

Understanding Criminalisation of Young People Seeking Asylum: An Executive Summary



Introduction

In recent years there has been much media and political interest in the criminality of people arriving in the UK in order to claim asylum. Only 1 in 8 of those residing in a prison in the United Kingdom is a foreign national, which is less than the foreign born population residing in the country as a whole (this data does not disaggregate by immigration status). Research also shows that asylum-seekers as a group are not more likely to commit crime than the general population. However, we know that some people seeking asylum do end up in touch with the police or sitting in front of a magistrate or a judge, and there has been limited research to explain what the social causes of this are.

With a particular focus on children and young people (ages 24 and under), this commissioned research has considered that issue in the round. Using a mixed methodology, including interviews and analysis of casework, we have sought to understand the reasons for, and experiences of, criminalisation for young people seeking asylum. The purpose is to provide educational information for practitioners, as well as recommendations for policymakers that would reduce the unnecessary criminalisation of young people seeking asylum, improve their access to justice, and better their life chances following contact with the police or courts.

Why do some young people seeking asylum end up in touch with the criminal justice system (CJS) in the UK?

Commons Law CIC, a criminal defence firm based in south London, worked with 36 clients who were young people seeking asylum dealing with a criminal matter (with most being care-experienced). The majority of these cases did not end up in court by the end of the research period and more than one-third of those that did resulted in the defendant being acquitted, or no evidence being offered by the prosecution.

Young people seeking asylum sought legal advice and representation for a number of different reasons. The most common issues resulting in criminalisation were those related to travel: offences stemming from driving a private e-scooter or driving without insurance. In some

cases young people failed to pay a fine or deal with minor bureaucracy, and so this resulted in a court summons.

Some young people were criminalised after the police were called to the accommodation they lived in. Young people seeking asylum commonly live in staffed accommodation, provided by the Home Office or a local authority and managed by a private company.

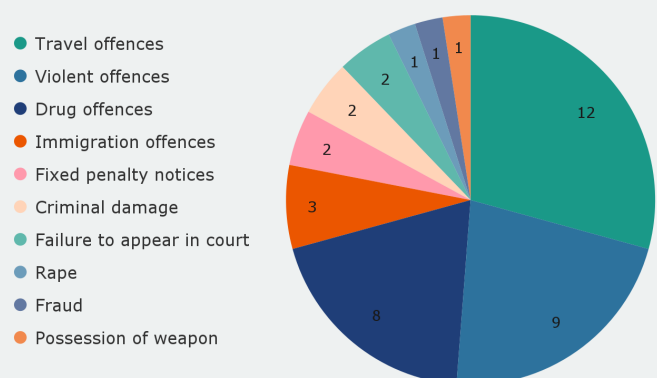
Most cases that Commons worked on involved clients who either had formally diagnosed mental health conditions or were presenting with symptoms. Some of the violent crime, property damage and other criminal conduct appeared linked to or exacerbated by mental health issues and trauma.

There are economic pressures that increase the risk of young people seeking asylum undertaking illegal work: asylum-seekers cannot legally work, rely on meagre sums of money from the state, and may be supporting family back home. Some of those involved in black-market work were likely experiencing that pressure.

Some young people in this study were recognised victims of trafficking and modern slavery, while others showed signs of being criminally exploited or of experiencing debt bondage.

Finally, some young people were criminalised for breaching the immigration rules. Since the introduction of the Nationality and Borders Act (NABA) in 2022, an increased number of people seeking asylum have been incarcerated following arrival on a small boat.

Reason young person in touch with CJS



What are the structural and systemic reasons?

Children and young people seeking asylum are often very vulnerable due to their life experiences, both before and after arriving in the UK. They have been forced to migrate, separated from their family, may have suffered violence or abuse on their journeys, and are retraumatised by the UK's asylum system. This vulnerability includes higher chances of poor mental health.

Systems in the UK increase vulnerability. Depending on whether they arrived before or after their 18th birthday, children and young people are often accommodated in harmful or inappropriate local authority or Home Office accommodation, sub-contracted to private companies, where they receive inadequate or no support.

Behaviours related to vulnerability are surveilled and responded to in ways that increase the risk of contact with the criminal justice system. Unlike British young people living independently or with their families, the offending behaviour of children and young people seeking asylum and living in staffed accommodation are often responded to by contacting the police.

3. They are most likely living in the UK without parents or adult family for support.
4. They are likely traumatised or managing a trauma-related mental health issue.
5. They are racialised as black or minority ethnic and as a migrant.

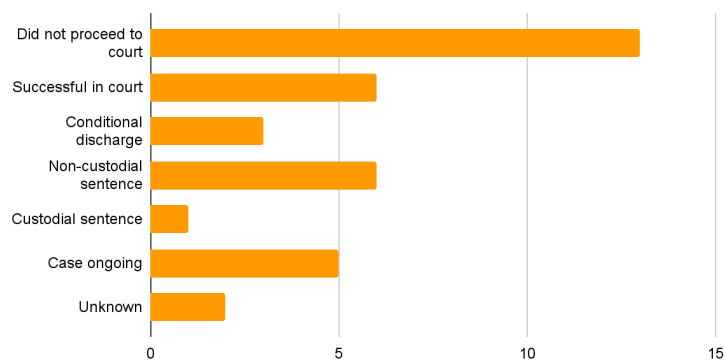
When a young person seeking asylum is in touch with the police or the criminal courts, the above factors greatly impact on that experience.

Young people seeking asylum experience the CJS 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; struggling to trust appointed legal representatives; difficulties with interpreters; and issues with bail and sentencing. The experience is also retraumatising, especially for those who have previous negative experiences with hostile authorities or experiences of arbitrary detention.

Additional issues for this group include the misidentification of minors as adults based on appearance, leading to inappropriate detention and court treatment. Interpreter access was also viewed as inconsistent or inadequate by research participants, affecting communication and fair access to justice.

Despite these challenges, many cases handled by Commons avoided prosecution or led to non-custodial outcomes, largely thanks to early legal intervention and multi-agency support. However, these positive results may not reflect broader systemic trends, with those appearing in court unrepresented likely experiencing worse outcomes.

Outcome for young people seeking asylum who were Commons clients



How do young people seeking asylum experience the criminal justice system (CJS) in the UK?

A number of key factors affecting young people seeking asylum impact the way in which they experience the CJS.

1. They are likely unable to speak English fluently or are speaking it as a second language.
2. They have limited or no knowledge of the CJS and how it functions.

"Why do people join gangs? [They are] disaffected, [have] poor economic potential, [have] no support network, no community, no family connection. They're perfect. Every kind of identifying factor for people joining gangs, [young asylum-seekers] are experiencing the vast majority of those factors. [These young] people are looking for that [replacement] family, that sense of belonging, [and] there are many, many people out there that are going to offer that, who are criminals."

Sam, Accommodation Key Worker

What are the secondary impacts of criminalisation?

Our research shows that contact with the CJS impacts young people seeking asylum in a number of negative ways. These include an impact on immigration applications and immigration status; impacts on mental health; and impacts on the ability to work, access benefits, housing and education. These can occur at the point of initial contact with the police, but are accentuated following criminal prosecution. They increase vulnerability in already vulnerable individuals, thus increasing the likelihood of reoffending.

Why do young people seeking asylum experience the CJS in such a negative way?

Research participants identified that once in contact with the police and the CJS, young people seeking asylum appear as if **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 within the CJS. These young people were identified as: lacking maturity compared to other similarly aged young people; often being unable or unwilling to self-advocate for their rights and entitlements; lacking in knowledge about the CJS; more likely traumatised (and therefore difficult to work with and defend); often experiencing life instability and lack of resources.

The **impact of austerity** is widely felt within the CJS, 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. Immigration concerns are often not understood by criminal solicitors or taken into consideration by sentencing judges (beyond awareness of automatic deportation orders). There are systemic issues with interpreters that can disadvantage young people seeking asylum. Systemic and institutional racism within the criminal justice system then further impacts on this group. Together these issues show a broken CJS which compounds the inequality faced by this group.

Some of these young people are entitled to statutory support from children's services when in touch with the

police and the criminal courts. However, with cuts to local authority budgets, social workers and personal advisers find themselves sometimes unable to provide the necessary wrap-around support – including for those engaged in the CJS – or local authorities might otherwise gate-keep that support. Some research participants talked about the way in which **the care system fails to sufficiently support young people seeking asylum** at the point in which they most need that help – when in a police interview room or alone in court. Young adult asylum-seekers who have not been in care, though the same age as care-leavers and similarly without parental support, are able to access none of the same statutory support. But when multi-agency support (incl. Statutory support) is engaged, it can have a positive impact on court proceedings, outcomes and secondary impact.

"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

Conclusions

Young people seeking asylum are an especially vulnerable group due to their experiences before, during and after journeying to the UK: living in the UK without family; experiencing economic pressures; mental health pressures; vulnerable to criminal exploitation; struggling to manage new rules and bureaucracy; worried about an asylum claim or how to support family back home. Those who are traumatised live with stress in their day-to-day lives. These stresses can lead to behavioural issues – and for those living in staffed accommodation these behaviours will be policed through the CJS. Contact with the police can be traumatic. Without efforts to divert young people seeking asylum away from criminal prosecution, this contact with the CJS can result in a criminal sentence – but also impacts on immigration status, health, housing and more. These secondary impacts can result in reoffending.

Summary of Key Recommendations

Report A:

1. The government could reduce criminalisation of young people seeking asylum by supporting them to **heal and recover from their trauma**. This means access to mental health services and evidence-based treatments, and also to other things important to wellbeing, such as good quality housing, access to community and familiar culture, as well as reducing retraumatisation.
2. The government should work to **reduce barriers to economic access** for this group. Reducing criminalisation means lifting the ban on work for asylum-seekers – but also ensuring access to skills-based education and training, apprenticeships and other opportunities.
3. The government should support what research shows are **'protective factors' for mental health and wellbeing** of young people seeking asylum. Young people must have access to long-term positive relationships with adults. This could happen by allowing young people to be reunited with their parents and other family, as well as working to improve care-experienced young people's relationships with support workers, social workers and personal advisers.
4. The law should **not unnecessarily criminalise young people seeking asylum**. As it stands, the Nationality and Borders Act 2022 puts all those arriving 'illegally' at risk of criminalisation, even if they do so in order to claim asylum. The government must repeal the parts of the Act that increase criminalisation.
5. The government must ensure the children's social care system and the police are better able to **redirect young people away from the courts and criminal prosecution**. All professionals working with these young people must take action to reduce police contact and divert young people away from the CJS. Discretion must be more actively used to not charge where it is not in the public interest to do so.

Report B:

1. The government should **invest in the support systems** that young people seeking asylum need when in contact with the CJS. Better funding mechanisms for the CJS and children's social care system would allow those with additional needs to be better supported by professionals, and would allow courts to hear cases quicker, reducing secondary impacts.
2. The Ministry of Justice should tackle the ongoing issues within the CJS that **create unequal access to justice**. Young people seeking asylum experience institutional racism and xenophobia – this must be addressed. Issues with interpreters, prosecution of victims of modern slavery and the assessment of age within the CJS need targeted solutions.
3. The Ministry of Justice should make criminal courts reflect what is now known about **young adults and maturity**. 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.
4. The Home Office should stop young people seeking asylum being **double punished**, particularly for minor offences. 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 – the knock-on secondary impacts for those who are not removed increase the likelihood of re-offending.

The research that informed these two reports was small-scale and exploratory. We hope that **further research** will be undertaken that might better illuminate the issues highlighted in both reports – and provide evidenced-based solutions.

"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 [young people seeking asylum] 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 don't understand what's going on."

Salam, Caseworker