



LIVES ON HOLD, OUR STORIES TOLD (LOHST): RESEARCH BRIEFING NO.3

**The violent impacts of delays on
unaccompanied asylum seekers -
Covid-19 and Beyond**



TABLE OF CONTENTS

| | |
|---|-----------------|
| Introduction | <u>3</u> |
| Multiple Sites of Delay | <u>6</u> |
| Multiple Causes of Delay | <u>9</u> |
| Multiple Consequences of Delay | <u>12</u> |
| Delay Breaches the Law | 15 |
| Delay is Torture | <u>17</u> |
| From Hostility to Violence | <u>20</u> |
| Moving Forward: Not Simply a Matter of 'Clearing the Backlog' | <u>22</u> |



INTRODUCTION

This briefing examines the impacts of delay in asylum processes on young asylum seekers' legal rights, their welfare and their access to other services. Delay has been highlighted as a particularly pervasive and destructive feature of the asylum system, and one that affects unaccompanied young people seeking asylum in particular [1].



The following analysis is informed by the findings from the Lives on Hold, Our Stories Told (LOHST) project (Jan 2021-July 2023) [2], which explored the impacts and legacies of Covid-19 on unaccompanied young people's legal and welfare rights and experiences. Specifically, it draws on semi-structured interviews with 69 unaccompanied young people (aged 16-25) seeking asylum and with 53 practitioners representing the **legal, social care, policy and civil society sectors** [3]. The project also involved an analysis of the legal framework, including decisions of the UK courts and European Court of Human Rights, of official data issued by the Home Office, and of 11 summary, anonymised casework files compiled by Da'aro Youth Project, a civil society organisation working with young people from Eritrea and the Horn of Africa.

Our research findings paint a complex picture of where and why delay is occurring in the system and of its effects. Importantly, the powerful accounts of children and young people seeking asylum and those that work with them reveal such **significant, systematic breaches of the law that it is insufficient to refer to these as simply manifestations of the 'hostile environment'**. Rather, some accounts resonate with definitions of violence [4] and meet the definition of torture as prohibited under **Article 3 of the European Convention on Human Rights**.



Key Findings

- Delay in the asylum process is **significant** and **systemic**. There are multiple sites, various causes and diverse consequences for children and young people, which interact in complex and devastating ways resembling definitions of **torture** and **violence**.
- Unlike other areas of the justice process, there is **no routine, expedited procedure** for unaccompanied children seeking asylum, despite the acknowledged, acute effects of delay on their welfare and legal status.
- Because of the complexities of delay, children and young people are **confused** about who to contact for updates on decisions and processes.
- A particularly troubling feature of delay is the **lack of communication** with young people as to the causes of that delay. Young people reported receiving no indication of how long it might take for them to receive an update on their claim. This uncertainty created intense **anxiety** and distress for most young people, and in some cases led to **suicidal ideation**.
- The European Court of Human Rights has acknowledged that delays in dealing with children in any part of the asylum or justice process that are not 'planned and purposeful' and consistent with their best interests can constitute torture, in **breach of Article 3 ECHR**.



1. Multiple sites of Delay

Existing research and official Home Office data have highlighted the extent of delays in the asylum system primarily by reference to the time it takes to receive an initial decision on a submitted claim. Accordingly, Home Office data from 2020-2023 show increasing delays in receiving an initial decision across all asylum claims (including those from unaccompanied children), with the majority of applicants waiting 6 months or more for an initial decision.

Table 1 shows a **more than three-fold increase in the number of asylum applications awaiting an initial decision, from 40,830 at the beginning of lockdown in March 2020 to 133,607 by March 2023.**

| | 31 March 2020 | 31 Dec 2020 | 31 March 2021 | 31 Dec 2021 | 31 March 2022 | 31 Dec 2022 | 31 March 2023 |
|---------------------------------|---------------|-------------|---------------|-------------|---------------|-------------|---------------|
| Pending Initial decision | 40,830 | 51,321 | 52,467 | 81,978 | 89,344 | 132,182 | 133,067 |
| 6 months or less | 16,300 | 14,642 | 13,215 | 33,298 | 30,529 | 43,253 | 34,868 |
| More than 6 months | 24,530 | 36,679 | 39,252 | 48,680 | 58,815 | 88,929 | 98,739 |
| Pending further review | 1,381 | 3,812 | 2,506 | 3,279 | 3,737 | 4,051 | - |
| Grand Total | 42,211 | 55,133 | 54,973 | 85,257 | 93,081 | 136,233 | 133,607 |

Source: Immigration system statistics, year ending March 2023 (Asy_D03)



The number of claimants waiting more than 6 months for an initial decision has almost quadrupled, from 24,530 in March 2020 to 98,739 in March 2023.

74%

The percentage of asylum claims by March 2023 delayed for more than 6 months compared to 58% in March 2020

Disaggregated Home Office data show that unaccompanied children are at least as vulnerable to delays in decision-making as adults, with those from some countries waiting significantly longer than others. Indeed, data acquired from the Home Office by the Migrant and Refugee Children's Legal Unit (MICLU) through a Freedom of Information request revealed that applications from unaccompanied children and young people seeking asylum during the first quarter of 2022 were taking on average 200 days longer to process than those of adults. MICLU findings further revealed that claims from young unaccompanied Albanians were taking nearly 350 days longer on average than the average times for children from the other most common asylum-producing countries.



Similar trends were revealed in our sample. While it is difficult to extract a precise chronology from a study that is inherently qualitative, 27 out of the 69 young people participating in the study were able to provide a detailed timeline for their asylum claims. Of these, only 5 waited less than 6 months for an initial decision. **Eight waited 6-12 months, 3 waited 12-18 months and 3 waited for between 18 months and 2 years. Eight young people waited for more than 2 years for an initial decision: 4 of these waited for more than 3 years and 2 waited for more than 4 years. All of those who waited for 18 months or more for an initial decision were from Albania.**

While available evidence is based primarily on the delay between the initial claim and the initial decision, our research highlights that **delays are a feature of all aspects of the UK asylum system and impact every stage of the process.** As our briefing on Age Assessment highlights, there are significant delays in conducting age assessments with those whose age is disputed. Presently, such delays are exacerbated further as the changes to age assessment, introduced as a result of the Nationality and Borders Act 2022, are implemented [5]. Specifically, the new Home Office body responsible for assessing age – the National Age Assessment Board [6] – will take time to become fully operational. The possibility of applying ‘scientific’ methods to ascertain the age of a child will inevitably delay this stage of the process further (s.52 Nationality and Borders Act 2022).

Our data show that there are also significant delays between the initial asylum claim and the substantive interview, when the bulk of the supporting evidence forming the basis of a claim is presented.

- 44 out of 69 respondents could recollect with some accuracy the timing of their substantive interview
- 5 respondents waited 12-18 months
- 6 respondents waited more than 18 months, 3 of whom waited more than 2 years.



2. Multiple Causes of Delay

It is clear from the data that the causes of delay are multi-faceted and complex. It is not easy to isolate a single cause for the increasing delays that applicants experienced. A recent [Parliamentary analysis](#), research by the [Migration Observatory](#), and a report by the [Independent Chief Inspector of Borders and Immigration](#), have all pointed to an increased number of asylum applications, the complexity of some of the claims, a high turnover in caseworkers, and the enduring legacies of Covid 19 as contributing to the backlog. The asylum backlog pre-dated Covid-19, yet the pandemic compounded it significantly.

The enduring legacies of Covid-19?

Our study coincided with the onset of the Covid 19 pandemic, enabling us to see first-hand the extent to which the pandemic impacted on delays. There is no doubt that the lockdown and social distancing measures caused significant disruption to the asylum system. For example, substantive interviews were suspended from March 2020-July 2020, at which point they were resumed via video conferencing only where it was deemed to be in the best interests of the child [7]. There were corresponding interruptions to face-to-face tribunal hearings, social care support, [8] mental health services and legal advice and representation between 2020 and 2021.

Arjana, aged 17, comments on how the increase in home-working, necessitated by Covid 19, affected progress on her claim:

“...they are working slower, they are working from home.... But even before, they were so slow, so now that they work from home, it’s limited, it’s not the same. So of course, it will impact my claim because everything is being delayed...”



To fully appreciate the impacts and legacies of Covid, however, they must be placed within the context of pre-existing pressures on the system, and the measures subsequently put in place to mitigate delays in the process. For example, prior to the pandemic, successive cuts to legal aid had a devastating impact on the quality and availability of advice and representation for asylum seekers. [9] Children’s social care and mental health services were also already running on significantly reduced funding, despite a growing and more complex case load.[10]

Both social workers and lawyers interviewed for our project commented on how the delays experienced as a result of Covid 19 were symptomatic of the existing, dysfunctional system for unaccompanied children and young people:

“...the only difference with Covid is the cases have now been delayed because there wasn’t face to face contact. But all the issues before - the inconsistency with the process, the length of time it takes for decisions to be made, the back and forth between solicitors, or the social workers unable to attend the interview - all those things have always been there - it wasn’t just because of Covid.” [SWP10]

“... the kind of backlog, and delay from all ends of the process for unaccompanied children is severe. Our clients are suffering because they were supposed to have a hearing six months ago or nine months ago...but it’s been delayed, or moved, or the Home Office just hasn’t made a decision and the backlog is increasing and increasing.” [LP2]

Other factors external to the UK – notably, difficulties in sourcing and retrieving supporting evidence from the asylum seekers’ country of origin due to Covid 19 restrictions – delayed proceedings further.

Young people seeking asylum who have been identified as victims of trafficking and who are simultaneously going through the National Referral Mechanism, are more vulnerable to delay than others, by virtue of the problematic correspondence and communication between the two systems.



The statement from a lawyer reflected the experiences of other lawyers we interviewed and confirmed existing research [11]:

“There’s always a delay in the NRM. Well, there’s a delay in both systems...and they don’t seem to communicate. Both systems are supposed to make their decisions independently but what ends up happening is the asylum system won’t make their decision until the NRM decision is made...” [LP2]

This inefficient interplay between the modern slavery and asylum systems is one reason why unaccompanied young people from Albania - the most common nationality group to be referred to the NRM [12] – are more likely to experience delay than other groups.

Not all the delays are down to the Home Office or other public services inefficiencies. Some of the lawyers we spoke to openly admitted that they had engineered delays to ensure they had sufficient time to gather the most persuasive evidence. The following lawyer puts it this way:

“...sometimes as a lawyer, you actually need to delay a case, or get a hearing adjourned, so you have more time to gather evidence. And sometimes that’s very difficult for the young person, but sometimes it’s necessary, because it’s better to take a little bit longer and win than to lose and then put the young person in a very bad situation. But, at the same time, most of the delays that are happening are not ascribable to lawyers. Most of them are ascribable to the Home Office.” [LP8]

Notwithstanding the multiple procedural causes, deeply entrenched structural and procedural inefficiencies in the Home Office, as well as policy associated with the hostile environment, are undoubtedly factors which both cause and perpetuate delays.



3. Multiple Consequences of Delay

Accessing services and opportunities

The consequences of delay are as extensive and far-reaching as its causes. These consequences impact on all the legal, educational, social, psychological and financial - dimensions of young people's lives. Whilst young unaccompanied children seeking asylum are entitled to access core services such as social care, accommodation, education and health, the scope, quality and accessibility of that provision is in jeopardy while their claim is pending or being appealed. Insofar as most unaccompanied young people seeking asylum arrive in the UK at 16 or 17 years old, delays in receiving a decision can cause problems when it comes to applying for higher education, and specifically qualifying for student finance.

Arber, aged 23, for instance, like many other young people, reflected on the impact of the delays in his case on his ability to take up one of a number of offers he received to study at university:

“... You know everything is harder and even though I got offers from a lot of good universities, I still can't go until I fix the situation with my immigration matters. It's delayed. It has been a year now and even that has impacted my goals and my dreams for a future.”

The quality and credibility of testimony

Asylum claims depend heavily on an individual being able to provide a coherent, chronologically and factually verifiable account of their experiences. Delay inevitably affects memory retention and recall as the circumstances on which the individual's claim is based become more distant and distorted by intervening events and trauma. A number of the young people we spoke to found it challenging to remember not only specific dates, but specific months or even years as so much time had elapsed since their initial claim. This was particularly due to their mental health situation, which can affect recall. Blerta from Albania, aged 19, highlights the anxiety and frustration that this caused as she anticipated not being believed when she eventually underwent her substantive interview:



“They were asking a lot of questions and then for some questions I didn’t have answers, like I couldn’t remember the time or the date, I couldn’t remember, and then they were saying that ‘how can you not remember that, if you’ve been in that situation?’ and this was making me more worried and more stressed.”

Ageing out

One of the key problems that delay presents to unaccompanied children is the risk of turning 18 (or ‘ageing out’) whilst awaiting a decision on their immigration status. Unaccompanied asylum-seeking children fall under the statutory framework of the Children Act 1989 and have all the same rights pertaining to other looked after children. This includes access to leaving care provision until they reach the age of 25, subject to certain conditions.

In practice, however, we heard numerous accounts of support – including housing, social care provision and access to education - being withdrawn from children as soon as they reached 18 whilst awaiting a substantive interview or an initial decision on their claim. The following lawyer explained it as follows:

“...if the young person has never had a decision, they won’t have been granted any leave, and if they age out, they will miss out on being granted Unaccompanied Asylum Seeker Child (UASC) leave. Because normally if you’re still a UASC, when you’re refused asylum, you’ll be granted leave till you’re 17 and a half. But young people who aged out before they got an initial decision obviously miss out on that...then the young people end up with nothing to do and nowhere to go - they can’t work, they’re living on very minimal local authority support, and then of course, if they lose their asylum case, they risk potentially being kicked off local authority support.” [LP8]



Another lawyer spoke of his experience of children being expected to accept that they will no longer be provided with the support they once received prior to the age of 18:

“This issue of transition for young people - so they are well cared for up until the age of 18 - or well, you know, reasonably well looked after - until they’re 18 and then kind of pushed off a cliff edge with no support.”
[LP2]

Ageing out was a common experience of the young people we spoke to: 56 out of 69 participants interviewed were children when they arrived in the UK and claimed asylum. 14 of those (25%) ‘aged out’ before their substantive interview and 23 children (41%) ‘aged out’ before an initial decision was made on their claim.

Perhaps more disturbing is the belief, expressed by some lawyers and young people, that delay was a deliberate strategy of the Home Office to minimise the amount of support a young person would receive as a looked-after child. For instance, the following lawyer told us that he believed that many strong cases of children who should have been granted asylum were being unnecessarily delayed:

“... It’s really frustrating when you have these very strong cases for children and then it just gets prolonged and then they’re being determined when they’re like nineteen/twenty as ‘adults’.” [LP6]



Artan, aged 18, had similar suspicions:

“From the big interview until the first refusal it took time because they want to wait for you to turn 18 so they don’t have to treat you as a child anymore...If not, then why would they mention so many times in the refusal that I was 18 and I was an adult now? I wasn’t even 18: it was June and I still had 2 or 3 more months to turn 18 and they kept mentioning it. So they 100% do that...”

For those who have already transitioned into adulthood, they face the additional frustration of not being allowed to work until their status is settled (apart from those who can get a work permit after 12 months but are confined to jobs on the Occupancy Shortage List), and fears that they will be detained or removed should they receive a negative decision. [13]

4. Delay Breaches the Law

Whilst extensive delays are now a routine expectation for asylum seekers, by contrast, the **asylum legal framework does not tolerate any delay** in the initial submission of an asylum claim. In particular:

- Article 31 of the Refugee Convention prevents contracting states from penalising someone who has entered a state illegally provided they show good cause for their illegal entry or presence and report to the authorities **without delay**.
- This is reinforced by Part 2 of the Nationality and Borders Act 2022 (s.12(2)(b)) which specifies that the requirements for and entitlements relating to claiming asylum are conditional upon asylum seekers having presented themselves **without delay** to the authorities.

Some of our respondents remarked on the unfairness of this disparity. Eralda said:

“You never know with the Home Office. They say April but they don’t really mean that. They want things by their deadline but they would not do the same thing if they have a deadline. They would not send you or do anything by the deadline.”



Irrespective of its multiple causes, sites and consequences, it is indisputable that any delay in asylum processes is a breach of the law. As far as unaccompanied young people seeking asylum are concerned, delay is also a breach of basic human rights obligations to which the UK is bound under international law.

There is no absolute time limit within which the Home Office is required to make a decision on an asylum claim, but there are some clear indications in domestic guidance of what might reasonably be expected:

- Paragraph 333A (Part 11) Immigration Rules: implies in its wording that initial decisions should be taken **within 6 months of the asylum application**. [14]
- Paragraph 350 Immigration Rules, which refers specifically to unaccompanied children's asylum claims, requires that: [... in view of their potential vulnerability, **particular priority and care** is to be given to the handling of their cases.]

Broader law and guidance relating to children's the rights in the legal process also stress the importance of progressing cases in a timely way in order to protect the well-being of children. In particular:

- **Section 1(2) of the Children Act 1989** – which applies to unaccompanied children seeking asylum as looked-after children - establishes a general principle that **any delay in determining any question with respect to the upbringing of a child is likely to prejudice the welfare of the child**.
- **Section 55 of the Borders, Citizenship and Immigration Act 2009**, which imposes a statutory duty to protect and promote the welfare of children in immigration proceedings, emphasises the need to deal with asylum applications **'in a timely way** and that minuses the uncertainty that they may experience' (2009 Every Child Matters Statutory Guidance, para 2.7)
- There should also be recognition that children cannot put on hold their growth or personal development until a potentially lengthy application process is resolved. **Every effort must therefore be made to achieve timely decisions for them** (2009 Every Child Matters Statutory Guidance, para 2.20)



At international level, the UN Committee on the Rights of the Child, in its guidance relating to the treatment of unaccompanied children, states that:

"Efforts to find durable solutions for unaccompanied or separated children **should be initiated and implemented without undue delay.**" [15]

Further guidance on the links between child friendly justice mechanisms and delay is provided by the Council of Europe soft law guidance, which states:

- In all proceedings involving children, the **urgency principle** should be applied to provide a **speedy response** and protect the best interests of the child, while respecting the rule of law (para 50)
- **Cases in which children are involved need to be dealt with expeditiously and a system of prioritising them could be considered...It should be borne in mind that children have a different perception of time from adults and that the time element is very important for them: for example, one year of proceedings in a custody case may seem much longer to a 10-year-old than to an adult. The rules of court should allow for such a system of prioritising in serious and urgent cases, or when possibly irreversible consequences could arise if no immediate action is taken.** (para 118)[16]

5. Delay is Torture

One of the most prominently reported consequences of delay was its adverse impacts on the mental health and well-being of unaccompanied young people seeking asylum. This is an issue we discuss further in our [Mental Health Research Briefing](#).

The following social worker described the acute impacts on the mental health of one young person seeking asylum under her care, who had been waiting for nearly 20 months for a substantive interview.

"...for this young person that has been waiting 19/20 months, the impact on mental health has been crazy. Like I couldn't even describe it to you; it's been a really, really difficult 18 months waiting, waiting for interview." (SWP9)



Many of our respondents described the fear and disorientation of not having any control over their future., Including Albana, aged 20:

“...I haven’t had my big interview yet. It will be two years in August, so that’s a huge wait. We were told we were going to wait six to nine months which is normal or even a year, the maximum, but now it’s been two years and there’s this big cloud of instability around it...”

Valbona, aged 20, explained how delays with her asylum application made her feel mentally and physically exhausted, as well as suspended in time:

“I am just so tired, both mentally and physically and I just feel like I am on hold for everything. There is an expression in my country where you are “not living, just surviving”. My life feels like it’s just stuck there and it’s not going anywhere”.

This was echoed by Arjana:

"You’re like frozen in everything and you cannot do anything..To them you’re so small. You’re just like a drop, you know; you’re nothing. You feel like you cannot do anything about the way you’re feeling. And you wonder if it will ever end.... It’s so hard."

Others, like Suada, aged 21, described how their minds went into overdrive during extended periods of waiting and not knowing, imagining the worst outcomes of their claims:

“Your mind is always like: “Are they coming? Are they arresting or detaining me? Am I going back to my country? ...”

Some young people spoke of how they considered taking more drastic action to avoid facing a negative decision on their asylum claim or being at the mercy of an indeterminate process. Artan, for example, considered going underground or ending his life during his period of waiting:



“That was like a very, very dark period of my life. It was really bad because it came at the worst time ever...I was thinking I should go underground, but what is that going to do to me? I’m going to live my life in fear again. And those are my two only options: basically go underground or maybe commit suicide or something like that; just taking any medication or in a pool or something to just end it.”

Such ideations were confirmed by the practitioners we spoke to. One social worker referred to a young man **“who had started self-harming... That sort of level of mental health distress is because of the delays...”** [SWP5]

Reinforcing the empirical evidence that delay places young people in a torturous holding room, the European Court of Human Rights has recognised that ineffective asylum processes that fail to take into account or exacerbate the vulnerabilities of asylum seekers, can constitute torture or inhuman and degrading treatment, which is prohibited under Article 3 ECHR.

Importantly, in *M.S.S. v. Belgium and Greece* (Application No. 30696/09), the Court identified major shortcomings in a young asylum seekers' treatment at the hands of the authorities, including excessively lengthy delays in receiving a decision. In particular, it acknowledged explicitly that delays in the asylum process can have a more profound effect on children than adults, compounded by the trauma associated with the conditions that sought them to seek asylum in the first place:

“...the Court must take into account that the applicant, being an asylum seeker, was particularly vulnerable because of everything he had been through during his migration and the traumatic experiences he was likely to have endured previously”. (para 232)

Moreover, in *Rahimi v. Greece*, (Application No. 8687/08), the Court concluded that State Authorities have a **positive obligation** under Article 3 ECHR to **take appropriate measures to protect vulnerable children and young people in the context of asylum procedures**. This includes expediting decision-making and ensuring that they receive adequate protection and support whilst awaiting those decisions.



In *Kudla v Poland* (Application no. 30210/96) – not concerning asylum seekers in particular, but relevant to the scope of Article 3 ECHR – the Court noted that the assessment of whether the treatment at the hands of the State is sufficiently serious to constitute torture is relative and ‘...depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, **its duration**, its physical or mental effects and, in some instances, the sex, **age and state of health of the victim.**’ (para 91).

Finally, the Court stressed in *Y.C. v. the UK* (Application no. 4547/10) that delayed decision-making in **any legal process involving children must be weighed against the child’s best interests and will be ‘considered in law to be prejudicial unless it is planned and purposeful’** (para 69 and para 97). This interpretation allows for strategic delays that actively serve the interests of the applicant (such as gathering the best possible evidence or waiting until an applicant is sufficiently stable to attend an interview or hearing).

6. From Hostility to Violence

The devastating effects of delay on asylum seekers are such that there is now an emerging body of work framing it as violent [17]. **Academic formulations of ‘slow violence’ offer a particularly chilling and compelling depiction of young asylum seekers’ experiences at the hands of the asylum system.** Slow violence, a concept conceived over a decade ago by Rob Nixon, is characterised by the fact that it **“occurs gradually and out of sight, a violence of delayed destruction that is dispersed across time and space, an attritional violence that is not typically viewed as violence at all.”** [18]

Research has highlighted how keeping people in a state of perpetual uncertainty – the inevitable consequence of delay – is a strategic feature of slow violence:

“Violent uncertainty is enacted through systematic, personal, social and institutional instability that exacerbates inequality and injects fear into the most basic of daily interaction” [18]



It keeps people “in a passive and desperate state of continual transience and uncertainty” [18]

This is brought into sharp focus by many of our respondents. Besjana, aged 23, for instance, put it this way:

"Everything was just terrible because I had no idea what was going on. I was all the time just thinking that they're gonna send me back and my life is not safe anymore... It's been hard, not knowing what's going to happen, not knowing what tomorrow will bring...it just made me feel very isolated, confused and stressed."

Iliri, aged 18, similarly described his experiences:

"I feel so unstable and insecure and, you constantly keep thinking. And if you contact your lawyer and she tells you nothing, you can't do anything about it. You just keep thinking about it all day, all night. Not hearing back...is such a scary experience and so intimidating...It's just too much sometimes. You feel overwhelmed.. You feel that they are not caring about your case or you're not even being considered. Not hearing back from them gives you a sense of hopelessness."

Many of the stories we heard resemble accounts of long-standing, psychological abuse. The following statement by Azad, aged 22, from Iran, puts the violence of delays even more starkly:

"Believe me... [the Home Office is] launching a psychological war on asylum seekers and people like myself. They want us to go mad and lose our brains, or at the end to decide to leave this country."



7. Moving Forward : Not Simply a Matter of ‘Clearing the Backlog’

Addressing the causes and consequences of delay requires a systems-wide approach to reform, which acknowledges and accommodates the specific needs and vulnerabilities of unaccompanied young people seeking asylum. This will take many years and considerable resources, but our research suggests that any response to the causes and impacts of delay needs to centre on three key areas. Immediate, interim measures are necessary in all of these areas to offset the current government plans.

Expediting processes: a children’s rights-based approach

In its most recent 2023 Concluding Observations relating to the UK’s progress in implementing the UN Convention on the Rights of the Child [19], the UN Committee on the Rights of the Child repeatedly stresses that the UK is failing in its obligations towards asylum-seeking children. It specifically recommends that the UK authorities:

Review and strengthen the asylum process to ensure that children receive age-appropriate information and legal advice about their rights, asylum procedures and requirements for documentation; that their best interests are given primary consideration in all asylum processes; that their views are heard, taken into account and given due weight; and that they have access to child-friendly justice mechanisms and remedies (para 50(c)).

Responding to this recommendation should include expediting legal proceedings where it is in young peoples’ best interests to do so. Indeed, this is an established feature of almost all other legal proceedings involving vulnerable children. As noted, all proceedings concerned **children’s care and upbringing within the scope of the Children Act 1989 are subject to the fundamental principle of ‘no delay’ (s.1(2)).** In the context of child protection proceedings, decisions concerning the care and welfare of a child who may be suffering or at risk of suffering significant harm need to be completed ‘without delay; and in any event within 26 weeks beginning with the day on which the application was issued’. [20]



In a criminal justice context, guidance requires that in cases involving children either as victims or as witnesses, "**delay should be kept to a minimum**, in order to reduce, so far as is possible, the levels of stress and worry about the process that the child may feel. From an evidential point of view, the less delay there is, the more likely it is that the events will be fresher in the child's memory." [21]

One lawyer we interviewed put it as follows: "... **a year is not the same for a child as it is for an adult. You know, the implications of all of that. We need to get a bit of an urgency around this...**" [LP1]

The expedited processes that exist in other areas of child-focused justice stand in stark contrast to recent government initiatives in the context of asylum which operate to exclude and remove rather than achieve security and stability for those who claim asylum on or after 28 June 2022. In particular, two aspects of the current policy are, at best, inadequate and, at worst, profoundly problematic as far as unaccompanied children are concerned:

- The plans announced by the Government in December 2022 to 'clear the backlog' of initial asylum decisions by the end of 2023 relate only to so-called 'legacy' cases, that is the 92,601 asylum claims made before 28 June 2022. This includes a new pilot launched on 16th March 2023 to streamline the initial decision-making process for children seeking asylum. This mechanism introduces a Preliminary Information Meeting (PIM) which takes place after the welfare interview and before the substantive interview. It enables the decision-maker to determine whether they have enough information to grant asylum without further interview. This initiative is welcomed as potentially removing unnecessary, traumatic delays and further interviews for children before a decision on their case can be made. However, **it is limited to 'legacy applications' that have been lodged by/on behalf of children before 28 June 2022, and to claims from children from only five countries: Afghanistan, Eritrea, Sudan, Syria and Vietnam.** [22]



- The other main feature of expedition relates to the new rules on inadmissibility and removal, introduced by the [Nationality and Borders Act 2022](#) [23] Specifically, Home Office [guidance](#), introduced in 2021, states that the removal of asylum seekers deemed to be inadmissible must take place within a “reasonable period” and that “As a general guideline, it is expected that in most cases, a safe third country will agree to admit a person within 6 months of the claim being recorded”. The guidance also states that “the inadmissibility process must not create a lengthy ‘limbo’ position”.
- Whilst unaccompanied children seeking asylum are generally outside the scope of the inadmissibility process, they may be subject to it if a close family member is identified in a third country who is deemed willing and suitable to care for the child and if it is deemed to be in the child’s best interests. The guidance does not clarify how such a best interests assessment will be undertaken and by whom.
- It is also worth noting that the growing number of those who are deemed not to be children following an age assessment, as well as those who arrive in the UK as children but who subsequently ‘age out’, will also be subject to inadmissibility.

This has led to an incongruous situation: on the one hand, the Home Office has failed to streamline processes to achieve certainty and stability for tens of thousands of unaccompanied children with legitimate claims to remain in the UK. On the other hand, it has acted with comparable speed and efficiency to implement policies and processes to deny them access to or actively remove them from the UK.



Enhanced Communication and Transparency

One of the biggest difficulties faced by the young people we spoke to was not knowing anything about the progress of their cases. Their legal representative or social worker's ability to provide them with updates depended entirely on the Home Office providing them with an update.

Improved communication and transparency around the decision-making process would go some way to improving young people's ability to cope with delay. This should include more regular, clearer updates around when they will receive a decision, what factors are causing the delays, and how they might access more information about progress on their case.

There is certainly precedent for such a policy: in criminal justice proceedings involving children, guidance states that 'prosecutors should, where possible, explain the reasons for any delays... Not only is it courteous, but it will also reduce anxiety levels.' We argue that the same courtesy is owed to children and young people in the asylum system.

Mental Health Support To Help Young Unaccompanied Asylum Seekers Cope with Delay

This briefing has highlighted recognising the profound impact that delay has on young people's mental health and well-being.

More tailored and sustained support needs to be in place to help them cope.

Specific measures could include:

- Referring young asylum seekers to adequate mental health support as soon as they have claimed asylum as part and parcel of statutory provision.
- Providing training to local authorities, Home Office staff and other first responders to identify and distinguish trauma from cultural differences and other special educational needs and disabilities, so that young people can be referred to adequate mental health support and their cases expedited as appropriate.



- Integrating a trauma-informed approach into casework practice within the Home Office, so that staff are sensitive to how delays are communicated to unaccompanied young people seeking asylum and include reassurances about their rights and support available in the meantime.
- Ensuring that **statutory** care planning for unaccompanied children and young people seeking asylum take specific account of the impacts of delays in the asylum process on access to other key services and mental health support.
- Ensuring that young people with a recognised mental health condition have continuous access to and engagement with appropriate mental health support throughout the entire asylum process.



Footnotes

To cite this brief: Stalford, H., Bracaj, E., Chase, E., Iusmen, I., Kreppner, J., Shankley, W. (2023). The violent impacts of delays on unaccompanied asylum seekers - Covid-19 and Beyond. Research Briefing No.3. Liverpool: Liverpool Law School (Liverpool University)

- [1] See in particular the research findings published by Greater Manchester Immigration Aid Unit (GMIAU) in "We lost our lives when we arrived here.": children in the UK's asylum system. (June 2023); in Wasted Childhoods – the impact of Covid-19 asylum delays on children (March 2021); in The wait goes on: an update on children's asylum delays in the North West of England - GMIAU (5th August 2021); and by the Refugee Council in Living in Limbo: A decade of delays in the UK asylum system (July 2021).
- [2] Funded by the Economic and Social Research Council, Project Ref: ES/W000474/1 Jan 2021-February 2023
- [3] The young asylum seekers came from Afghanistan, Albania, Azerbaijan, Guinea, Eritrea, Iran, Iraq, Nigeria, Somalia, Sri Lanka, Sudan, Syria, Pakistan and Uganda.
- [4] Nixon, R. (2011) Slow Violence and the Environmentalism of the Poor. Cambridge, Mass: Harvard University Press.
- [5] Part 4, ss.49-57.
- [6] Introduced under s.50-51 Nationality and Borders Act 2022
- [7] [Home Office, 'The resumption of substantive asylum interviews' Staff Guidance Published 06 August 2020, p.4
- [8] See notably the Adoption and Children (Coronavirus) (Amendment) Regulations 2020
- [9] Jo Wilding Droughts and Deserts. A report on the immigration legal aid market, 2019.
- [10] Children's Services Funding Alliance (CSFA) Children and Young People's Services: Funding and spending 2010/11 to 2018/19, May 2020; UK Parliament POST, Children's Mental Health and the Covid-19 Pandemic, POST Number 653, September 2021. See also Yeo, C. 'Briefing: the state of the UK asylum system' Free movement blog, 20th June 2023
- [11] Independent Anti-Slavery Commissioner paper: Asylum decision times for potential victims of modern slavery, October 2021; Hynes, P. 'Exploring the Interface between Asylum, Human Trafficking and/or Modern Slavery within a hostile environment in the UK' Soc. Sci. 2022, 11(6), 246; Jo Bezzano and Sammie Currie
- [12] Data from 2022 reveals that Albanians comprise 27% of NRM referrals (4,613). See further Gower, M. and Sturge, G. 'Modern Slavery cases in the immigration system' House of Commons Research Briefing, 8 March 2023.
- [13] Such issues are detailed further in LOHST Research Briefing No.4 on the impacts and legacies of Covid for unaccompanied young people seeking asylum, forthcoming.
- [14] In January 2019, the Home Office suspended its 6-month service target for asylum decisions but with a reassurance that the Home Office would continue to prioritise claims involving the most vulnerable asylum seekers, including unaccompanied children. However, consistent with the findings of our study, an investigation by the Chief Inspector of Borders and Immigration found "...no evidence of any case type being prioritised" save for some limited exceptions, and by June 2021 there was no evidence of any cases at all being prioritised.
- [15] GC6 (para 79)
- [16] Council of Europe Guidelines on Child Friendly Justice
- [17] See for example, Phillimore, J. and Cheung, S. Y. 'The violence of uncertainty: empirical evidence on how asylum waiting time undermines refugee health' Social Science & Medicine, August 2021, Vol. 282, 114154.
- [18] Rob Nixon, 2011 Slow Violence and the Environmentalism of the Poor, Cambridge, Massachusetts: Harvard University Press
- [19] 2023 United Nations Committee on the Rights of the Child
- [20] The Children Act 1989, s.32(1), as amended by The Children and Families Act 2014, s.14(2)



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- [21] [‘Safeguarding children as victims and witnesses’ \(October 2019\)](#)
- [22] See further GMIAU [Briefing: new Home Office plans to clear the backlog of children’s asylum claims](#), 27th March 2023.
- [23] This inserted sections 80B and 80C into the Nationality, Immigration and Asylum Act 2002 to enable appropriate asylum claims from 28 June 2022 to be treated as inadmissible on third country grounds. The inadmissibility process is intended to support safety of asylum seekers, the integrity of the border and the fairness of the asylum system, by encouraging asylum seekers to claim protection in the first safe country they reach and deterring them from making unnecessary and dangerous onward journeys to the UK. In broad terms, asylum claims may be declared inadmissible and not substantively considered in the UK, if the claimant was previously present in or had another connection to a safe third country, where they claimed protection, or could reasonably be expected to have done so, provided there is a reasonable prospect of removing them in a reasonable time to a safe third country.





ABOUT THE LOHST PROJECT

The ESRC-funded LOSHT project is a peer research study investigating the effects of Covid-19 on children and young people seeking asylum in the UK. Working in close collaboration with the Albanian organisation **Shpresa Programme**, It explores how asylum seekers aged 16-25, as well as lawyers, social workers and charities and support organisations, are responding to the delays and disruption in front line services. The findings will suggest legal, policy and practice proposals to better promote the rights and wellbeing of young people seeking asylum in the UK.



Acknowledgements

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Thank you to:

Research Assistants:

Joseph Ramsden
Migena Xemajli

Partners:

Shpresa Programme
Da'aro
Greater Manchester Immigration Aid Unit
Baobab

All young peer researchers

