they discuss with a young person who is newly arrived – for one local authority anyway. It was a very cursory explanation of the role of the police. Just very briefly mentioned... I've encountered and observed lots of misunderstandings [about the law] and about the police and their role"*

**Louise\***, caseworker

One professional in their interview raised the issue of education on relationships and consent, which some young people seeking asylum might miss out on or not receive in their own country or after arriving in the UK.

It was also noted by some that supporting professionals themselves might have limited knowledge of the law or about the criminal justice system. This led on occasion to false expectations being created for the young person.

#### **d. Working with trauma survivors is challenging**

The impact of trauma on young people seeking asylum was raised as an issue central to the handling of criminal legal proceedings from start to finish. Legal professionals and supporting professionals alike raised in their interviews how difficult it is to work with young people who had experienced or were experiencing significantly traumatic events, especially during a criminal proceeding in which their liberty is at risk and with it their secure status and ability to continue to live in the United Kingdom.

*"[With] this particular group, the biggest [barrier] is young people experiencing complex trauma, and the impact on their brain that this has. Clearly an event [like] getting arrested is going to trigger anyone with complex trauma and then they're just in fight or flight. So that is a huge barrier to self advocating, to being able to enable them to have a coherent thought process [in police custody]. So I would say, for the vast majority of the young people that we work with there are huge barriers. A lot of it's because of trauma, and the [in]ability to act in a very triggering, and scary situation."*

**Maria\***, caseworker

Several legal professionals spoke about how the trauma that their clients had experienced impacted on their client's ability to participate in the criminal proceedings, and in turn their ability to represent their client. One supporting professional spoke about how she felt that there still wasn't sufficient understanding of trauma within the criminal justice system.

"It's very difficult when you're representing them, because of the overwhelming amount of trauma the majority of these children have, to meaningfully take instructions... Because they don't trust you. Their experience of White people, let's be blunt here, and particularly people who look like me, who wear a suit and speak in a certain way, you know... they don't trust you, because you represent something that's quite hostile to them. And you're also working within a system that hasn't been kind to them."

**Yvonne\***, criminal barrister

*"[There should be] a better understanding in the courts of... mental health... [but not] in this really blanket [and] broad way that we speak about it here in the UK, but the actual neurological impacts of trauma. A trauma-informed approach at court level."*

**Florence\***, accommodation key worker

### **e. Life instability and lack of resources create additional barriers**

It's also important to consider the impact of socio-economic position. Both life instability and a lack of economic and social resources create additional barriers for young people seeking asylum when they are trying to engage with the criminal justice system and in accessing their rights, but also the necessary support needed as life continues on alongside dealing with the criminal matter.

*"If people have unstable accommodation, they give you an address, they may not be there, the letter may get returned to you. If people's phones are seized by the police, ... it's then not as easy to maintain contact... In a big city like London, a five mile distance can seem huge, if you [have] never [before] gone that far, if you don't know the city particularly well. There's loads of practical difficulties [this group face]... it is harder to represent people who are less resourced in general, because in a criminal case, things like presentation and stability in your life does have an impact on your ability to participate in a case. And so if you have a chaotic life, you're more likely to miss a court date, for example. And that can compound your errors or difficulties. You may end up being arrested or prosecuted for failure to surrender."*

**Jonathan\***, criminal defence solicitor

## II - A broken criminal justice system compounds inequality

The impact of austerity is widely felt within the criminal justice system, resulting in delays at every stage. Deficiencies in the legal aid system mean that criminal solicitors and barristers working under legal aid contracts are often juggling many cases and have less time available to devote to high-needs clients. Minor criminal offences and pre-charge work on criminal cases might not be covered by legal aid, regardless of the downstream impact on immigration matters. These immigration concerns are themselves often not understood by criminal solicitors or taken into consideration by sentencing judges (beyond awareness of automatic deportation orders).

### a. Impact of cuts on criminal justice system and criminal legal aid

Many of the struggles that young people seeking asylum experience within the criminal justice system are not unique to them. The difficulties described in this report have happened within the context of a criminal justice system that has been wrestling with the impact of funding cuts over a period of at least a decade. Most obviously, these cuts have affected the provision of criminal legal aid, causing a reduction in the number of criminal legal aid solicitors and barristers practicing. As well as this, there have been closures of courts, a lack of practicing judges — and, as a consequence, a soaring backlog in cases to be heard.

A recent report by the National Audit Office found that expenditure on state-backed legal support dropped from £2.58bn to £1.86bn between 2012-13 and 2022-23, as reforms introduced in 2013 have reduced access to representation<sup>46</sup>. In December 2021, the independent review of criminal legal aid, chaired by Sir Christopher Bellamy QC, published its final report<sup>47</sup>. The report confirmed that the legal aid system was chronically underfunded and risked collapsing the criminal justice system.

The consequences of the dearth in criminal legal aid are plainly visible in the number of solicitors available to advise and represent defendants: nearly half (48%) of defendants appearing in the magistrates' courts on imprisonable summary offences did not have legal representation recorded on their case in the first half of 2023<sup>48</sup>. Cuts to criminal legal aid, funding shortfall at the Crown Prosecution Service<sup>49</sup> and a lack of judges<sup>50</sup>, have all contributed to massive delays in the courts.

46. National Audit Office (2024), ['Government's management of legal aid'](#)

47. Sir Christopher Bellamy (2021), [Independent Review of Criminal Legal Aid](#)

48. Law Society (2024), [Criminal duty solicitors: a growing crisis](#)

49. Channel 4 (2021), [FactCheck: extra funding for CPS comes after long-term cuts](#)

50. Law Gazette (2022), [MoJ lays bare full extent of court closures](#)

The backlog in the Crown Court system stands at 76,957 cases as of March 2025<sup>51</sup> with 10% of cases in crown court delayed for more than 2 years<sup>52</sup>. Between July and Sep 2023 fewer than half of criminal trials went ahead on the day that they were listed<sup>53</sup>.

The consequences of these issues for any person charged with a criminal offence is self-apparent. For particularly vulnerable defendants the consequences are obviously wide-reaching.

## **b. Racism in the criminal justice system**

*"Albanians don't have a very good reputation in the UK. I think we get judged, even before we have done something wrong, they think that we have done it. So there are probably tens of thousands of Albanians [in the UK], but we get judged on what [a small number of] people do. It doesn't matter if they're Albanian, or if they're English – there are always people who do wrong, but you can't judge all the people based on those few people. That's my opinion, at least."*

**Alteo\***, 22, from Albania

The 2017 Lammy Review into the treatment of and outcomes for Black and minority ethnic individuals in the criminal justice system found evidence of significant racism and over-representation at all stages of the youth and adult criminal justice systems<sup>54</sup>. According to the review, Black and minority ethnic children are more likely to be arrested, less likely to receive Out of Court Disposals, and more likely to receive punitive outcomes in courts.

When asked why it was that young asylum seeker clients ended up criminalised or had a poor experience of the criminal justice system, several research participants raised the issue of unequal treatment caused by racism and xenophobia.

*"You know, generally, we do see young people... coming to the attention of law enforcement for things that [are minor]. I'm fairly sure if I had been walking to the shops with a football in my hands I would not have been targeted in the same way."*

**Susan\***, immigration solicitor

51. Ministry of Justice (2025), ['Criminal court statistics quarterly: January to March 2025'](#)

52. Law Society (2024), ['Criminal justice mired by delays that show little government impact'](#)

53. Law Gazette (2023), ['Latest criminal court statistics show 'fundamental right to access to justice is at stake''](#)

54. Lammy Review (2017), ['An independent review into the treatment of, and outcomes for Black, Asian and Minority Ethnic individuals in the criminal justice system'](#)

Young people and professionals both said in interviews that they considered the treatment of young people seeking asylum by the police to be racist. One solicitor spoke about a client, who was the victim of a crime and who was mocked by the police whilst asking for them to help him to find his teeth that had been knocked out during an assault. This led to an uncooperative response from her client, who then refused to give a breath specimen and was charged with an offence. He was then acquitted in court.

It was observed by one solicitor interviewed for this report that anti-immigrant bias appeared to be present in some of the cases she had worked on involving young people seeking asylum, including one involving a child.

*"I think that the hostile environment absolutely creeps into the criminal justice system. There were comments made to me [about my client] by the prosecution "well, he says he's 15". And there's a sort of roll of the eyes and the side glance to suggest that he may well be an adult pretending to be a child or that sort of thing. I would say very strongly that the hostile environment seeps into the criminal justice system, and the way in which prosecutors then deal with cases."*

**Ilona\***, criminal defence solicitor

A barrister interviewed as part of this research felt that racist treatment was more likely to come from some actors within the criminal justice system than others:

*"I'd say that in Magistrates Court, or the Youth Court where you've got lay people, yes [there is discrimination]. The majority of Crown Court judges have done my job, for a long time, before they are appointed. So they have that experience to draw upon. In terms of prosecutors. No, [I don't see discrimination]. Do I wonder whether or not people are charged because they're perceived in a certain way, with certain crimes? Yes, I do think that. I think the police are badly equipped to deal with these people, they don't understand, and a lot of them are racist and islamophobic."*

**Yvonne\***, criminal barrister

This interviewee's perception is not universal. Racial Bias & the Bench<sup>55</sup>, co-authored by Keir Monteith KC and Professor Eithne Quinn of the University of Manchester, which draws on a survey of 373 legal professionals, concluded the judiciary is institutionally racist, with 95% of respondents stating that racial bias plays some role in the processes or outcomes of the justice system. Over half (52%) of respondents had witnessed one or more judges acting in a racially biased way in their judicial rulings, summing up, sentencing, bail, comments and/or directions. Racial discrimination by judges was seen as being most frequently directed towards young Black male defendants.

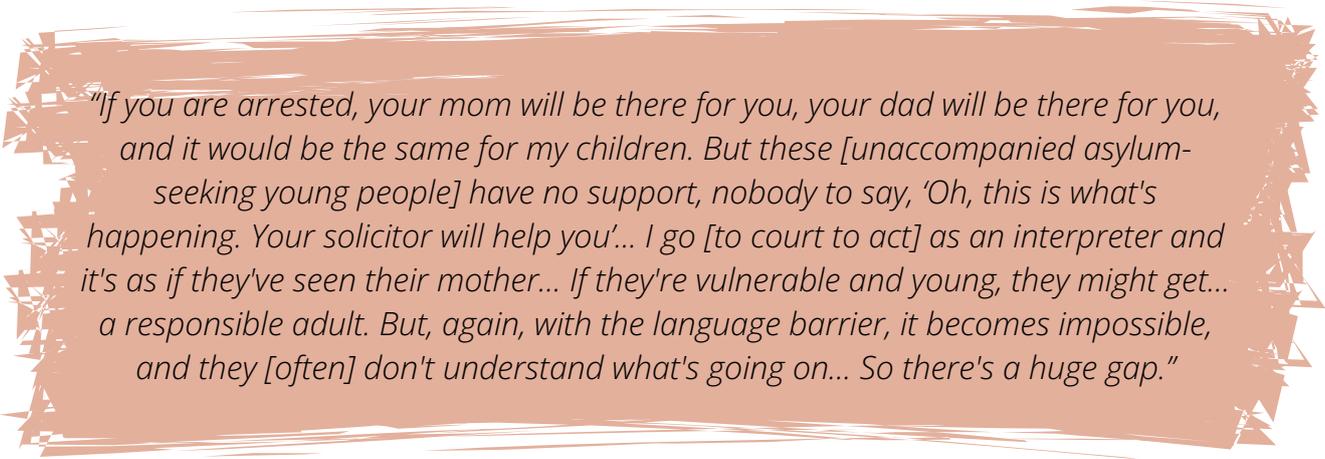
55. Monteith, Keir et al. (2022) , Racial Bias and the Bench: A response to the Judicial Diversity and Inclusion Strategy (2020-2025), University of Manchester.

### III - Care system often fails to provide necessary support

Looked-after children and care-leavers are entitled to statutory support from children's services when in touch with the police and the criminal courts. However, with local authority budgets having been cut, social workers and personal advisers find themselves sometimes unable to provide the necessary wrap-around support, or local authorities might otherwise gate-keep important support. Young adult asylum-seekers who have not been in care, though the same age as care-leavers and similarly without parental support, are provided with none of the same statutory support.

#### a. Inadequate statutory support for criminalised looked-after children and care-leavers

As explored, young people seeking asylum are often high-needs clients. Because of this, they most likely need additional support to be able to properly engage with the criminal justice system and in order to avoid being disadvantaged and having unequal access to justice.



*"If you are arrested, your mom will be there for you, your dad will be there for you, and it would be the same for my children. But these [unaccompanied asylum-seeking young people] have no support, nobody to say, 'Oh, this is what's happening. Your solicitor will help you'... I go [to court to act] as an interpreter and it's as if they've seen their mother... If they're vulnerable and young, they might get... a responsible adult. But, again, with the language barrier, it becomes impossible, and they [often] don't understand what's going on... So there's a huge gap."*

**Salam\***, caseworker

A number of professionals interviewed for this report, including local authority social workers, spoke about what support young people should expect to receive (as per various pieces of statutory guidance) at each stage of the criminal justice process, from arrest to appearing in court to being sentenced to prison and preparation for release or bail applications.

When a young person seeking asylum is first arrested, relevant caring professionals be they social workers, key workers or personal advisers should engage with the police and the young person to ensure the best outcome.

Social workers interviewed for this research talked about speaking up to ensure young people had access to their rights; to an interpreter (if they needed one); to an appropriate adult; and also ensuring that police have considered a plan for release so that care professionals can put in place necessary support.

*"If you get the phone call to say that one of your young people is in custody, you should be going straight down there. You should be at the police station with that young person talking to them to find out what's going on and liaising with the police."*

**Serena\***, social worker

This support is especially important when the young person in question is a suspected or recognised victim of trafficking and has been referred into the National Referral Mechanism (NRM). In fact, some spoke about social services playing an investigative role in these cases.

*"It's often the professionals around a young person who have to highlight their vulnerabilities when they come into contact with the criminal justice system... When it's just left to the police they [may] just see the [young people] as criminals. And it is often the social workers or the PAs or the key workers who are having to show the evidence, or try and collect the evidence, on why [they haven't just committed crime but] that it is exploitation... the police [may] just see it as a criminal matter straight away and are not looking at the vulnerabilities."*

**Florence\***, accommodation key worker

If a looked-after child or care-leaver is then charged with a crime and is required to attend a court hearing, ensuring that a professional who knows the young person well can accompany them to court may be important for their ability to access their rights. This helps to ensure the young person will attend court, provides the young person with important pastoral support that can help them feel safe and manage the stress of the experience, ensure that important information is understood (for example, the date of any future hearings), and informs the the court of any facts that might prevent the young person from being unnecessarily criminalised or ensure they are released on bail.

*"I always expect my social workers to go with the child to court. You're the corporate parent — and so you've got to represent the local authority, but also be there for that for the child in terms of [pastoral] support. I've been questioned quite a lot in court... [for example:] is there a more appropriate address [for] bail? What's the support plan?... So we'd always make sure that we could attend. [It's important] to show the young person 'I'm here. I'm gonna be here every time.' And if that isn't possible, then I would always ask keyworker or [accommodation] staff to [go]. I've even gone to court on a Saturday."*

**Denise\***, social worker

If a looked-after child or care-leaver is denied bail and sent to prison on remand — or is convicted of a crime and sentenced to prison — support from the local authority might prevent negative secondary impacts at this stage. It is important that young people continue to have access to their personal allowance in custody and that they are being visited.

*"You still have to see the child, at least six-weekly. Occasionally, we've had trouble booking visits.. but then I would always try to make contact via the phone or do something like a virtual visit. Or just do the [email] to a prisoner' thing – you can just send little notes back and forth."*

**Denise\***, social worker

*"The support should continue and should be based on updated assessment of their needs. [The local authority should be] making sure [to] provide for everything [they need] before they are detained, whilst they're detained, and if they're released. [They should be] supporting them through any arrest or hearing... helping them to understand and make informed decisions about their cases. [They should be] providing as much information about the vulnerabilities [of the child or young person] as possible at all stages [and] working with criminal solicitors."*

**Natasha\***, community care solicitor

When a looked-after child or care-leaver is due for release on licence or on bail, preparation must take place to ensure that they are well supported, and that they do not breach any bail conditions or licence conditions.

If this preparation is done last minute or not completed at all, it can set the young person up for failure, increasing the likelihood of re-offending or preventing them from being released from prison altogether. However, several research participants acknowledged that the guidance often did not reflect the support in-fact available on the ground.

*"[Social workers] should be working really closely with probation and with a young person's solicitor to make sure that they get bailed. The court will say 'Okay, well, we'll grant this person bail if they're living in this type of an environment.' So it's then the social worker's role to make sure that type of environment is available... Leaving young people to languish in prison on remand, because you can't get the right placement for them, is not [good enough]."*

**Serena\***, social worker

*"Sometimes, resource-wise, courts don't always like the plan we have. But we've only got available what [accommodation] we've got available, and it might not be the best... Once the person's over-18, it falls [more] on to probation than it does Children's Services, because it's probation that has to assess and approve any post-release address."*

**Denise\***, social worker

In one case represented by Commons, an especially vulnerable unaccompanied child who had been recognised as a victim of trafficking in the UK and who had been arrested for possession of class A drugs lacked the necessary support from social services for him to engage with his criminal solicitor to attend appointments with them and to attend court. It was necessary that Commons provide additional wrap-around support (because it was so lacking) and a chaperone who could ensure the child was able to engage with the process. Many months later, the case was discontinued after representations were repeatedly made in court that the child was a victim of trafficking.

*"[In my experience] the social worker turns up after they have been sentenced. But during the case, they might have very little communication with them. Most of the time, they don't get involved. Unless it is to provide... a supporting letter. As always, there's very little help or support for that young person during the case."*

**Salam\***, caseworker

Statutory guidance explains the responsibilities of local authorities towards looked-after children and care-leavers who are in contact with the criminal justice system. These documents direct local authorities in how they should support looked-after children and care-leavers who are offending, who have been arrested and are in court, and also those who have been remanded or sentenced to a period in custody. There are differences in the duties that are owed to looked-after children and care leavers.

- **The Children Act 1989 guidance and regulations Volume 2**<sup>56</sup>: care planning, placement and case review – guidance on how local authorities should care for looked-after children, including those in contact with youth justice services, including children who are arrested, remanded or convicted of an offence.
- **The Children Act 1989 guidance and regulations Volume 3**<sup>57</sup>: planning transition to adulthood for care leavers – guidance on how local authorities should care for care leavers and how they should prepare them for adulthood including how they should respond to offending behaviour by care leavers and when care leavers are in custody.
- **The Children Act 1989: former looked-after children in custody**<sup>58</sup> – statutory guidance for local authorities on children who lose their looked-after status when remanded or sentenced to custody.
- **Working Together to Safeguard Children**<sup>59</sup> – guidance on assessing and responding to the needs of children, including how to respond to safeguarding concerns and is relevant to all children including children in need and those who are looked-after.

In addition there is also:

- **National Protocol for Reducing Unnecessary Criminalisation of Children in Care and Care-leavers**<sup>60</sup>
- **Reducing criminalisation of looked-after children and care leavers: a Protocol for London**<sup>61</sup>

56. Department for Education (2010) [The Children Act 1989 guidance and regulations Volume 2: care planning, placement and case review](#)

57. Department for Education (2010) [The Children Act 1989 guidance and regulations Volume 3: planning transition to adulthood for care leavers](#)

58. Department for Education (2010), [Children Act 1989: former looked-after children in custody](#)

59. Department for Education (2023), [Working Together to Safeguard Children](#)

60. Department for Education (2018), [The National Protocol for Reducing Unnecessary Criminalisation of Children in Care and Care-leavers](#)

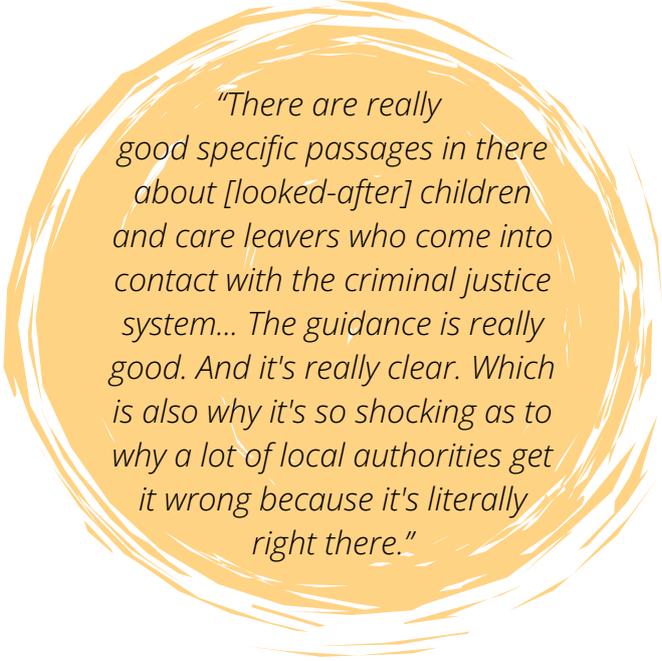
61. Mayor of London Office for Policing and Crime (MOPAC), (2021) [Reducing criminalisation of looked-after children and care leavers - a Protocol for London](#)

Neither of these Protocols are statutory guidance<sup>62</sup>. However, their purpose is to set out a framework of best practice and therefore, Local Authorities ought to have regard to it as they should be striving for best practice.

Because there is such detailed guidance, it is worth considering why it is that the support actually available to these groups is often so lacking.

There are a number of different challenges facing social workers who are trying to support the children and young people in their care. One social worker said that she struggled to get access to a looked-after child she was responsible for who was in police custody and that she had to put up a fight with custody officers.

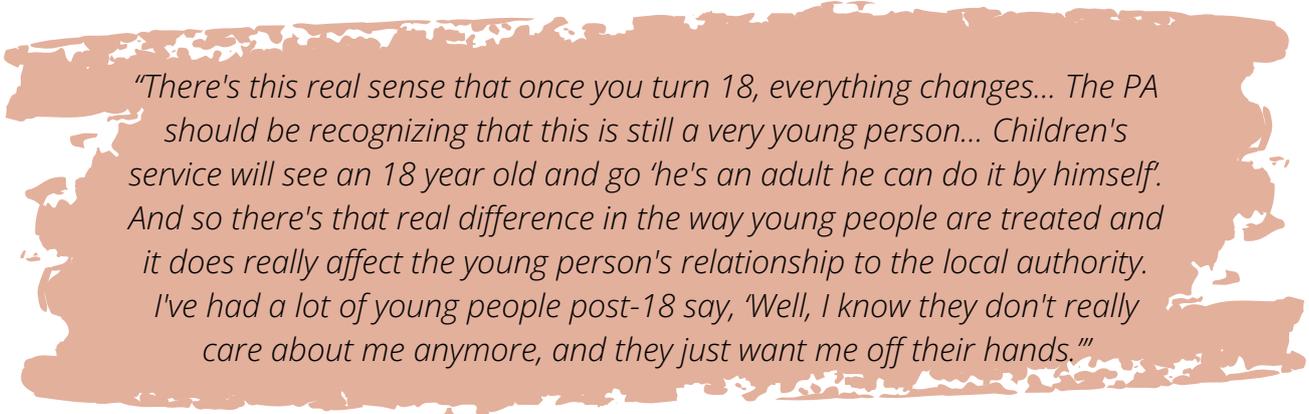
As previously identified, more than three-quarters of unaccompanied children seeking asylum enter care at 16 or 17 years old<sup>63</sup>. They are therefore less likely to be charged with a crime and to enter a courtroom before they turn 18-years-old and age out of care.



*"There are really good specific passages in there about [looked-after] children and care leavers who come into contact with the criminal justice system... The guidance is really good. And it's really clear. Which is also why it's so shocking as to why a lot of local authorities get it wrong because it's literally right there."*

**Natasha\***, community care solicitor

The statutory duty of local authorities to support care-leavers charged with a crime is reduced. Young adults are expected to seek out support, rather than an assessment of needs taking place and support being offered to them. On the whole, care-leavers have much less contact with professionals and an entitlement to much less. This can have negative consequences for care-leavers who are charged with a crime and are struggling within the criminal justice system.



*"There's this real sense that once you turn 18, everything changes... The PA should be recognizing that this is still a very young person... Children's service will see an 18 year old and go 'he's an adult he can do it by himself'. And so there's that real difference in the way young people are treated and it does really affect the young person's relationship to the local authority. I've had a lot of young people post-18 say, 'Well, I know they don't really care about me anymore, and they just want me off their hands.'"*

**Serena\***, social worker

62. because it is not issued pursuant to section 7 of the Local Authority Social Services Act 1970, so a public authority is not legally obliged to follow or comply with it.

63. Department for Education (2024), 'Children looked after in England including adoptions'

One social worker pointed out in their interview that personal advisers often aren't usually informed when a young adult care-leaver is in contact with the criminal justice system, as it would require the young person in question to confess their care-leaver status to the police and then the police contacting them.

*"If a care-leaver has been arrested, we don't [necessarily] get told. They're an adult. If you don't know, then you can't help. The police don't notify us because they've got no duty to, that person is an adult. I would hope that you're developing relationships with [young people] where they want to tell you or at least someone like a key worker, or a college teacher, that they've got somebody [to help them]. That's about making sure then as a network that that child [or young person] has somebody important in their life. It might not always be the PA but [as long as there is] just one person who they can reach out to and ask for help. And then that teacher or that key worker [can decide] we need to tell your PA and make sure you've got support. It is more difficult post-18. But that's about 'curious conversations' on your visits. Ask questions."*

**Denise\***, social worker

## **b. Lack of resources available to children's social care**

One young person interviewed as part of this research felt let down by social services and pointed to a lack of resources as the cause.

*"At the time [I was arrested], I didn't have a personal advisor, because when I turned 19 or 20, or something like that, the local council which I used to be under, Croydon Council, I think they were cutting down on costs, so they said we can't support [you] anymore, so you will have to find somewhere else to live. My key-worker explained all this to me. It's not like I had any other choices. They just told me this is what is going to happen."*

**Alteo\***, 22 , from Albania

Agreeing with this, a social worker interviewed for this research felt that they could only do so much when the resources available to local authorities were so lacking.

*“Social workers are really, really stretched. The care system has collapsed... And young people are not getting what they need from those services. So I think one of the issues we face is that the environments that young people need, to keep them safe, simply aren't there, the social workers don't have enough time to be able to be there for young people, they don't necessarily have the expertise that is needed.”*

**Serena\***, social worker

Unlike all other looked-after children in England, whose care is paid for by the local authority in which they reside, funding for the care of unaccompanied children comes primarily from central government in the form of grants paid by the Home Office to individual local authorities based on the number of unaccompanied children in their care. This Home Office funding did increase in recent years to between £114 per person per day (£41,610 per year) and £143 per person per night (£52,195 per year), depending on numbers of unaccompanied children that the local authority is housing) — and for care leavers, an increase to £270 per week (£14,040 per year) per young person<sup>64</sup>.

However, local authorities have regularly noted how insufficient even the current level of funding is — and how far short it is of meeting the true cost of caring for unaccompanied children and young adult care-leavers<sup>65 66</sup>. The shortfall between the Home Office grant and the true cost of care must be met by the local authority itself, pulling from other budgets.

Local government is funded from three main sources: council tax receipts; a proportion of business rates; and central government grants. Central government funding for local authorities has seen a reduction of 40% in real terms between 2009/10 and 2019/20 (with some increases in funding in the following years due to Covid grants)<sup>67</sup>. In this same period, the number of looked after children in England has increased by 27% and is now *“at its highest level for a generation”*<sup>68</sup>.

As local authority budgets have been cut, the cost of living and the cost of renting has also increased. One caseworker interviewed for this report noted that *“we have a housing crisis, so local authorities don't have money for children who are born here who are looked-after by the state, let alone those seeking asylum”*.

64. Local Government Association (2023), [‘Debate on accommodation of asylum-seeking children in hotels, House of Commons, 7 June 2023’](#)

65. East Midlands Councils (2017), [Analysis of Local Authority costs incurred in support of Unaccompanied Asylum Seeking Children in the East Midlands](#)

66. ADCS (2016), [Safeguarding Pressures Phase 5 – Special Thematic Report on Unaccompanied Asylum Seeking and Refugee Children](#)

67. Institute for Government (2023), [Local government funding in England](#)

68. House of Commons (2019), [Funding Of Local Authorities’ Children’s Services: Fourteenth Report Of Session 2017–19](#)

There is also a national shortage of foster care placements resulting in local authorities placing children with more costly independent fostering agencies, further increasing financial pressures. In 2016, that gap was thought to amount to 9,000 placements<sup>69</sup>. A 2021 analysis by think tank the Social Market Foundation predicts a shortage of 25,000 carers in England by 2026<sup>70</sup>.

It seems inevitable that squeezed budgets will result in a reduced standard of protection and care as financial concerns are given prominence over the best interests of looked-after children. In interviews undertaken by the Children's Society in a number of local authorities in 2019, social care staff were cited as *"those who bore the brunt of funding cuts, in spite of the fact they worked in statutory services"*<sup>71</sup>. Interviewees said there were insufficient numbers of social care staff to meet the needs of looked-after children and one participant described how social workers had caseloads *"coming out of their ears"*, resulting in them being unable to build relationships with vulnerable children.

Accommodation provision for unaccompanied children was also said to be impacted by budget concerns. Witness evidence given to the Joint Committee on Human Rights cited an *"overwillingness of social workers to place children at 16 into independent accommodation or semi-independent arrangements, where staff were not always trained for the specific needs of unaccompanied children"* with the result being that children were more prone to go missing in such circumstances<sup>72</sup>. The Children's Society thought that such decisions were being *"driven largely by resource considerations rather than welfare needs or children's own views"*.

In May 2022, the long-awaited Independent Review of Children's Social Care published their report and called for £2.6 billion of additional funding for children's social care, over five years, with £1 billion over the first two years. In June 2025, as part of the new government's Spending Review, £1.1 billion was promised for children's social care, falling short of that asked by the Independent Review, and criticised by the Children's Charities Coalition, comprising Action for Children, Barnardo's, National Children's Bureau, NSPCC and The Children's Society<sup>73</sup>.

When budgets have been cut, staff working in such environments will find themselves unable to provide the necessary wrap-around support — including for those engaged in the criminal justice system — or might otherwise gate-keep important support.

69. Fostering Network (2016), [Over 9,000 More Fostering Households Urgently Needed During 2016](#)

70. Social Market Foundation (2021), [Fostering the future: Recruiting and retaining more foster carers](#)

71. The Children's Society (2020), [Under Pressure: children and young people's services 2010/2011 to 2018/2019](#)

72. JCHR (Joint Committee on Human Rights)(2013), [Human Rights of unaccompanied migrant children and young people in the UK: First Report of Session 2013-2014](#).

73. Children and Young People Now (2025), [Children's social care nets £1.1bn in Spending Review 2025](#)

### **c. Lack of support creates condition for re-offending**

The failure of social services to address the conditions that resulted in criminal exploitation or contributed towards criminality was raised as a primary reason for re-offending by a number of professionals interviewed for this report. Several raised the lack of support post-custody as being causative of further contact with the system.

*"Certainly [going to prison] is disruptive of [any support from] social services. In my experience, if someone goes into prison, if they're a care leaver, that case tends to be closed [by social services], rather than support being offered whilst they're in prison."*

**Louise\***, caseworker

Young people were observed as being returned to inappropriate accommodation which they shared with other young people in touch with the criminal justice system. In these placements they lacked supervision, and consequently some were then preyed upon by criminal gangs.

*"What are the factors that drive criminalisation? Lack of support from social services [post-release]; an increased risk of exploitation and trafficking, grooming from local gangs, not necessarily connected to the journey over here but often just because of the lack of support and they receive when they're here and exposure to gangs... direct racism amongst the police and the CPS and the courts and in the prisons... if they're not being supported adequately around education or mental health or positive activities, or they're not in foster care, if they're [just hanging out] in Croydon, for example – most of the care leavers who don't have immigration status are just kind of housed in these shared accommodation placements indefinitely – and there, their exposure to criminality is very high. I've had young people's probation workers risk assess those houses and negatively assess it just because of such a high chance that young people are going to be exposed to other young people who are engaged in criminality."*

**Louise\***, caseworker

One social worker interviewed for this report noted the importance of introducing extra support for young people at risk of criminal exploitation. She felt that only young people who felt supported would feel capable of avoiding re-offending.

*"If there is evidence that [a] young person has been or is being exploited, then put extra support in place for them. Because young people don't just make a choice to be exploited... You get young people who are in prison, and they feel like everyone has abandoned them. And in particular, in cases where they're guilty, that is really the sense that they often get: 'I did this, and because I did this, I am not worthy of love anymore.' Because a kid who comes fresh out of prison who wasn't visited once whilst he's in prison, and he's got no one around him, is going to leave prison feeling like he's got nothing to lose."*

**Serena\***, social worker

In some of the criminal cases in which Commons was involved this gap in support was sometimes filled by the third sector. Youth workers or charity caseworkers worked alongside criminal solicitors, ensuring that young adult asylum-seekers kept on top of their criminal case, were attending appointments with solicitors and in court on time, ensuring that relevant information about vulnerabilities was proffered by the young person to their legal representatives, and providing much-needed pastoral support.

It was also often charity workers who provided supporting statements, spoke in court, and worked to ensure that young people seeking asylum avoided serious custodial sentences or were released on bail, acting as a go-between for criminal solicitors and immigration solicitors and personal advisors.

*"The involvement of [third-sector] support is incredible — the work of people involved in the voluntary sector, in London... having someone that these young people trust on board, not only getting them to court, and getting them to appointments, but also helping to build the trust between me and that young person, to help with communicating, that's been [helpful]. I compare it to work with other young people [and with] parents."*

**Fiona\***, criminal defence solicitor

Whilst most legal professionals interviewed for this research spoke about the positive difference an independent advocate or support had on the criminal matter they had charge of, one legal professional did speak about how charity workers can sometimes have a negative impact on criminal proceedings by overstepping their role.

*"Some of the charity workers forget that they are not your clients. The client is the client. I've had issues where they've wanted to come into [client] conferences, and I'm really sorry that the conference is between me and the child."*

**Yvonne\***, criminal barrister

One client of Commons who had been refused asylum, and who had an outstanding appeal at the time of his conviction, explained that he felt a grant of legal status would have helped him and others like him from exiting the cycle of criminality and criminalisation.

*"The only thing I'd like to say is just give them the chance to contribute to society. Because I know lots of people, lots of friends, who have chosen 'the wrong way', just because they didn't have the chance to do the right thing. I've seen many people in the same situation as me... I felt like I was stuck at the same place. I know many people who were going to work on cannabis farms... just because they didn't have the chance. Like for example, they have been to a professional electricians school, they've done all the qualification, and they can't go to work... So I think just give them the chance to do the right thing. And I think it would be good for the country as well. Because if they work, they pay taxes. Tax is good for the government."*

**Alteo\***, 22, from Albania

## 6. Recommendations

It is critical that state bodies, from local authorities through to the Crown Prosecution Service and HM Courts and Tribunal Service, are enabling equal access to justice. The conclusions of this report show that not enough is being done to that end. There is also a vital need to reduce the unnecessary criminalisation of young people seeking asylum and to shield them from secondary impacts of criminalisation. This is necessary in order to reduce re-offending and improve the life chances of young people seeking asylum.

We recommend that central and local government should:

### **A. Invest in the support systems that young people seeking asylum need when in contact with the criminal justice system**

Both the criminal justice system and the children's social care system are underfunded, creating a combined negative impact for those looked-after children and care-leavers who end up in touch with the police and criminal courts. We recommend:

- Better funding mechanisms for the criminal justice system could allow solicitors to spend more time with those who have additional needs and increased court resources would allow trials to be heard more quickly.
- More training opportunities should be developed for solicitors to learn about the impact of criminal convictions on immigration matters, and about how to work well with young people, traumatised people, and those who do not speak English as a first language.
- Protocols to reduce the criminalisation of looked-after children and care-leavers provide instruction on how the police and local authorities can work together to divert young people away from the criminal justice system, and should be expanded to include young adults living in Home Office accommodation<sup>72</sup>.
- A better funded children's social care system could ensure that every looked-after child and care-leaver could have a trusted adult with them in police custody and in court, ensuring a fairer system for this disadvantaged group.

### **B. Tackle the ongoing issues within the criminal justice system that create unequal access to justice**

Most young people seeking asylum are ethnic minority young people, and so their unequal treatment by the police — including being more likely to experience use of stop and search and strip searches — and the court system — including more frequent denial of bail and unequal sentencing — is partly explained by institutional xenophobia and racism which should be constantly monitored and addressed.

72. Mayor of London Office for Policing and Crime (MOPAC), (2021) '[Reducing criminalisation of looked-after children and care leavers - a Protocol for London](#)'

- Those who do not speak English need continued access to an interpreter or equivalent translator technology after being detained in police custody in order to understand the case they face.
- Police should consider provision of a national disclosure document, to prompt consideration of the s.45 Modern Slavery Act defence during disclosure with the young person's legal representative, and provision should be documented as has worked elsewhere<sup>75</sup>.
- Age assessment in criminal proceedings must centre child safeguarding and ensure children are not wrongly placed in adult detention settings. Guidance to the CPS and courts should ensure that no-one claiming to be a child (but where their age is in doubt) should be prosecuted until they have undergone a Merton-compliant local authority assessment.

### **C. Make criminal courts reflect what is now known about young adults and maturity**

Young age and lack of maturity impact the way that young people experience the criminal court system. More action is needed to ensure a move towards a distinct provision for young adults.

- The procedures in place in the youth justice system should be applied to young adults — for example, by removing the dock; requiring court professionals not to wear wigs or gowns; allowing supporting professionals such as social workers or key workers to sit with a young person; and reducing conversations in the courtroom between prosecutors, solicitors, legal advisers and magistrates taking place in front of young people.
- England and Wales could adopt the good practice shown in the Glasgow Youth Court<sup>76</sup>, a judicially led problem solving court for 16–24-year-olds.
- Recommendations by the Centre for Justice<sup>77</sup> Innovation would greatly benefit young people seeking asylum. For example: the call for provision of better information to young adults before attending court; holding a pre-court meeting on a nominated day to identify any communication needs and reports to be prepared; and identifying those known to be unrepresented and ensuring their representation.

75. Independent Anti-Slavery Commissioner (2020), Modern Slavery Act 2015 Statutory Defence, Section 3.7.13

76. Centre for Justice Innovation (2023), 'Glasgow Youth Court'

77. Centre for Justice Innovation (2019), 'A fairer way: Procedural fairness for young adults at court'

## **D. Stop young people seeking asylum being double punished, particularly for minor offences**

Young people seeking asylum experience many negative secondary impacts from being criminalised and thus being prevented from accessing secure migration status, such as refugee protection, indefinite leave or citizenship. This has knock-on impacts on access to housing or work and on mental health, increasing risk of reoffending.

- Where a criminal investigation is ongoing for several years or has resulted in 'No Further Action', the Home Office must have procedures in place that do not unreasonably delay a decision on whether a refugee is entitled to protection.
- The immigration system should not be used as a secondary punishment as part of prosecuting a criminal offence for those who have already received a sentence. Conflation of these two legal areas are unhelpful to both victims and perpetrators of crime. Enforcement of double punishments will not be a migration deterrent but will increase the likelihood of reoffending.
- The government should consider implementation of a 'Second Chances' rule in the immigration system, where caseworkers considering immigration applications (including applications for indefinite leave and citizenship) cannot consider relevant any criminal record received as a child or young adult.

The research that informed this report was relatively small-scale and exploratory. We hope that further research will be undertaken that might, using both quantitative and qualitative methods, explore more of the experiences of young people seeking asylum in the criminal justice system. Further work is needed to ensure the rights of this group are realised, that equal access to justice actually happens and moreover to improve the life chances of these vulnerable young people.

## 7. Appendices

### a. Full methodology

#### 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. Funding provided by the AB Charitable Trust allowed Commons Law CIC to undertake legal work on behalf of clients who were young people seeking asylum which might otherwise not be covered by legal aid. Casework data from working with these clients was then anonymised and analysed for use in this report.

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

<b>Country of origin</b>	<b>Number of cases</b>
Iran	1
Iraq	4
Sudan	3
Unknown	1

	<b>Number of cases</b>
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 it was essential that those individuals who had experiences of being 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 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 in the UK. Where the young person in the interview had particular experiences within the criminal justice system, such as being arrested or being in court, further questions were asked.

The research underwent an internal ethics approval process to minimise any risks to interviewed young people. 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 that was asked.

<b>Country of origin</b>	<b>Number of young people</b>
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 who had been 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 were posed to each person about what experience they had of working with young people seeking asylum 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 people seeking asylum, and what could be done to reduce criminalisation and ensure better outcomes.

These interviews provide subjective analysis of the experiences and issues affecting criminalised young people seeking asylum.

<b>Legal professionals</b>	<b>Number of interviews</b>
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.

<b>Supporting professionals</b>	<b>Number of interviews</b>
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 people seeking asylum for immigration offences, attending hearings at Canterbury Crown Court in June 2023.

Observations related to five separate criminal cases, including:

- the opening of a trial of a teenager charged with ‘facilitating entry to the United Kingdom of those without leave to enter’ and four counts of manslaughter;
- and the sentencing hearing for four other young people prosecuted for piloting small boats across the Channel.

The subjective observations made about these court proceedings helped to better understand how changes brought about by the Nationality and Borders Act 2022 are resulting in the criminalisation of young people seeking asylum.

## **Limitations of research**

This report is a small-scale, exploratory research project.

Interviews were primarily with persons based in London and in Birmingham, large and highly diverse urban settings in which the issues facing this client group might differ from those in more remote or rural settings. In London, for example, there are many refugee charities and community groups supporting newly arrived migrants, as well as large numbers of settled migrants who work as interpreters and can perhaps be more easily accessed when in court or in police custody than for those living in other places.

The scope of the interviews conducted as part of this research is also limited. In ideal circumstances there would have been many more interviews conducted, taking in a fuller breadth of experience. For example, we conducted interviews with young people from only four nationality groups. All young people interviewed 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 they met while acting as duty solicitors at police stations. They also independently received ad hoc calls from people who had their contact details as a result of 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 specific concerns stemming from their experiences may be overrepresented in the research.

The 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 and local authority care systems, and with different experiences of 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 providing 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 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.

**National Referral Mechanism** A framework for identifying and referring potential victims of modern slavery and ensuring they receive the appropriate support.

**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.