



## **A Response to Call for Evidence on Human Rights of Asylum Seekers in the UK Joint Committee on Human Rights**

**19 December 2022**

### **Executive Summary:**

In response to this Call for Evidence on the [Human Rights of Asylum Seekers in the UK](#) by the Parliament Joint Committee on Human Rights, we provide evidence and policy recommendations in relation to the following:

- There needs to be an urgent focus on establishing safe routes for unaccompanied children to enter the UK and seek asylum and to subsequently regularize their legal status in the UK once they turn 18.
- Young asylum seekers who arrive as unaccompanied children should not be considered as illegal entrants under any circumstances
- Each application for asylum should be based on the circumstances of the individual claiming asylum and not solely on assumptions according to the country of origin as is clearly the case with applications from young people from Albania
- Any age assessment should be considered in relation to domestic and international children's rights obligations which require that an individualised assessment of whether the proposed referral for and approach to age assessment is in the best interests of the child and proportionate in the circumstances
- Monitoring of the Implementation of the Nationality and Borders Act 2022 needs to be undertaken in light of the statutory obligation to protect the welfare of children, under s.55 of the Borders, Citizenship and Immigration Act 2009.

### **Response authors:**

**[Prof. Helen Stalford](mailto:stalford@liverpool.ac.uk) (stalford@liverpool.ac.uk): Professor of Law, and Founder of the European Children's Rights Unit, School of Law and Social Justice, University of Liverpool.**

[Dr Ingi Iusmen](#)

**Citation:**

Stalford, H., Iusmen, I., (2022). *A Response to Call for Evidence on Human Rights of Asylum Seekers in the UK Joint Committee on Human Rights.*

**DOI:** 10.5258/SOTON/PP0029

**Introduction**

1. This response to the call for evidence is informed by the findings of a 20-month study, [Lives on Hold our Stories Told \(LOHST\)](#), involving detailed legal and policy analysis, as well as interviews with 69 unaccompanied young people seeking asylum from 13 different countries, and with over 50 professionals from the government, legal, welfare, education and civil society sectors. It provides the first detailed insights into young people’s experiences of the asylum process in England, during and in the aftermath of the Covid-19 lockdowns. The focus of our evidence is on the human rights of young unaccompanied asylum seekers, including both children and young adults who arrive as children but who ‘age out’ and become legal adults whilst still awaiting a decision on their claim.
2. Of the 69 unaccompanied young people seeking asylum we interviewed for the LOHST project, **43 are Albanian**. We also interviewed over 50 practitioners and Home Office officials, **13 of whom were ‘experts’ in Albanian migration**. The research extends beyond the Albanian experience but reveals distinctly adverse perceptions and misconceptions of Albanians.

**“Safe and legal routes”**

- **Is it compatible with the UK’s human rights obligations to deny asylum to those who do not use what the Government calls “safe and legal routes”?**[\[6\]](#)
  - **What “safe and legal routes” currently exist for asylum seekers in the UK? Should new routes be introduced?**
3. Over the past two years, the government has terminated most safe and legal pathways for under 18s to travel and lodge an asylum claim in Britain unaccompanied. Official suspensions/terminations of legal routes of entry for asylum seekers coincided with global Covid-related travel restrictions, making it virtually impossible for unaccompanied children to secure safe passage for the purposes of claiming asylum or other forms of protection.

4. Specifically, the Dubs relocation scheme<sup>1</sup>, which committed the UK government to offer sanctuary to some of these most vulnerable children, living alone in unsatisfactory temporary camps or sleeping outdoors and in need of urgent protection, was officially abandoned in February 2017.<sup>2</sup> It was envisaged that up to 3,000 unaccompanied children and young people would be resettled in the UK under the Dubs scheme. In reality, a total of only 480 places materialised before it was finally closed down in May 2020.
5. Around the same time (31st December 2020), the Dublin III<sup>3</sup> Regulation, which provided a legal route for reuniting separated asylum-seeking children with their family members in the UK, was discontinued as a result of Brexit. The Regulation applied more generous eligibility criteria to unaccompanied children wishing to reunite with their family members in the UK than the UK's comparable refugee family reunion Immigration Rules. Despite calls by civil society organisations, Parliamentarians<sup>4</sup> and campaigners to introduce alternative legal routes of entry to the UK for unaccompanied asylum-seeking children, no such alternatives have since been introduced.<sup>5</sup> This is in spite of a statutory commitment to review existing legal routes of entry to the UK for people seeking asylum and refugee family reunions which must include consideration of, and a public consultation on, the position of unaccompanied asylum seeking children seeking to join relatives in the UK.<sup>6</sup>
6. Other, more modest legal routes of entry for unaccompanied children are available under The Refugee Resettlement Programmes, such as the [Vulnerable Children's Resettlement Scheme](#) (VCRS). This was launched on 21 April 2016, and has been specifically tailored to resettle vulnerable and refugee children at risk (as defined by the UNHCR) and their families from the Middle East and North Africa (MENA) region. Whilst VCRS officially includes unaccompanied children, there is no data indicating how many of the 25,000 children and adults resettled in the UK since 2016 are unaccompanied children.<sup>7</sup> **In fact, when we asked a Home Office official about the official data on unaccompanied children who enter the UK under this scheme, he commented that the number was very small indeed.**

---

<sup>1</sup> Introduced in May 2016 under s.67 of The Immigration Act 2016.

<sup>2</sup> At that stage, approximately 220 unaccompanied children had been transferred to the UK from Calais.

<sup>3</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) *OJ L 180, 29.6.2013, p. 31–59*

<sup>4</sup> Lord Dubs proposed an amendment during the passage of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2019-21 (as then was). It aimed to mitigate the loss of the Dublin provisions by establishing a legal route for people in Europe to apply for asylum in the UK and obtain permission to enter the UK as an asylum seeker. The eligibility criteria would have been similar to those specified in the Dublin Regulation. The amendment would have also obliged the Government to make a strategy for ensuring that unaccompanied children in EU member state continued to be relocated to the UK, if it was in the child's best interests.

<sup>5</sup> See further M. Gower, Briefing Paper Number 9031, 21 December 2020: ['Brexit: the end of the Dublin III Regulation in the UK' House of Commons Library](#)

<sup>6</sup> section 3 of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020

<sup>7</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/877261/2020-2021\\_LA\\_Funding\\_Instruction\\_v1.0\\_-\\_Final1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/877261/2020-2021_LA_Funding_Instruction_v1.0_-_Final1.pdf)

7. The VCRS ceased operating altogether between March 2020 and December 2020 (at which point it resumed on only a very small scale). This means that there **are currently virtually no formal, safe routes of entry into the UK from Europe for young asylum seekers.**
8. The majority of young people we interviewed for our project entered the UK in the back of lorries, vans and cars through Calais. The development of more robust and sophisticated methods of detection at the ports is just one factor driving many young asylum seekers to make perilous boat journeys at the hands of smugglers. The lack of safe entry into the UK steers many young people into exploitative arrangements, not just in order to enter the UK, but post entry, where they face sex or labour exploitation. They are subsequently identified in these illegal employment spaces in Britain and then viewed through a criminal justice lens which avoids recognising their vulnerability or exploitation.

➤ **OPENING UP SAFE ROUTES OF ENTRY TO THE UK FOR YOUNG UNACCOMPANIED ASYLUM SEEKERS IS THE BEST MEANS OF PROTECTING THEM.**

### Relocation of asylum seekers

• **Is the policy of relocating asylum seekers to third countries consistent with the UK's human rights obligations?**

9. Attempts to relocate asylum seekers to third countries for processing of their asylum claims raise grave concerns that many of those relocated could, in fact, be unaccompanied children. Whilst the UK is prohibited from returning or relocating those who are deemed to be unaccompanied children, **we have gathered compelling evidence<sup>8</sup> in the course of our research of the UK authorities disputing children's age on arrival and concluding (erroneously, in many cases) that they are adults.**
10. Indeed, by the end of 2021, two-thirds (66%) of unaccompanied asylum seekers were age-disputed compared with 31 per cent in 2020 and 21 per cent in 2019. The Covid-19 lockdowns, in particular, saw a significant increase in the proportion of age disputed asylum seekers being assessed as adults - from 31 per cent in the third quarter of 2019 to 69 per cent in the same quarter in 2021.
11. Our research also revealed an increase during Covid-19 of less reliable, fast-track assessments, online assessments, and assessments conducted by poorly-trained staff, particularly in regions that are less accustomed to receiving and assessing young asylum seekers. As a result, we received distressing accounts from young people of

---

<sup>8</sup> Reported further in a more detailed research findings briefing on age assessment, available [here](#)

being placed in unsuitable accommodation with adults or placed in immigration detention.

12. The very threat of relocation is causing significant anxiety and distress to young asylum seekers who are already in the UK, many of whom arrived as unaccompanied children and are still awaiting a decision on their asylum claim. Some of our young participants have expressed deep concern to us that they may be relocated to Rwanda. This threat is impacting significantly their mental health and well-being, and is likely to contribute to decisions to go 'underground' or fall into the hands of criminal gangs to avoid detection.
13. **We are concerned also of the redoubling of efforts to target those from so-called 'white-list' countries deemed to be safe for whom decisions can be fast-tracked and swiftly returned.**<sup>9</sup> This has long been possible under UK immigration law (s.2 of the Asylum and Immigration Act 1996)
14. In a factsheet on small boat crossings since July 2022 the Home Office referred to Albania as "a safe and prosperous country."<sup>10</sup> In a recent Country Policy and Information Note (CPIN) on Albanian blood feuds (a common basis for asylum claims), dated September 2022, the Home Office stated that "there is, in general...no serious risk of persecution of persons entitled to reside in that state or part of it" and that the Albanian state is "both willing and able to offer effective protection to persons affected by blood feud."<sup>11</sup>
15. It is important to note that CPINS are drafted by the Home Office rather than independent, empirically verified expert reports. As such the CPINs on Albania tend to draw on outdated and inaccurate information on the situation in Albania and paint Albania as a safe country of origin, where persecution, conflict, inhuman treatment or risk of indiscriminate violence towards Albanians in Albania are deemed not to exist
16. In any case, the fact that a country is deemed to be safe does not undermine their right to claim asylum. The presumption that their claim is unfounded is a rebuttable one, meaning that the person concerned can adduce evidence of persecution and still seek asylum. Indeed, our research reveals numerous examples of legal and other support organisations achieving better outcomes for young Albanians by developing legal training, advice and representation and engaging in more effective evidence gathering that is sensitive to the specific, complex experiences of Albanians.<sup>12</sup>

---

<sup>9</sup> A mechanism established under s.94 Nationality Immigration and Asylum Act 2002.

<sup>10</sup> 'Factsheet: Small Boat Crossings since July 2022' (GOV.UK) accessed 13 November 2022

<sup>11</sup> Home Office, 'Country Policy and Information Note Albania: Blood Feuds' (2022)

<sup>12</sup> See the work of the 'Breaking the Chains' project, led by the Migrant and Refugee Children's Legal Unit; eg. Esme Madill, 'Albanian Asylum Claims: Making a Difference' (Free Movement, 7 October 2020) accessed 16 November 2022

### Legal aid, accommodation, and subsistence

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

17. Our research findings show that during Covid-19 lockdowns and restrictions, many of the young people and unaccompanied minors seeking asylum, were placed in unregulated accommodation or adult accommodation, due to being assessed (via age assessment procedures) as adults. This was further accompanied by the ongoing disruption in services (eg social services and support, mental health services, legal services) which further compounded the uncertainty and vulnerabilities experiences by this population.

18. Not having access to legal representation or having only poor legal support had a particular damaging effect on young asylum-seekers' asylum processes, which further compounded the dire uncertainty they experienced, and had negative repercussions on their mental health. Indeed, our research respondents highlighted how their lawyers were no longer available to talk to them about their cases, and if they did, this would occur online, via digital platforms, which put an extra layer of stress on already extremely vulnerable young people, who spoke about the difficulties of sharing personal and intimate information with professionals online. via

### Right to work

- How do the rules on right to work impact on the human rights of asylum seekers?

19. Asylum-seekers in the UK do not have a right to work until they have legal status (eg refugee status, humanitarian protection etc). Our research findings highlight the severe mental health effects on the young people seeking asylum as they are left in limbo, waiting for their asylum case to be finalised, and not being able to develop the skills they need by working or enrolling on a higher-education degree. Indeed, most of the young people insisted that they wish to contribute to the community by working and therefore paying back the help they received via various services.

20. While asylum seekers who have been waiting for a decision for more than 12 months "through no fault of your own" are issued with a restrictive work permit, this means that they are only allowed to work in a job on the shortage occupation list. However, most jobs on the shortage occupation list are specialised (like **civil engineers, architects, or classical ballet dancers**) or may require prior training, such as nursing (and nursing assistants), and care work. This work permit is particularly ineffective for

young asylum-seekers who may lack the necessary skills and training to perform the jobs on the shortage occupation list.

21. The shortage occupation list is **particularly discriminatory as it does not extend to under 18s**, specifically as this group are unlikely to have had the chance to acquire the necessary education and skills needed to fill such jobs. This lack of skills and education is also a consequence of the protracted delays and waiting times with their asylum decision, during which time they can only enrol on certain courses which don't allow them to develop the necessary skills in order to progress with their education. Indeed, the young people we interviewed felt those crucial years that they could have spent learning new skills and knowledge had been irretrievably wasted, further affecting their future career prospects.

### Modern slavery

22. Some of the young people seeking asylum from Albania (including unaccompanied minors come to the UK as victims of trafficking and modern slavery. This explains the reason why some of them are also enrolled into the NRM (National Referral Mechanism), the main framework for identifying and referring potential victims of modern slavery and ensuring they receive the appropriate support. Our research findings show that, due to the delays and backlog in the asylum system, **some of vulnerable young people go underground or worse, they become victims of trafficking and re-trafficking in the UK, by being recruited by various criminal gangs to be exploited** for labour (e.g. working in cannabis farms, car washes etc) or for sexual purposes (eg sexual exploitation, prostitution).
23. A Home Office report<sup>13</sup>, based on fact-finding mission in Albania on human trafficking, conducted between 5 and 12 October 2022, was recently published. As a result of the report's findings, the Home Office updated its CPIN (country policy information note) on human trafficking in Albania<sup>14</sup>. The guidance on human trafficking in Albania now points to a number of organisations confirming that one of the risk factors for human trafficking includes the difficult economic situation and being dependent on state aid and benefits. Given the patriarchal and honour-based nature of Albanian society, being a victim of trafficking, in itself, is something of a social stigma. According to the Home Office's new report, many people are at risk of being re-trafficked because of the economic situation they continue to face, including as a result of not being accepted into society. The new CPIN acknowledges that one of the risk factors for such

---

<sup>13</sup> 'Report of a fact-finding mission Albania: Human trafficking', December 2022, available from [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1123466/ALB\\_FFM\\_report\\_on\\_human\\_trafficking.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1123466/ALB_FFM_report_on_human_trafficking.pdf)

<sup>14</sup> 'Country Policy and Information Note Albania: Human trafficking', December 2022, available from [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1123460/ALB\\_CPIN\\_Human\\_trafficking.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1123460/ALB_CPIN_Human_trafficking.pdf)



trafficking is the dire economic situation, thereby contradicting the Home Office's own CPINs.

24. While the previous CPIN on Blood Feuds in Albania<sup>15</sup> (2022) painted Albania as a safe country of origin, where persecution, conflict, inhuman treatment or risk of indiscriminate violence are deemed not to exist, a biased view which has been refuted by legal and country experts on Albania<sup>16</sup>, the most recent CPIN on Human Trafficking in Albania demonstrates that it is not safe for Albanian women who are victims of trafficking to be returned to Albania. The CPIN supports the ruling from TD and AD<sup>17</sup>, according to which it is not safe for victims of trafficking to be returned and, according to the CPIN, citing TD and AD) : 'Re-trafficking is a reality. Whether that risk exists for an individual claimant will turn in part on the factors that led to the initial trafficking, and on her personal circumstances, including her background, age, and her willingness and ability to seek help from the authorities. For a proportion of victims of trafficking, their situations may mean that they are especially vulnerable to re-trafficking, or being forced into other exploitative situations'.

Is the UK's legal framework for tackling modern slavery and human trafficking effective, and is it compatible with our human rights obligations? Are there changes that should be made?

- Is there any evidence that modern slavery laws are being abused by people "gaming" the system?

25. A number of the young unaccompanied asylum seekers that we have interviewed were being processed simultaneously through the NRM and the asylum system. They were acting under the advice of their legal representatives, and there was no evidence at all that they were doing so cynically to 'game' the system. In fact, all of the evidence points to a highly disruptive and disorganised interplay between the two systems, with delays in and the outcomes of NRM decisions impacting adversely on asylum decisions.<sup>18</sup>

26. It is a common misconception that Albanians in particular enter the UK under false pretences (eg as asylum seekers/victims of trafficking) to gain access to lucrative black market operations across the UK and Europe and deliberately 'game the system'. This

<sup>15</sup> <https://www.gov.uk/government/publications/albania-country-policy-and-information-notes/country-policy-and-information-note-blood-feuds-albania-september-2022-accessible>ten

<sup>16</sup> See '*A practical response to the surge in certification of asylum claims by Albanian nationals*' (2019) by David Neale and Gurpinder Khanba, available from <https://www.gardencourtchambers.co.uk/news/a-practical-response-to-the-surge-in-certification-of-asylum-claims-by-albanian-nationals>

<sup>17</sup> Upper Tribunal (Immigration and Asylum Chamber) *TD and AD (Trafficked women) CG [2016] UKUT 92 (IAC)*, available from <https://www.bailii.org/uk/cases/UKUT/IAC/2016/92.html>

<sup>18</sup> C. Beddoe, '[Into the Arms of Traffickers: An examination of how delays in asylum and trafficking decision-making increase the risks of trafficking for young asylum seekers](#)', October 2021, MICLU



narrative has been heavily promoted in recent months by the media and politicians.

19

27. There is a worrying conflation of the purported people smugglers/gangs who facilitate entry to the UK, and the individuals who use such channels to enter the UK. For example, a Home Office report, Foreign criminals and illegal entrants to the UK removed to Albania, portray “foreign national offenders” facilitating illegal entry and committing sexual offences.<sup>20</sup> The reporting on the channel crossings – and specifically on Albanians – fails to acknowledge the multiplicity of motivations underpinning migration and refute suggestions that many of those who cross do so because of persecution in their home country and because there are no alternative safe routes of entry.
28. Such prejudices and misinformation are reflected in how the Albanian claims are processed and assessed: they experience longer delays with their claims compared to most other nationalities and their initial claims tend to be refused. According to recent Home Office statistics, for example<sup>21</sup> (for the period January-June 2022) 53% of Albanian asylum applicants were successful at initial decision, compared to 81% of other nationalities who were granted refugee status following an asylum application.<sup>22</sup> There is a distinct gender disparity too: of the positive decisions on adult Albanians’ asylum applications, 86% were for women.
29. **There is no single factor driving migration/channel crossings – asylum-seekers may be trafficked and victims of persecution simultaneously.** The research reveals that the reasons driving young Albanians to seek asylum and other forms of protection in the UK are complex and include a **mixture** of exploitation, cultural blood feuds, sexuality/sexual identity-related, trafficking and organised crime. The situations that have caused them to be exploited, trafficked and persecuted are, in turn, generated by the dire economic situation and weak/ineffective institutions and legal structures in protecting vulnerable groups in Albania. The complexity of the reasons behind Albanians’ decision to seek sanctuary in the UK makes their asylum cases all the more complicated, which further fuels the narrative that, as their cases don’t fit the typical asylum-seeker profile, they are undeserving or not credible.

---

<sup>19</sup> Eg. Matt Dathan, ‘Organised crime fears after 10,000 Albanian men arrive on small boats’ The Times (26 October 2022) accessed 13 November 2022; Lucy Williamson, ‘Channel crossings: Albanian migrants recruited to the UK by gangs’ BBC News (4 November 2022) accessed 13 November 2022; Phoebe Southworth and Charles Hymas, ‘Exponential rise’ in Albanian migrants crossing the channel this year’ The Telegraph (26 October 2022) accessed 13 November 2022.

<sup>20</sup> ‘Foreign Criminals and Illegal Entrants to the UK Removed to Albania’ (GOV.UK) accessed 13 November 2022.

<sup>21</sup> ‘Factsheet: Small Boat Crossings since July 2022’ (GOV.UK) accessed 16 November 2022

<sup>22</sup> The grant rate in the year ending June 2022 is the highest grant rate in over thirty years (since 82% in 1990, although volumes were lower at the time) (See Home Office stats “How many people do we grant asylum or protection to?”, 23 September 2022). Therefore this high overall grant rate constitutes an exception rather than the norm.

30. The current media reporting, coupled with the government's institutional prejudice towards certain communities and Albanians in particular, is fuelling a culture of disbelief and perpetuating racist stereotypes. This is compounding hostility on the part of service providers when asylum-seekers arrive, making it more difficult for them to navigate the system. **It also puts them at risk of further exploitation by criminal gangs, internal trafficking and acute mental health difficulties after they arrive in the UK.** We have numerous reports from dozens of young Albanians about their hostile treatment at the hands of social services and border force agents. There are few if any young Albanian asylum seekers in our sample who are not experiencing serious mental health problems. Many are on medication, and some have attempted or contemplated suicide. Their situation in the UK is dire, as they wait for a number of years (2 or more years) for their asylum claims to be processed/decided/appealed. Some have been waiting for seven years or more, with no right to work and reliant on an already stretched civil society sector. We cannot emphasise enough the impact of current reporting on public attitudes which, in turn is having an immediate injurious effect on young Albanians' treatment at the hands of different services, and potentially seriously undermining their prospects for a positive outcome to their claim for the protection

### **The Nationality and Borders Act 2022**

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

There are several features of the Nationality and Borders Act which present a threat to the rights of young unaccompanied asylum seekers.

31. The creation of a **two-tier system** that differentiates between people seeking protection who have arrived through 'illegal' routes and those who have travelled via 'safe and legal' routes (i.e. resettlement or family reunification) penalises those seeking protection simply because of the means by which they entered the country. There are no meaningful alternatives being offered for young people who currently take dangerous and irregular journeys. Rather, they are being punished for exercising their right to seek protection in the UK, contrary to the UK's obligations under the Refugee Convention<sup>23</sup> and the UN Convention on the Rights of the Child (notably

<sup>23</sup> Article 31 of the 1951 Convention relating to the Status of Refugees provides as follows:

1. *The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.*

2. *The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.*

Article 22). This is particularly concerning for those who enter the UK through trafficking and smuggling networks, where ‘choice’ is simply not available to them.

32. **We are also concerned that the Act makes no distinction between adults who seek asylum and children, including children who arrive unaccompanied.** Often when children flee harm, they leave their countries of origin with nothing and in desperate circumstances. Many children who claim international protection – including a number of the young people we interviewed for our study - made long and arduous journeys under the control of people smugglers and human traffickers, risking abuse and exploitation on route. They are powerless to deviate from the planned method of entry irrespective of whether it is an ‘illegal’ route.<sup>24</sup>
33. **There is no evidence that granting an inferior form of status will deter people from seeking protection in the UK and ‘save lives’.** Indeed, there is evidence from the American context that deterrence policies in immigration do not work (<https://immigrationimpact.com/2021/04/02/immigrants-coming-to-the-border-deterrence-policies/#.YJG-Ci9Q01g>). The two-tier system enshrined in the Act is only serving to worsen the insecurity and anxiety already faced by too many children waiting for decisions in their cases and in permanent fear of being returned. It is leaving children and young people languishing, potentially for years, in a system that is not fit for purpose, and has created a ‘second class’ of refugees who are unable to integrate or build safe lives, leading to an increase in long term mental health problems, heightened exposure to exploitation and re-trafficking. **Our sample included abundant evidence of the impacts of precarious immigration status on young asylum seekers in particular.**
34. It will also increase the likelihood of children and young people going missing out of fear of removal and, in cases where forced removals are imposed, re-migration at huge risk to their lives.<sup>25</sup> Being granted Inferior protection will further disrupt unaccompanied children and young people’s transition to adulthood, including interrupting educational outcomes which, in turn, limit future abilities for integration and employment.
35. Another issue is that many Albanians engaged with the NRM as a result of their modern slavery due to exploitative labour etc. If they were granted a conclusive grounds decision they would have been offered 45-day grace period and not treated as an immigration/asylum related issue. Now under the new Act, modern slavery and those engaged in the framework will be open to immigration controls and punitive measures, such as deportation/detention. This is important as many Albanians are caught up in these parallel systems and this are not more likely to be subject to immigration controls.
36. A second feature of the Nationality and Borders Act is the possibility of the Home Office or local authorities using scientific methods to inform age assessments (s.52(1))

<sup>24</sup> See, for example, <https://www.ecpat.org.uk/precarious-journeys>

<sup>25</sup> Chase, E and Allsopp, A. (2020) *Youth Migration and the Politics of Wellbeing. Stories of life in transition*. Bristol: Policy Press

and the fact that age-disputed children can be determined as adults by ‘decision-makers’ through the use of so-called scientific methods (s.52(7)).

37. Under s. 52(2) the types of scientific method that may be used include: a) examining or measuring parts of a person’s body, including by the use of imaging technology; and b) the analysis of saliva, cell or other samples taken from a person (including the analysis of DNA in the samples). S. 52(9) clarifies that this clause does not preclude the ability to undertake other scientific methods of age assessment not specified in regulations, “provided that it is considered appropriate to do so and the appropriate consent is sought. However, failure to consent to a non-specified scientific method would not affect credibility under this section.”
38. These measures have been introduced in spite of an abundant body of domestic and international research and guidance confirming that there is no precise method for determining age and that holistic approaches, endorsed by existing guidance, are the most effective and reliable age assessment methods.<sup>26</sup> The complexities of age assessment and the need for an holistic approach are also highlighted in various international guidelines.
39. Our research sample, which involved 9 young people who had been age-assessed, and a further 10 case files from another charity supporting young asylum seekers who had been age assessed, that it is difficult to ascertain children and young people’s age purely on appearance. Age is culturally embedded and how young people appear at the point of an age assessment can be shaped by arduous journeys, traumatic interactions before and during their migration and as a result of the asylum system
40. Given the known limitations of the sorts of ‘scientific’ methods advocated within the Nationality and Borders Act, there are significant risks if these are applied without due attention to the broader experiential, social and cultural factors that are known to affect how young people appear in terms of age when they arrive to seek asylum in the UK
41. Reverting to an over reliance on such scientific methods, without adopting a more holistic approach to age assessment, can lead to immediate risks for young people in terms of lack of safety and security and more generally can fundamentally undermine young people’s credibility with regard to their application for asylum

---

<sup>26</sup> Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012 [accessed 5 August 2022]; Council of Europe (2017) Age Assessment: Council of Europe member states’ policies, procedures and practices respectful of children’s rights in the context of migration; T. Smith and L. Brownless, [‘Age Assessment: A Technical Note’, UNICEF Working Paper, 2013](#)

- Young asylum seekers who arrive as unaccompanied children should not be considered as illegal entrants under any circumstances
- Any age assessment should be considered in relation to domestic and international children's rights obligations which require that an individualised assessment of whether the proposed referral for and approach to age assessment is in the best interests of the child and proportionate in the circumstances
- Age assessment methods/procedures need to recognise and respond to the complexity of childhood and trauma, be underpinned by a children's rights framework and be framed by an intention to create an improved sensitive age assessment method which does not risk further traumatising children and young people.
- A routine assessment should be made of the proportionality and ethics of subjecting young people to the intrusion of scientific age assessment given the potential impacts on their mental health and wellbeing. This is particularly important given the obligation under s.55 of the Borders, Citizenship and Immigration Act 2009 to safeguard and promote children's welfare/best interests when discharging any immigration function
- A careful assessment should be conducted in each case of how proportionate it would be to carry out an invasive age assessment on a young person whose mental health is already fragile, bearing in mind also the likely additional negative impacts of Covid19 and lockdown restrictions alongside systematic trauma linked to routine procedures related to the asylum system.