

Written evidence submitted by Coram Children's Legal Centre

Executive summary

1. Main points:

- Hundreds of foreign national young people are in the youth secure estate. We have estimated 831, and this is an underestimate.
- We recommend that the Ministry of Justice and the Home Office provide data on the number of foreign national children and young people in the youth secure estate. These young people experience the youth justice system, secure estate and the immigration system together. They systematically do not have access to legal advice and representation, even if they would be eligible for asylum legal aid, exceptional case funding, or legal aid for judicial review.
- We recommend that immigration/asylum/nationality legal advice surgeries are held in the secure estate.
- We recommend that immigration legal aid is available for all children and young people up to 24 who are in the youth secure estate. In the alternative, we recommend that there is a presumption in favour of granting exceptional case funding.
- EU, EEA and Swiss children and young people (as well as family members of EU, EEA and Swiss citizens) who are in custody need advice on whether they are automatically British, their potential claims to British citizenship, their eligibility under the EU Settlement Scheme, and the impact of their conviction(s) on any application.
- We recommend that the government raises the age of criminal responsibility.

Introduction

2. Coram Children's Legal Centre (CCLC), part of the Coram group of children's charities, is an independent charity working in the United Kingdom and around the world to protect and promote the rights of children. CCLC provides direct legal services, publishes free legal information, offers training, undertakes policy advocacy, and carries out international research and consultancy on child rights. Founded in 1981, CCLC has almost 40 years' experience in providing legal advice and representation to children, their parents and carers and professionals. CCLC's Child Law Advice Service provides legal advice to over 17,000 callers per year on child and family law and education law in England. CCLC's Legal Practice Unit covers immigration, asylum and nationality law; child and family law; education law; and community care law. We hold legal aid contracts in all these areas. CCLC specialises in the rights of children affected by UK immigration control, and has since 2004 run the Migrant Children's Project, a centre of specialist expertise in this area. With grant funding, we:

- a. Provide free legal information and guidance on the rights and legal entitlements of children and young people affected by UK immigration control online, in guides and via a newsletter.
 - b. Offer training for voluntary and statutory sector organisations, as well as workshops for young people and families. In 2018/19 we provided training and workshops to over 1500 people.
 - c. Provide free legal advice through an email advice line, direct and second tier for professionals. In 2018/19 we dealt with 979 queries through the advice line, including several regarding young people in custody.
 - d. Provide free legal advice through outreach advice work in partner organisations across London, including in HMP Bronzefield and previously in YOI Feltham. In 2018/19 we dealt with 280 outreach cases. Currently, part of our outreach work is focused on supporting vulnerable children, young people and families to apply to the EU Settlement Scheme.
 - e. Policy advocacy, using evidence from frontline work, to protect and promote the rights of children and young people affected by immigration control.
3. In this submission, we focus on only those questions relevant to our expertise.

The youth justice population and entering the system

How has the young offender population changed and what are the challenges in managing this group?

What are the characteristics of those entering the youth justice system and how has the mix of offences committed by young people changed?

4. The characteristic that we wish to focus on is the nationality and immigration status of those entering the youth justice system and the nationality and immigration status of young people in the youth secure estate.
5. Since 2017 defendants have been asked their nationality. Under section 162 of the Policing and Crime Act 2017, as amended by The Criminal Procedure (Amendment No. 4) Rules 2017, defendants in England and Wales are required to provide the court with their nationality. Failure to do so or providing incomplete or inaccurate information without a 'reasonable excuse' is punishable with up to 51 weeks imprisonment, a fine or both. The information is retained irrespective of whether the defendant is acquitted or the proceedings discontinued. However, as far as we are aware, data on foreign nationals in the justice system is not published by the Ministry of Justice. There are no sources of information available that we are aware of.

6. Likewise, to our knowledge, it is very difficult to estimate the number of foreign nationals in the youth secure estate. In the absence of available information, we have made an estimate using the prison population profiles annexed to reports by HM Chief Inspector of Prisons.¹ This is a very rough estimate for a number of reasons. First, the prison population profiles are based on information supplied by the establishment. We do not know how it is obtained and by whom, and working out a young person's nationality is not always a simple question. Indeed, some young people may themselves not know their own nationality and may assume that they are British when they are not, especially who were born and brought up in the UK or who arrived as infants. Second, the data in the reports is not sufficiently broken down by age for us to capture all young people; a report on an adult prison gives the number of foreign nationals aged 18-20 but then only 21+, so we cannot know how many are, say, 21 to 24. Third, we do not have information on children in secure training centres and secure children's homes. Numbers of foreign nationals are not included in the Ofsted/ Care Quality Commission / HMIP reports on these institutions. Fourth, we can only rely on the most recent HMIP reports so information will be out of date.
7. Bearing in mind these caveats, we have estimated that there are at least hundreds of foreign nationals in the youth secure estate. Our estimate based on the HMIP reports is 831 foreign national young people in the youth secure estate, and this is an underestimate for the reasons given above.² We do not know the nationalities of these foreign national young people. We do not know how many are EU, EEA and Swiss nationals and how many from outside the EEA/Switzerland.
8. We recommend that the Ministry of Justice provides accurate, up-to-date data on the number of foreign national children and young people in the youth secure estate and specifically how many are EU, EEA, Swiss citizens. We recommend that the Home Office provides accurate, up-to-date data on the number of young people up to 24 in the secure estate who are being considered for deportation.

What is the experience of Black, Asian and Minority Ethnic offenders of the youth justice system and secure estate and what progress has been made in implementing the recommendations of the Lammy Review?

9. Many Black, Asian and Minority Ethnic young people in the youth justice system and secure estate are British. However, here we focus on the experience of those who are not British

¹ Available at <https://www.justiceinspectorates.gov.uk/hmiprisons/inspections/>

² This includes all foreign nationals mentioned in the latest HMIP reports on YOIs Altcourse, Aylesbury, Deerbolt, Feltham A, Feltham B, Grimsby, Huntercombe, Lancaster Farms, Northallerton, Onley, Polmont, Portland, Derby, Rochester, Stoke Heath, Swinfen Hall, Thorn Cross, Werrington and Wetherby. It includes foreign nationals aged 18-20 mentioned in the latest reports on HMPs Ashfield and Woodhill and HMP YOIs Askham Grange, Brinsford, Bronzefield, Castington, Chelmsford, Durham, East Sutton Park, Elmley, Guys Marsh, Hatfield, Hindley, Hollesley Bay, Low Newton, Moorland, New Hall, Norwich, Reading, Warren Hill, Exeter, Glen Parva and Winchester. The inspection reports for secure children's homes and secure training centres do not include information on the number of foreign national children.

citizens and the particular experiences they face, because that is our area of practice. There is little reference to this group in the Lammy review.

10. In our experience, those young people who are not British often experience the immigration system while in the youth justice system or the youth secure estate. Their involvement in criminal proceedings may prompt action by the Home Office in relation to their right to be in the UK. Or, if they are in the youth secure estate, their case is passed to the Home Office and they may face immigration detention and removal or deportation proceedings after their sentence.
11. Those who face immigration detention and removal can include victims of trafficking who have been wrongly criminalised. They have had a criminal lawyer but no one has picked up on signs of trafficking and they have not had an asylum lawyer or made a claim for asylum. Asylum legal aid is available to them but they do not know it and cannot access it without someone who can help them to do so.
12. For example, a Vietnamese young person has been convicted of drugs offences and is serving a sentence. No one has picked up signs that he was trafficked. His criminal solicitor advised him to plead guilty. He has made no application to the Home Office and has no leave to enter or remain in the UK. As he approaches the end of his sentence he is told he is going to immigration detention. He does not know what this means. He has never heard of trafficking or the Refugee Convention or legal aid. He does not know he could apply for international protection in the UK.
13. Those who face deportation proceedings can include young people who have indefinite leave to remain, which they thought was secure. Their leave can be revoked and they can be deported. They often would have been able to apply for British citizenship, which would have protected them from deportation, but the opportunity was missed or they could not afford the fee.
14. We see cases where a young person was in care prior to being in custody but steps were not taken to acquire them citizenship even though they could have applied for it. Failure to do so has left them at risk of deportation. Sometimes, children and young people themselves, and social care staff, may have wrongly assumed they were British already, especially if they were born in the UK or arrived as infants. These may be young people who feel British and are British in all but legal fact. They face being deported to countries they cannot remember, where they know no one, and may not be able to speak the language.
15. Young people facing deportation need legal representation to make their cases about whether their deportation would breach their rights under the Human Rights Act 1998, EU law, the Refugee Convention, or the Trafficking Convention. Yet we have seen in our practice that young people who face deportation are frequently completely bewildered by the process and have nowhere to go for legal advice. Those whom we see are a very limited number whose advocates or carers happen to have found our advice line, or who happen to be able to access our outreach solicitor. We would like to do more work with these young

people, but our resources are very limited and working in the secure estate is very time-intensive.

16. For example, a young person who has been in the UK since he was two years old is serving a sentence. His family originally come from Nigeria but his mother and younger brother are now British. He assumes he is British too; in fact, he has indefinite leave to remain. While serving his sentence, he gets a letter from the Home Office saying his indefinite leave to remain may be revoked and they are considering him for deportation. He is completely confused, does not understand the language in the letter and does not know what is happening because he thought he was British. He has some contact with his mum but she does not know what to do and cannot afford to pay for a solicitor. The advocacy service does not know how to help him either.
17. Since 2013, legal aid has not been available for those with immigration cases, including those challenging their deportation on the basis of Article 8 ECHR. As a safeguard to protect those without access to legal aid, the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) does provide for the Legal Aid Agency to grant legal aid funding for so-called 'exceptional cases', where legal aid is deemed necessary to prevent a breach of human rights or an EU law right. During the passage of LASPO, the UK government repeatedly emphasised that the availability of ECF would ensure that legal aid is available to the most vulnerable in society. In practice, the ECF scheme is woefully inadequate and does not provide the promised safety net for vulnerable or disadvantaged people who are struggling to navigate complex legal processes and effectively advocate for their rights. Very few people are applying for exceptional case funding (ECF), and only a small minority of cases are coming from people who are not already supported by a solicitor. This means the system is failing the most vulnerable, including children and young people in the secure estate. We make many ECF applications for children, young people and families, and have a 100% success rate, and we believe many children and young people in custody – if not all – would have very strong grounds for exceptional case funding, but neither they nor their parents and carers nor those working with them know this, still less know how to do it.
18. We recommend that immigration/asylum/nationality law legal advice surgeries are held in the secure estate, as in immigration removal centres. This would enable those with asylum claims, including trafficking victims, to get legal advice and representation, and those with immigration cases to know about their rights and the possibility of claiming exceptional case funding, as well as being advised on potential judicial reviews.
19. We recommend that immigration legal aid is available for all children and young people up to 24 who are in the youth secure estate. This could be brought under by a Statutory Instrument under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. In the alternative, we recommend that there is a presumption in favour of granting exceptional case funding for their immigration case to all children and young people up to 24 who are in the youth secure estate.

Is the current minimum age of criminal responsibility too low and should it be raised?

20. The UN Convention on the Rights of the Child (UNCRC) promotes non-judicial measures for managing children in conflict with the law, and requires states to establish a minimum age of criminal responsibility (ACR) that reflects children's emotional and intellectual immaturity.³ In 2007 the UN Committee on the Rights of the Child (the UN Committee) declared an ACR of less than 12 years 'not to be internationally acceptable'.⁴ Many countries have introduced or raised their ACRs accordingly, resulting in the UK now having the lowest ACR in Europe and one of the lowest worldwide.⁵
21. The UN Committee has consistently raised concerns about the low age of criminal responsibility – 10 years in England and Wales – and in 2016 called on the UK to raise the minimum age of criminal responsibility in accordance with acceptable international standards.⁶ However, the UK argued in its 2017 State Report as part of the Universal Periodic Review by the Human Rights Council that 'children aged 10 are able to differentiate between bad behaviour and serious wrongdoing'.⁷ While the Scotland government has taken steps to raise the age of criminal responsibility to 12, there has been no progress in England and Wales. We recommend that the government significantly raises the age of criminal responsibility.

Suitability of the secure estate

Is the secure estate a fit and proper place to hold children and young people?

What does a good quality custodial place for a child or young person look like and is there sufficient provision across England and Wales?

22. A good quality custodial place for a child or young person includes access to the legal advice they need. This includes legal advice on prison law, discrimination law, community care law and immigration, asylum and nationality law.
23. We have mentioned the need for immigration, asylum and nationality law advice in certain scenarios above. There is also a significant group of EU, EEA and Swiss citizen children and young people, as well as family members of EU, EEA and Swiss citizens, who need legal support about whether they are automatically British, their potential claims to British citizenship, their eligibility under the EU Settlement Scheme, and the impact of their conviction(s) on any application. Please see evidence we endorsed by Kathryn Hollingsworth and Helen Stalford.

³ United Nations Convention on the Rights of the Child, Article 40 (3); United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")

⁴ United Nations Committee on the Rights of the Child, General Comment No. 10. 2007, para 32

⁵ Child Rights International Network. "Minimum Ages of Criminal Responsibility in Europe".

⁶ UN Committee on the Rights of the Child, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, 3 June 2016

⁷ Ministry of Justice (2017) UPR: UK, British Overseas Territories and Crown Dependencies National Report Para. 38

24. We recommend that the Home Office undertakes a targeted information campaign in multiple languages to inform EU, EEA and Swiss children and young people as well as family members in the secure estate about their citizenship rights and the EU Settlement Scheme.

Do staff receive appropriate training and support and what more can be done to improve this?

25. In our experience, staff do not receive appropriate training and support on how to work with foreign national young people in the youth secure estate. We have occasionally trained advocates who work in the youth secure estate, but the need for immigration, asylum and nationality law training is much more widespread. This is not so that these professionals can advise children and young people themselves; this area of law is highly regulated. But they do need to be able to recognise legal problems and support children and young people to get legal advice and representation.
26. We recommend that staff are trained and given support to deal with the particular issues faced by foreign national children and young people facing immigration detention, removal or deportation.

Resettlement and rehabilitation children and young people

Is sufficient support available in the secure estate and community to ensure that children and young people do not reoffend and if not, what more should be done?

Is there effective release planning to ensure that children and young people have access to accommodation, training and education upon release and what more can be done to ensure they do not reoffend?

27. Some young people are not released but face immigration detention and then removal or deportation. Not enough is done to ensure these young people have the legal support they need to put forward their claims to stay in the UK, so that they can secure their legal rights and then go on to access accommodation, progress in training and education and build their futures.
28. In cases where the young person has a custodial sentence but has not been moved to immigration detention or issued with removal directions or a deportation order by the Home Office, part of the support on release should include being made aware of the impact of any future offending on their immigration status. This could contribute to lowering the risk of re-offending.

What mechanisms exist to transition young people from the youth to the young adult/adult estate? What challenges does this raise and is more support required?

29. Some young people transition to immigration detention. More support is required so that they can get legal advice and representation on their legal claims to stay in the UK.

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