



Input for the upcoming report of the Special Rapporteur on the sale and sexual exploitation of children

About ECPAT UK

ECPAT UK is a leading UK-based children's rights organisation campaigning and advocating for the right of children to be protected from threats of trafficking and transnational child sexual abuse. We have a long history of campaigning against child trafficking and exploitation in the UK, having produced the first research into trafficking of children in the UK in 2001. An on-going programme of research, training, youth participation and advocacy informs our campaigning efforts. ECPAT UK has been instrumental in raising awareness of the plight of children trafficked into the UK for all forms of exploitation and advocating for changes in policy and legislation to improve the UK's response to this abuse. We also work directly with young victims of trafficking, which provides insight into the experiences of these children and the processes/systems that they encounter. ECPAT UK is part of the ECPAT International network, which is present in 93 countries, working to end child exploitation.

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Introduction

ECPAT UK welcomes this opportunity to provide input for the Special Rapporteur's final thematic report to the Human Rights Council March 2020 session. We particularly wish to focus on sharing national expertise, issues and concerns to assist in the identification of good practices and inform future efforts. ECPAT UK is incredibly grateful for the work of the Special Rapporteur and we wish to express sincere concern if the mandate is not renewed. A dissolution of the mandate will significantly impact the ability for independent oversight with a specific focus on children within the overall UN system. The mandate holds a uniquely important role in the UN Human Rights architecture, participating as the only UN entity with the exclusive mandate to ensure the promotion and protection of children from these most pernicious human rights abuses.

ECPAT wishes to draw the attention of the Special Rapporteur to persistent issues affecting children in the UK such as the use of terminology and the sexual exploitation of boys and young men. We also wish to draw her attention to the particular issues affecting children in migration in the context of European and UK immigration policy and how the current environment are drivers of exploitation as well as failing to protect children when exploitation has taken place. The input provided focuses on separated and unaccompanied children as a particularly vulnerable group and uses the framework of human trafficking and not on sale (as defined by Article 2 of OPSC where there was no intention to exploit the child). ECPAT UK also wishes to provide input on our concerns with regards to state's accountability, particularly in the imminent context of Brexit where children's rights organisations consistently raise that no sufficient measures are being taken to ensure that children are safeguarded once the UK leaves the European Union, specifically in the case of a 'no-deal' scenario.



Awareness and attitudes underpinning the sale and sexual exploitation of children

1. Terminology

It has been a persistent issue discussed within the international community as to how terminology is harmful to children. The production of the Luxembourg Guidelines¹ has been a helpful tool to enhance the protection of children against sexual violence by clarifying the terminology and drafting consideration for each term. ECPAT UK does not wish to re-litigate these discussions, instead, we wanted to draw the attention of the Special Rapporteur on the sale and sexual exploitation of children to additional uses of terminology in the context of children in migration which are extremely harmful to children. Dehumanising and discriminatory language leads to significant failings in child protection responses to migrant children. These terms may include: 'illegal' which implies criminality and has significant impacts on policy and public perception. In the UK, separated and unaccompanied children are routinely referred to as UASC's an abbreviation to an immigration leave often granted to this group of children by the Home Office called: Unaccompanied Asylum Seeker Child Leave. ECPAT UK amongst other children's charities consistently highlight that this term and its commonly used abbreviation is harmful to children as it places the child's immigration status before the fact they are a child which is legally inaccurate and has shown to impact on practitioner's responses to children. We highlight these terms as children and young people known to ECPAT UK face significant barriers in accessing support and protection as victims of all forms of exploitation do to the inappropriate focus on their immigration status.

2. Sexual exploitation of boys and young men

In the UK, despite an increasing focus on child sexual exploitation following the cases in Rochdale, Rotherham and Oxford, the focus has remained primarily on the risk to girls – paralleling the invisibility of male victims among children who are exploited. Research conducted by The Children's Society into the sexual exploitation of boys who are foreign national children² highlighted the significant barriers these children face in the identification of abuse. There is a high level of concern among organisations working with children to the degree which boys have failed to feature in policy and practice decision-making around sexual exploitation. There are complex, ingrained and inter-related gaps linked to deep personal identity issues for boys around their masculinity and sexuality which prevent disclosure. Sexual exploitation remaining hidden after other forms of exploitation where identified in boys such as labour and criminal exploitation and the unwitting professional blindness of some workers to indicators of exploitation in boys due to the gendered expectations about the context for sexual exploitation. There is significant need to address these issues at an international level to ensure policy and practice is evidence based and these significant gaps are addressed.

Children in migration³

The protection of children in migration is dependent on effective multi-agency and cross-border approaches where the best interests of the child are always the primary consideration in all actions taken. At its core, effective cooperation between Member States is essential to prevent and respond effectively to the exploitation of children. However, current policy and legal frameworks across EU

¹ <http://cf.cdn.unwto.org/sites/all/files/docpdf/terminologyguidelines.pdf>

² The Children's Society. (2016). *Boys Don't Cry*. Available at: <https://www.childrenssociety.org.uk/sites/default/files/boys-and-trafficking-report-lowres-pcr059.pdf>

³ For further details, please see ECPAT UK and Missing Children Europe joint briefing for the Initiative for Children in Migration. Available at: https://childhub.org/sites/default/files/webinars/mse-policy_briefing-v4.pdf



Member States are significantly lacking, frontline responses are insufficient and cross-border cooperation needs considerable improvement.

Data provided by the European Migration Network estimate that from 2014 to 2017 more than 30,000 children went missing after their arrival in Europe, with the majority disappearing before filing an asylum claim or during the asylum procedure. It is impossible to ascertain the actual amount of children in migration who go missing, as there is no consistency between Member States and between professionals in the meaning given to ‘missing children’ and data are not collected in a systematic, uniform and comparable way across Member States and stakeholders. However, the real numbers are expected to be higher. At European level, the Europol situation report published in October 2018⁴ says that children in migration are at higher risk of exploitation and that they are likely to be increasingly targeted.

1. Family reunification

Unaccompanied children in Europe may be reunited with family members through a European Regulation known as Dublin III, which establishes the method for deciding which signatory state should process a claim for international protection. Under this Regulation, signatory states shall try to identify the family members of unaccompanied children present in other signatory states. In practice, children accessing transfers through Dublin III experience significant delays mainly due to either human resources constraints or complicated and exceedingly lengthy administrative practices and evidentiary processes.⁵ Evidence shows that there is a lack of prioritisation of the best interests⁶ of the child and uneven interpretation of legal provisions.⁷ Other tools for family reunification may also exist, for example through Central Authorities⁸ provided for in the Brussels IIa Regulation⁹ however Member States are not currently making full use of them.

These long delays, uncertainty of the outcome of the reunification process or the rejection of family reunification requests leave children extremely vulnerable to going missing in order to undertake their own migration plans which have led to all forms of exploitation, as found by a study carried out by Missing Children Europe in 2015¹⁰ and earlier by Terre des Hommes in 2009.¹¹

⁴ Europol. (2018). *Criminal networks involved in the trafficking and exploitation of underage victims in the European Union*. Available at: <https://www.europol.europa.eu/publications-documents/criminal-networks-involved-in-trafficking-and-exploitation-of-underage-victims-in-eu>

⁵ https://www.theguardian.com/world/2019/mar/31/calais-child-refugees-hunger-strike-uk-transfer-delay?utm_source=ECRE+Newsletters&utm_campaign=c4ce5c313c-EMAIL_CAMPAIGN_2019_04_01_12_39&utm_medium=email&utm_term=0_3ec9497afd-c4ce5c313c-422328957

⁶ EASO. (2019). *Practical Guide on the best interests of the child in asylum procedures looks at the implementation of the best interests of the child in Dublin procedures*. Available at: <https://www.easo.europa.eu/sites/default/files/Practical-Guide-Best-Interests-Child-EN.pdf>

⁷ Safe Passage. (2018). *Caught in the Middle*. Available at: <http://safepassage.org.uk/wp-content/uploads/2019/03/Caught-in-the-Middle-Unaccompanied-Children-in-Greece.pdf>

⁸ As mentioned in the European Commission Communication on the Protection of Children in Migration (2017)

⁹ Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, OJ L 338, 23.12.2003, p. 1–29.

¹⁰ Missing Children Europe. (2015). *Summit Report. Best practices and key challenges on interagency cooperation to safeguard unaccompanied children from going missing*. Available at:

<http://missingchildreneurope.eu/Portals/0/Docs/Best%20practices%20and%20key%20challenges%20for%20interagency%20cooperation%20to%20safeguard%20unaccompanied%20migrant%20children%20from%20going%20missing.pdf>

¹¹ Terre de Hommes. (2009). *Disappearing, departing, running away: A surfeit of children in Europe?* Available at: https://childhub.org/en/system/tdf/library/attachments/963_945_disappearing_departing_running_away_a_surfeit_of_children_in_europe_original_original.pdf?file=1&type=node&id=6660



2. Providing safe and legal ways for children to move from one country to another

Other children in migration might not have any family members or anyone with parental responsibility for them within signatory states. Currently, unaccompanied children will have limited means to access safe and legal options to move between EU Member States. Solidarity and cooperation is essential, such as in the case of the United Kingdom, where after significant public pressure, the government committed, under Section 67 of the Immigration Act 2016 (**the Dubs Amendment**¹²), to accept a specified number of unaccompanied children from within Europe, where they are at risk of exploitation. However, this agreement is currently limited,¹³ and due to uncertainty around the future of Brexit, cross-border cooperation between the UK and the EU remains unclear. In the meantime, unaccompanied children as young as 13 have been identified in Italy as child victims recruited into sexual exploitation and child labour¹⁴ who in the absence of safe and legal channels report exploitation and abuse on their journeys,¹⁵ risking their lives in traumatic and often fatal crossings which may also lead to recruitment into various forms of exploitation.

Cross-border cooperation has a crucial role in preventing children in migration from being exploited, by reducing the occurrence of the said push factors, for instance, through better information sharing upstream of the identification and registration processes, hence speeding up procedures. Indeed, the identification of child victims of exploitation can be particularly complex and there are significant obstacles to their identification. Research shows that identification and disclosure¹⁶ are rarely single events, instead they are staggered over time and will only occur when the child has a trusted, secure relationship with a practitioner.¹⁷ Significant barriers to the disclosure of abuse by children in migration may include fear of retribution, debt bondage,¹⁸ spiritual abuse,¹⁹ fear of arrest, fear of deportation and immigration detention or an overwhelming feeling of shame.²⁰ For these reasons, children are unlikely to disclose their exploitation on initial encounters with a public authority and practitioners may be unaware of pertinent information, which may aid identification, held by professionals in other Member States through which children travelled.

¹² Scheme launched by the UK to enable a number of unaccompanied children to travel safely in the UK in the absence of a member of family in the country. It is called the Dubs Amendment, named after the man who led the scheme being introduced, Lord Alf Dubs.

¹³ <https://www.theguardian.com/global-development/2019/may/17/transfer-of-vulnerable-child-refugees-from-france-to-uk-to-end-charities-say-home-office>

¹⁴ Save the Children Italy. (2018). *Young Invisible Enslaved: Children Victims of Trafficking and Labour Exploitation in Italy*. Available at:

<https://www.savethechildren.it/sites/default/files/files/rapporto%20young%20invisible%20enslaved%20DEF.pdf>

¹⁵ UNICEF and IOM. (2017). *Harrowing Journeys: Children and youth on the move across the Mediterranean Sea, at risk of trafficking and exploitation*. Available at:

https://www.unicef.org/publications/files/Harrowing_Journeys_Children_and_youth_on_the_move_across_the_Mediterranean.pdf

¹⁶ Disclosure by a child or young person who has been trafficked takes time. Details are rarely available when they first become known to a public authority. Research shows that disclosure of trauma, abuse or exploitation often only occurs after a relationship of trust has been built up between the practitioner and the child or young person.

¹⁷ Pearce, J.J., Hynes, P. and Bovarnick, S. (2009) *Breaking the Wall of Silence: Practitioners' Responses to Trafficked Children and Young People*. NSPCC

¹⁸ For more information on debt bondage, please see ECPAT UK's FAQ's, p.18, available at:

<https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=4589c2b3-70ca-41ed-81cc-fe1aae9d8fc0>

¹⁹ For more information on spiritual abuse, please see ECPAT UK's FAQ's, p.19, available at:

<https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=4589c2b3-70ca-41ed-81cc-fe1aae9d8fc0>

²⁰ Finch, N. (2016). *Better support, better protection: Steps lawyers and guardians can take to better identify and protect trafficked children*. ECPAT. Available at: <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=a7777e73-bd40-44a1-b7f5-a9dd76b4afbe>



3. Information sharing and children in migration

There are significant legal and structural gaps as well as unclear procedural obligations amongst EU Member States to protect children in migration. Like dominoes, these ineffective or inexistent procedures may render children increasingly vulnerable to exploitation or fail to identify a child who has been exploited and provide them with the support they require to recover from trauma. Within the context of child protection, information sharing has been recognised as vital to safeguard and promote the welfare of children. The General Data Protection Regulation (GDPR)²¹ places duties on organisations and individuals to process personal information fairly and lawfully. These regulations are not a barrier to sharing information, where the failure to do so would cause the safety or wellbeing of a child to be compromised. Similarly, human rights concerns, such as respecting the right to a private and family life would not prevent sharing where there are real safeguarding concerns.

Unfortunately, there is a legitimate fear amongst professionals working with children in migration that information sharing between agencies can be used for the purposes of immigration enforcement. Practices of this kind have led to the use of data in the context of health, policing and education,²² such as the agreement from December 2016 where the UK Department for Education shared data from the National Pupil Database, collected through the School Census, with the Home Office for immigration enforcement purposes.²³ In the UK, the national legislation that sets out the duties under GDPR is the Data Protection Act 2018. This legislation contains an exception for data sharing under 'immigration control'.²⁴ It is well documented that fear of immigration and law enforcement is consistently used to control children by threatening deportation and/or imprisonment if the child does not comply or reports their abuse. Similarly, professionals working with children may fear that reporting a missing child might lead to immigration enforcement, detention or transfer to another country once the child has been found. It is essential that a firewall²⁵ is in place between immigration enforcement, child protection and other services when handling the data of children in migration, and also that it is clearly communicated to the child and the stakeholders responsible for their protection, especially in light of the recent EU regulation on the Interoperability of the EU Information Systems.²⁶

4. Guardianship: a key prevention measure in need of considerable improvement

International standards call for a guardian to be in place for all unaccompanied and separated children²⁷. Guardians represent, assist and support unaccompanied children by safeguarding their

²¹ Or, when it comes to the protection of personal data in the law enforcement context (e.g. investigation or crime prosecution), the Data Protection Law Enforcement Directive

²² Bradley, GM. (2018). *Care don't share, Hostile environment data-sharing: why we need a firewall between essential public services and immigration enforcement*. Available at: <https://www.libertyhumanrights.org.uk/sites/default/files/Liberty%20%27Care%20Don%27t%20Share%27%20Report%20280119%20RGB.pdf>

²³ Memorandum of Understanding Between The Home Office And Department for Education In Respect of the Exchange of Information Assets, published December 2016 https://www.whatdotheyknow.com/request/377285/response/941438/attach/5/20161016%20DfE%20HO%20MoU%20redacted.pdf?cookie_passthrough=1

²⁴ Data Protection Act 2018 Schedule 2, Part 1, paragraph 4.

²⁵ For more explanations on what we mean by firewall, please see: <https://picum.org/firewall-3/>

²⁶ Regulation (EU) 2019/817 on establishing a framework for interoperability between EU information systems in the field of borders and visa, OJ L 135, 22.05.2019

²⁷ European Union Agency for Fundamental Rights (2015) *Guardianship for Children Deprived of Parental Care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*. Available at: <http://fra.europa.eu/en/publication/2015/guardianship-children-deprived-parental-care/>



best interests and wellbeing. In some countries, guardians also provide for the child's basic needs and assist them in asylum and family tracing procedures. However, guardianship schemes are not in place in all Member States and when there is a scheme, these may not be of the right scope or quality. Research on guardianship standards in twelve Member States suggests that there is a need for considerable improvements, such as timely appointment and clarifying roles²⁸. By not investing in ensuring that guardians are qualified, trained²⁹ and appointed swiftly, European and national authorities lose key opportunities to build trust with children and help prevent them from going missing.

Article 14.2 of the EU Trafficking Directive³⁰ calls for all unaccompanied child victims of trafficking to be appointed with a legal guardian to safeguard their best interests. The picture with regard to guardianship in the UK is mixed with each administration adopting a conflicting approach, which worryingly means children receive different standards of protection in each area.

In October 2017, the Government re-stated its commitment to rolling out the Independent Child Trafficking Guardian (ICTG) scheme across England and Wales.³¹ The scheme is currently operating in 'Early Adopter Sites', Wales, Greater Manchester, East and West Midlands, Croydon and Hampshire. The evaluation of a one-year trial showed that this was an extremely effective intervention for children.³² Despite continued commitment to the scheme, the timeframe for national rollout is still to be confirmed despite the legislation being passed in 2015. This raises concerns that there is an unequal provision of support for children nationally. The scheme is only accessible for those children identified as trafficked, which given the well-established failings in identification and training among professionals, means that only those children lucky enough to be identified can benefit from an advocate. ECPAT UK, along with other children's charities, has long argued for all unaccompanied and separated children to be able to access a guardian or independent specialist advocate so that all vulnerable children can benefit and to ensure failings in identification do not prevent children benefiting from having an advocate.

In Scotland, there seems to have been little progress with regard to expanding the soon-to-be statutory scheme of guardianship, which should include not just those with immigration issues. The scheme has so far been widely praised for its inclusion of all unaccompanied and separated children within its remit. In Northern Ireland, it is understood that an NGO has been awarded the contract to run the national guardianship service but that this is not yet operational. Overall, there are still concerns that the UK has a disjointed approach to guardianship and that it has been slow to recognise the importance of this function for children who are separated and/or have been trafficked.

The European Guardianship Network is a project that started in September 2018, funded by the European Commission and managed by Nidos, and aims to develop a network of institutions and

²⁸ European Migration Network. (2018). *Approaches to Unaccompanied Minors Following Status Determination in the EU plus Norway*. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_eu_synthesis_report_unaccompanied_minors_2017_en.pdf

²⁹ https://www.theguardian.com/world/2019/mar/31/calais-child-refugees-hunger-strike-uk-transfer-delay?utm_source=ECRE+Newsletters&utm_campaign=c4ce5c313c-EMAIL_CAMPAIGN_2019_04_01_12_39&utm_medium=email&utm_term=0_3ec9497afd-c4ce5c313c-422328957

³⁰ Directive 2011/36/EU on combating and preventing trafficking in human beings and protecting its victims. Article 14(2)

³¹ <https://www.gov.uk/government/news/modern-slavery-victims-to-receive-longer-period-of-support>

³² Home Office, (2015), *Evaluation of Independent Child Trafficking Advocates trial: Final Report*. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486138/icta-horr86.pdf



agencies who work in the area of guardianship for unaccompanied and separated children. The vision of the European Guardianship Network is to create an inclusive and supportive environment which will enable members to contribute to the development of effective and consistent ways of delivering high quality, child rights-based and accessible guardianship services. The Network will be a welcoming and enabling forum for the development of best practice that will put the rights and best interests of separated and unaccompanied children at the heart of its work thus leading to better outcomes for children and the guardianship services who work with them. The Network has great potential to have a key role in improving the cross-border cooperation between guardians and other actors, including in cases of Dublin transfers, trafficking, exploitation and disappearances.

5. Lacking legal provisions and multi-agency cooperation in finding a durable solution for the child

Currently, no signatory State has directly transposed the duty under Article 16.2 of the EU Anti-trafficking Directive into their national legislation.³³ This provision states that Member States shall take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child.³⁴ International obligations under the General Comment 14 to the UNCRC state that a child's best interests must be assessed and taken into account as a primary consideration in all actions or decisions that concern them. However, at present, most EU+13 States do not have an established process for implementing this legal obligation, and most existing processes are limited to children within asylum procedures. Article 14 explains that "Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views, needs and concerns with a view to finding a durable solution for the child." This therefore explains that a 'durable solution' is not just a matter of immigration status, but incorporates measures needed to ensure a child's long-term physical and psychological recovery. As UNICEF's report shows, it requires a multi-agency and above all a child protection response.³⁵ A durable solutions provision in law would therefore ensure consideration of what each child requires. A durable solutions process would ensure careful consideration is given to each child's best interests with regard to any returns process that takes place.

The UK is obligated under the UNCRC and the EU Directive to provide this 'durable solution' or long term sustainable arrangement for children.³⁶ Currently, many identified child victims face significant challenges in the asylum system³⁷ and asylum refusal rates for these children have increased.³⁸ If they have not been granted refugee status, these children are granted limited leave to remain in the

³³ Some countries have Best Interest Assessment procedures as part of immigration status determination, however no EU Member State has directly transposed the provision of durable solutions from the Trafficking Directive into national legislation making it a procedural obligation for Member States to seek a durable solution for the child based on an individual assessment of their best interests

³⁴ See the Toolkit for guardians, produced by the ProGuard Project lead by Nidos: <https://guardianstoolkit.eu/>

³⁵ UNICEF. (2015). *Achieving a Durable Solutions for Trafficked Children*. Available at: https://downloads.unicef.org.uk/wp-content/uploads/2016/01/Unicef_DurableSolutions_ExecSummary.pdf?_ga=2.251870282.279355555.1531214147-375590463.1511369688.

³⁶ EU Directive Against Trafficking in Human Beings, Article 16.2.

³⁷ Finch, N. (2017). *Lighting the Way*. ECPAT. Available at <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=1dcfd01-44fd-4b0f-90c3-ccbc36649a80>

³⁸ <https://www.reuters.com/article/us-britain-slavery-immigration-children/exclusive-uk-deporting-more-ex-child-slaves-despite-safety-fears-idUSKBN1KZ00W>.



UK (Unaccompanied Asylum Seeking Child or UASC leave), which lasts until they are 17 ½. There is a lack of services and support provision for young people at this transition age (18-21), which is compounded when there is uncertainty as to whether a child will be able to remain in the UK or not.³⁹

The uncertainty of their immigration status and lack of a stable long term solution leads to further vulnerability. Some young people are forced into destitution after being discharged from services.⁴⁰ Some intentionally choose to disengage from statutory services at 18 because of fear of detention and forced removal, making them more likely to end up working in exploitative conditions. Some even reach out to underground networks as a result.⁴¹

The uncertainty and delays that young people face in both the trafficking and asylum processes could be considered cruel, inhuman or degrading treatment. There are also long delays for children receiving both decisions.⁴² There is a distinct lack of scrutiny and human rights-based risk assessment for child victims who are returned to their country of origin as young adults. There are no monitoring procedures in place, meaning that there is no understanding of whether further exploitation has occurred. For EEA national children, there is less clarity on a child's rights and legal status with regard to the returns procedure. Research has shown that decisions on returns are often made on an ad hoc basis, with the potential for mistakes to be made.⁴³

Case study: 'Stephen'

'Stephen' was identified as a former child victim of trafficking but faced the threat of removal to Vietnam. His case received significant public attention.⁴⁴ An orphan aged just 10 years old, Stephen was trafficked out of Vietnam to the UK. He was locked away in houses converted into cannabis farms and forced to work as a gardener producing the drug for sale in the UK. He worked long hours for no pay and in extremely dangerous conditions, mixing chemicals that made him ill, getting burnt by hot lamps used to grow the plants and receiving electric shocks from wires. He was kept alone most of the time, completely hidden from the public and received beatings from his traffickers. "I was like an animal, kept in a box," he told The Guardian.

At the age of 16, he was found by police and placed in foster care in the North East of England. Once there, he was able to go to school, make friends, and begin to put his life back together. But on turning 17 and a half, he lost his automatic right to remain in the country and applied for asylum. However, his application was refused, meaning he faced removal to Vietnam, despite having no family or support network there, and despite the known risk of re-trafficking.

³⁹ Ibid

⁴⁰ Coram Children's Legal Centre. (2013). *Growing Up in A Hostile Environment*. Available at:

https://www.childrenslegalcentre.com/wp-content/uploads/2013/11/Hostile_Environment_Full_Report_Final.pdf.

⁴¹ Sigona, N, Chase, E, Humphris, R (2017) *Becoming Adult Project: protecting the 'best interest' of the child in transition to adulthood*: <https://becomingadultproject.files.wordpress.com/2017/12/ba-brief-3-low-res.pdf>

⁴² Elder Rahimi. (2018). *Systemic Delays in the Processing of the Claims for Asylum made in the UK by unaccompanied Asylum Seeking children (UASC)*. Available at: http://www.elderrahimi.co.uk/UserFiles/Files/p_nS4kT4.pdf

⁴³ Ibid

⁴⁴ <https://www.theguardian.com/law/2018/feb/06/child-slavery-victim-to-plead-to-stay-in-uk-petition-stephen-trafficked-cannabis>.



Current gaps in support and protection

In the UK, in 2018 there were 3,137 potential child victims of exploitation, comprising nearly half (45%) of the total number of victims.⁴⁵ The Government's estimate of 13,000 victims, with over a third being children, is now out of date.⁴⁶ Newer UK estimates are not child-specific.⁴⁷ Children comprised nearly half (41%) of the total number of suspected trafficking victims in 2017, and the number of suspected child victims of trafficking rose by a staggering 48% compared to the previous year.

1. Missing and re-trafficking of child victims

Whilst we do not have data that records the rates of re-trafficking of child victims, children going missing from care is a key indicator. In a piece of research conducted by ECPAT UK, FOI requests were sent to all local authorities across the UK to provide data on the numbers of trafficked and unaccompanied children going missing from care.⁴⁸ More than a quarter of all trafficked children and over 500 unaccompanied asylum-seeking children went missing at least once in the year to September 2015, while 207 had not been found. Research by The Times found that 150 Vietnamese minors disappeared from care and foster homes between 2015 and October 2017.⁴⁹ At least 104 children went missing between August 2016 and July 2017 in the UK after being transferred from Calais.⁵⁰

Case Study: Failure to Prevent Re-Trafficking

The UK Government was recently found to be in breach of its obligations under Article 4 of the European Convention on Human Rights, when a Vietnamese child trafficking victim went missing.⁵¹ 'TDT', a Vietnamese victim, was found by police in the back of a lorry in Kent in September 2015. He was treated by IE as an adult and placed in immigration detention in Dover Immigration Removal Centre and then at Brook House in Sussex. His age was disputed by Immigration Officers and he was not initially treated as a potential trafficking victim, despite presenting clear indicators. After seeing a specialist support worker at the Refugee Council, he was referred to the NRM. His lawyer challenged the Home Office on various aspects of his treatment, including the failure to conduct an age assessment and to recognise him as a potential victim of trafficking, as well as calling for his release into safe and secure accommodation. The Home Office did not reply. He was subsequently released on temporary admission without any protection measures in place. His solicitors had sought assurance that he would be released under arrangements that would minimise the risk of re-trafficking. However, he was released by the Home Office to an address that was not residential but actually listed as a Buddhist temple. He went missing soon after and was last seen by police with a man at Gatwick Airport railway station. He has not been seen since. The police have made enquiries as to his whereabouts but without success. His solicitors believe that he was re-trafficked. This case

⁴⁵ <https://nationalcrimeagency.gov.uk/who-we-are/publications/282-national-referral-mechanism-statistics-end-of-year-summary-2018/file>

⁴⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/383764/Modern_Slavery_Strategy_FIN_AL_DEC2015.pdf.

⁴⁷ <https://www.globallslaveryindex.org/2018/findings/country-studies/united-kingdom/>.

⁴⁸ Missing People and ECPAT UK. (2018). *Still in Harm's Way: An update report on trafficked and unaccompanied children going missing from care in the UK*. Available at: https://www.missingpeople.org.uk/files/PandR/Still_in_Harms_Way_Final.pdf.

⁴⁹ www.thetimes.co.uk/article/child-trafficking-victims-vanish-from-council-care-and-into-the-hands-of-criminals-baroness-butler-sloss-rochdale-gctdcqgg6

⁵⁰ www.independent.co.uk/news/uk/home-news/child-refugees-uk-missing-calais-smuggled-jungle-camp-crisis-lorries-parliament-dubs-resettlement-a7853991.html

⁵¹ <https://www.matrixlaw.co.uk/wp-content/uploads/2018/06/R-TDT-v-SSHD-2018-EWCA-Civ-1395.pdf>.



highlights the serious failure to prevent re-trafficking of child victims and the lack of structures in place to prevent this from occurring.

2. Support measures for children

The National Referral Mechanism is the system for providing support to trafficking victims, however, for children, this system is not tied to any provision of support. Unlike for adults, child trafficking victims are supported by local authority children's services, who are responsible for their safeguarding and support. Once children are identified as trafficked through the NRM, there is no follow-up provision and no specific funding provided to children's services to offer additional or specialist support. Frontline workers in child protection services already have little awareness of trafficking issues, this often results in the issue being overlooked or ignored by those with direct responsibility for the child.⁵²

At the local authority level, support is very limited. Support and accommodation is provided to child victims of trafficking by children's services in the local authority, where their needs are identified, most commonly under Section 20 of the Children Act 1989 (in England & Wales). There is an assessment framework that provides a structure for the assessment of need across three domains and includes the child's development needs, the parenting capacity and family and environmental factors. However, there are extremely limited specialist placements available for child victims of trafficking, especially those who are trafficked for exploitation types other than sexual exploitation. A 2017 report commissioned by the Home Office and Department for Education found that there was a limited availability of specialist provision for migrant children who are identified as potential victims of modern slavery by local authorities.⁵³ GRETA's report also found that local authority approaches to providing this support to child victims of trafficking in the UK were "inconsistent" and "patchy."⁵⁴

Across the UK, there are no agreed safety standards for accommodating child victims of trafficking and provision varies significantly. A joint Parliamentary inquiry in 2012 found that 'the best solution to help trafficked children to break the contact with their traffickers and prevent them from going back was specialist foster care'.⁵⁵ Support for vulnerable children such as child victims of modern slavery is also hampered by a policy of reducing funding to children's services. With reduced funding, core functions become prioritised, meaning that specialist training or early intervention services for children are being reduced.

3. Criminalisation of children

An inspection of policing responses to modern slavery and human trafficking highlighted that inconsistent and ineffective identification of victims are causing failures to prevent victims of trafficking from being criminalised.⁵⁶ These problems are exacerbated by a situation in which there are few solicitors, barristers and legal projects that specialise in the representation of children who

⁵² ATMG. (2018) Before the Harm is Done. Available at: <http://www.antislavery.org/wp-content/uploads/2018/09/Before-the-Harm-is-Done-report.pdf>

⁵³ Local authority support for non-EEA migrant child victims of modern slavery, 2017. See: www.ecpat.org.uk/news/report-finds-major-gaps-in-la-support-to-migrant-children.

⁵⁴ GRETA. (2016) *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom*. Available at: <https://rm.coe.int/16806abcdc>.

⁵⁵ <https://www.gov.uk/government/publications/report-from-the-joint-inquiry-into-children-who-go-missing-from-care>.

⁵⁶ <https://www.justiceinspectorates.gov.uk/hmicfrs/publications/stolen-freedom-the-policing-response-to-modern-slavery-and-human-trafficking/>.



may have been trafficked, and they are not distributed uniformly across the United Kingdom.⁵⁷ Child trafficking victims continue to be arrested or prosecuted for crimes they have been forced to commit whilst being exploited. Between 2012 and 2017, more than 1,333 Vietnamese children were arrested, rather than being seen as potential trafficking victims.⁵⁸ The reasons for arrest included drug offences, despite the known links with exploitation for cannabis cultivation.

Trafficked children continue to be treated as defendants rather than victims in the UK justice system.⁵⁹ This is despite the Crown Prosecution Service guidance stating: *“If the defendant is a child victim of trafficking/slavery, the extent to which the crime alleged against the child was consequent on and integral to his / her being a victim of trafficking / slavery must be considered. In some cases the criminal offence is a manifestation of the exploitation.”*⁶⁰

As a safety net, there is also Section 45 of the Modern Slavery Act 2015, which introduces a defence for victims who are compelled to commit criminal offences. However, UNICEF found there are *“serious shortcomings in the implementation of the non-punishment principle in the UK.”*⁶¹ ECPAT UK believes that the ‘reasonable person’ test contained with the defence is not appropriate or fair in children’s cases.

States’ jurisdiction and institutional accountability

1. Brexit

The UK’s decision to leave the European Union poses a risk to children’s rights in the UK, as well as specific risks in regards to children at risk of all forms of exploitation. A paper prepared by the Anti-Trafficking Monitoring Group outlines these concerns in more detail.⁶² Currently the nature of EU membership means that where national law is silent on the implementation of specific, positive obligations contained in an EU directive, the provisions of the directive may become directly applicable nonetheless. In other words, individuals could still rely on those unimplemented provisions before the national courts. Brexit jeopardises that possibility. Without the full transposition and protection of the rights contained in the EU Trafficking Directive at the point of leaving the EU, child victims of trafficking in the UK will be unable to rely on EU law directly, and will have more limited protection under domestic law. Even for those measures that have been transposed, the terms of the Withdrawal Bill allow the Government to modify parts of the directive, which do not conform with domestic legislation without further parliamentary scrutiny. It is also unclear whether the UK will continue to have access to cross-border intelligence-sharing programmes that support child protection and safeguarding.⁶³ Access to cross-border agencies and agreements will terminate in the event of a no deal Brexit.⁶⁴ These agencies and agreements are

⁵⁷ Finch, N. (2017). *Lighting the Way*. ECPAT. Available at

<https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=1dcfdd01-44fd-4b0f-90c3-ccbc36649a80>

⁵⁸ <https://www.thetimes.co.uk/article/police-treat-traffickedchildren-like-criminals-hkczd9sgz>.

⁵⁹ See for example: <https://www.thetimes.co.uk/article/police-treat-trafficked-children-like-criminals-hkczd9sgz>.

⁶⁰ http://www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/.

⁶¹ UNICEF UK. (2016) Victim not Criminal. Available at: https://downloads.unicef.org.uk/wp-content/uploads/2017/05/Unicef-UK-Briefing_Victim-Not-Criminal_2017.pdf

⁶² Brexit and Children’s Coalition (2019), *Ensuring cross-border mechanisms are in place to safeguard children* [https://www.liverpool.ac.uk/media/livacuk/law/2-research/ecru/European-Union-\(Withdrawal\)-Bill-2R-briefing-HoL-Safeguarding.pdf](https://www.liverpool.ac.uk/media/livacuk/law/2-research/ecru/European-Union-(Withdrawal)-Bill-2R-briefing-HoL-Safeguarding.pdf)

⁶³ Anti-Trafficking Monitoring Group (2017), *Brexit & the UK’s fight against modern slavery*: <http://www.antislavery.org/wp-content/uploads/2017/07/ATMG-Brexit-paper.pdf>

⁶⁴ ECPAT UK and The Children’s Society, as part of the Brexit and Children Coalition, are currently drafting a fresh briefing on cross border safeguarding arrangements for child victims of exploitation. For further information please contact l.duran@ecpat.org.uk



critical for the purposes of safeguarding children across borders which include Europol, Eurojust, European Arrest Warrant, European Criminal Records Information System (ECRIS), European Protection Order, second generation Schengen Information System (SIS II) and Supplementary Information Request at the National Entries (SIRENE bureaux) channel. EU national children in the UK who are at risk of exploitation are also made more vulnerable due to uncertainty around their immigration status.