

# Protective Framework of Law for the Unaccompanied Migrant Children (UMC) in the UK: Plights and Proposals

Ahmed Ehsanul Kabir\*  
Shuvra Chowdhury\*\*

**Abstract:** *Unaccompanied children are separated from their parents and relatives at the time of applying for asylum in the UK, and the immigration authority recognises them as unaccompanied migrant children (UMC). The main responsibility to look after the rights and interests of the UMC has been conferred upon the local authorities in the UK by the Children Act (CA), 1989. However, the protective framework of law has also been suffering from many flaws that undermine the rights and interests of the UMC. Such flaws include the exclusion from the care leaver support, less access, and barriers to educational facilities and health care support. The UK government has enacted some legislation consistent with the hostile environment policy with a view to curtailing and shrinking the rights of the UMC. This article tries to identify the precarious and uncertain conditions of the UMC in the UK and provides how to safeguard the welfare and well-being of the UMC within the protective framework of law in the era of hostility and austerity.*

## 1. Introduction

Every year, thousands of unaccompanied children leave their home country and arrive in the UK. The unaccompanied children are not welcomed in the UK border; rather, the assessment has been conducted by the border agency based on suspicion. The vulnerable conditions of unaccompanied children have been undermined by their immigration status.<sup>1</sup> The statistics show that the arrival of unaccompanied children has been gradually increasing every year. In the year 2011, the unaccompanied children made 1277 asylum applications. In 2015 and 2016, more than 3000 unaccompanied children arrived in the UK, and among them, a good number of children were granted unaccompanied asylum-seeking children (UASC) leave.<sup>2</sup> Such leave has been granted temporarily when the children are below 18 years old and their applications for refugee status or humanitarian protection have

---

\* Associate Professor, Department of Law, Jagannath University.

\*\* Assistant Professor, Department of Law, Stamford University Bangladesh.

<sup>1</sup> Francesca Meloni and Rachel Humphris, 'Citizens of Nowhere? Paradoxes of State Parental Responsibility for Unaccompanied Migrant Children in the United Kingdom' (2021) 34(3) *Journal of Refugee Studies* 34.

<sup>2</sup> '2016 National Statistics: Asylum' (*Home Office*, 25 August 2016) <<https://www.gov.uk/government/statistics/immigration-statistics-april-to-june-2016/asylum#unaccompanied-asylum-seeking-children>> accessed on 19 April 2024.

not been approved.<sup>3</sup> The UK government has taken the hostile environment policy, which restricts the rights and interests of unaccompanied migrant children (UMC) in the asylum and immigration proceedings. The UMC has undertaken huge risks and trauma in the entire journey from their home country to the UK, and after arriving in the UK, they experienced the hurdles and barriers in the immigration process created by the hostile environment policy. The UK government has ratified the United Nations Convention on the Rights of the Child (UNCRC), 1989, and in compliance with the provisions of the UNCRC, many provisions have been incorporated into the domestic legislation to protect and safeguard the rights of the UMC. Besides, the UK government has enacted a few pieces of legislation consistent with the hostile environment policy with a view to curtailing and shrinking the rights of the UMC. Due to that legislation, the UMC has started to treat as ‘underserving’, and a ‘thick border’ has been developed through ‘structural violence’ to restrict the UMC in the UK. Moreover, the best interest principle of the UNCRC has not been duly considered by the decision-making bodies, and the rights of the UMC are treated as residual.<sup>4</sup> This article tries to identify the precarious and uncertain conditions of the UMC in the UK and provides how to safeguard the welfare and well-being of the UMC within the protective framework of law in the era of hostility and austerity.

## **2. The Unaccompanied Migrant Children (UMC) and their Causes of Migration**

Unaccompanied children are separated from their parents and relatives at the time of applying for asylum in the UK, and the immigration authority recognised them as unaccompanied migrant children.<sup>5</sup> From 2010 to 2020, the unaccompanied minor children represented 15.4% of the total number of asylum applicants. In 2021, the UK received 3762 applications from unaccompanied children. Until March 2020, there were 5000 UASC living

---

<sup>3</sup> Home Office, United Kingdom, ‘Immigration Rules part 11: Asylum’ para 352ZC; Until 6 April 2013, Discretionary leave was granted on the same basis but outside the immigration rules.

<sup>4</sup> Lisa Shamseldin, ‘Implementation of the United Nations Convention on the Rights of the Child 1989 in the Care and Protection of Unaccompanied Asylum Seeking Children: Findings from Empirical Research in England, Ireland and Sweden’ (2012) 20(1) *International Journal of Children’s Rights* 90, 94.

<sup>5</sup> British Border And Immigration Agency Communications Directorate, ‘Planning Better Outcomes and Support for Unaccompanied Asylum Seeking Children’ (2018) <<https://childhub.org/en/child-protection-online-library/better-outcomes-way-forward?language=ru&page=1>> accessed 20 August 2024.

in the UK.<sup>6</sup> After an asylum claim, when a child is granted refugee status, then the best interests have been served, and the local authority will undertake a pathway plan reflecting the prospect of living for long term in the UK. Where the unaccompanied child has not been granted refugee status then they may nevertheless qualify on humanitarian protection grounds. Similar actions will be taken by the local authority for the unaccompanied children granted humanitarian protection. For the unaccompanied asylum-seeking children (UASC), discretionary leave will be granted where a child fails to meet the criteria of refugee status and the humanitarian protection ground. If an unaccompanied child fails to fit into any of the above categories, then he/she will be refused outright. During 2021, the countries of origin with the largest numbers of UMC applications made were: Iran, Afghanistan, Iraq, Sudan, Eritrea, Vietnam, and Syria.<sup>7</sup> Of the decisions made on unaccompanied children's claims in 2021, 91% were refugee status, where the decision was made whilst the child was under 18. For decisions on unaccompanied children who have reached the age of 18, the refusal rate dropped in 2017 to 45%, rose to 60% in 2018, but by 2021 had fallen to 13%. Unaccompanied children who have reached the age of 18 when a decision is made have, in the past, generally been more likely to have their asylum claim refused. There are fewer outright refusals for children under the age of 18 because a child who cannot be returned to their country of origin is granted a specific form of leave called UASC leave.<sup>8</sup>

Unaccompanied migrants are travelling to the UK for a variety of reasons. The reasons include well-founded fear of persecution, compulsory military conscription, armed conflict, natural disaster, no access to educational facilities, and a high rate of unemployment. The UMC has undertaken huge risks and a traumatic journey to get a better life and livelihood in the UK. Children are the common victims of armed conflicts. Though there are specific provisions in the international legal instruments, i.e. Geneva Conventions of 1949, Additional Protocols of 1977, and the UNCRC, for the protection of children during armed conflict but they have been killed, tortured, abducted, maimed, mutilated, raped, and sexually exploited. In war-torn countries, children are not getting education, food, shelter, clothing, and health care. The detrimental impacts of armed conflict on children are so severe that they have been suffering both physically and

---

<sup>6</sup> Refugee Council Information, 'Quarterly Asylum Statistics: August 2021' (Refugee Council 2021) <<https://www-media.refugeecouncil.org.uk/media/documents/Asylum-Statistics-Aug-2021.pdf>> accessed 20 August 2024.

<sup>7</sup> Refugee Council Information, 'Children in the Asylum System: August 2022' (Refugee Council 2022) <<https://www-media.refugeecouncil.org.uk/media/documents/Children-in-the-Asylum-System-September-2022.pdf>> accessed 16 July 2024).

<sup>8</sup> *ibid* 5.

psychologically. The unaccompanied children from conflict areas are diagnosed with iron deficiency, anemia, anxiety, post-traumatic stress disorder, and depression. Another cause is female genital mutilation (FGM), which is a procedure involving injury or partial or total removal of the external female genital carried out for traditional, cultural, or religious reasons. According to UNHCR, 71% of survivors of FGM are applying for asylum in the EU.<sup>9</sup> Deprivation of liberty, i.e., false imprisonment, compulsory conscription, and violence against girls, such as non-consensual marriage, lack of access to contraception or safe abortion, forced them to flee from their home countries. In addition, environmental impacts such as natural disasters and climate change made the children unable to live in their homelands.<sup>10</sup>

### 3. Hostile Environment Policy and the UMC

The hostile immigration measure was first introduced during Thatcher's regime in the 1980s.<sup>11</sup> Subsequently, in May 2012, in an interview with the *Telegraph*, Theresa May, the then Home Secretary, expressed her plan to create 'a really hostile environment' for illegal migrants to Britain.<sup>12</sup> This hostile environment policy came into effect with the enactment of the Immigration Acts, 2014 and 2016, which provide restrictive measures to control and eradicate illegal immigrants, limiting their access to housing, employment, health facilities, bank accounts, and more.<sup>13</sup> The main aim of the policy, as identified by the House of Commons Home Affairs Committee, is "to deter people without permission from entering the UK and to encourage those already here to leave voluntarily."<sup>14</sup> So the ultimate goals of the hostile environment policy are twofold: to reduce net migration

---

<sup>9</sup> Fadela Novak-Irons, *Female Genital Mutilation: A Case for Asylum in Europe* (OUP 2015) 2.

<sup>10</sup> Amanda Levinson, 'Unaccompanied Immigrant Children: A Growing Phenomenon with Few Easy Solutions' (*Migration Policy Institute*, 24 January 2011) <<https://www.migrationpolicy.org/article/unaccompanied-immigrant-children-growing-phenomenon-few-easy-solutions>> accessed 16 July 2024.

<sup>11</sup> Sheona York, 'The "Hostile Environment": How Home Office Immigration Policies and Practices Create and Perpetuate Illegality' (2018) 32(4) *Journal of Immigration, Asylum and Nationality Law* 363, 365

<sup>12</sup> Alan Travis, 'Immigration bill: Theresa May defends plans to create 'hostile environment'' *The Guardian* (London, 10 October 2013) <<http://www.theguardian.com/politics/2013/oct/10/immigration-bill-theresa-may-hostile-environment>> accessed 20 August 2024

<sup>13</sup> Russell Taylor, 'Impact of 'Hostile Environment' Policy Debate' (House of Lords Library 2018) 1.

<sup>14</sup> Home Affairs Committee, *Immigration Policy: Basis for Building Consensus* (2017–19, HC 500) 20.

and to punish irregular migrants by “marginalising, isolating and further criminalizing”.<sup>15</sup>

Though the policies were initiated to deter illegal immigration, they hurt the individual who has the right to live in the UK, e.g., the ‘Windrush generation.’<sup>16</sup> who have a legal right to stay in the UK under the Immigration Act 1971.<sup>17</sup> As a result, this policy has been criticized by the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Professor Tendayi Achiume, as violating the International Human Rights Law. The Special Rapporteur concluded that:

“where the strategy for immigration enforcement is so overbroad, and foreseeably results in the exclusion, discrimination, and subordination of groups and individuals on the basis of their race, ethnicity, or related status, such a strategy violates international human rights law.”<sup>18</sup>

This hostile environment policy has attracted huge criticism from different stakeholders; consequently, the policy was rephrased as a ‘compliant environment’ in 2017 by the Home Secretary Sajid Javed.<sup>19</sup> The hostile environment policy is not expressly aimed at the UMC, but it can impact it indirectly or directly<sup>20</sup> the rights of the UASC. Until 2008, the UASC were not entitled to get the protection under the UNCRC in the UK because of the UK’s reservation. After the withdrawal of reservations, s. Section 55 of

---

<sup>15</sup> Colin Yeo, ‘Briefing: What is the hostile environment, where does it come from, who does it affect?’ (*Free Movement Blog*, 01 May 2018) <<https://www.freemovement.org.uk/briefing-what-is-the-hostile-environment-where-does-it-come-from-who-does-it-affect/>> accessed 21 August 2024.

<sup>16</sup> The ‘Windrush generations’ was named after the arrival of the SS Empire Windrush at Teilburg Docks on 22 June 1948. See ‘Windrush Generation: Who Are They and Why Are They Facing Problems?’ *BBC News* (London, 18 April 2018) <<https://www.bbc.com/news/articles/c3w4q1ee1p4o>> accessed 11 November 2025.

<sup>17</sup> Taylor (n 13) 1.

<sup>18</sup> United Nations, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, ‘End of Mission Statement at the Conclusion of Her Mission to the United Kingdom of Great Britain and Northern Ireland’ (Office of the United Nations High Commissioner for Human Rights, 11 November 2022) <<https://www.ohchr.org/en/statements/2022/11/end-mission-statement-united-kingdom>> accessed 12 November 2025> accessed 11 May 2018.

<sup>19</sup> Alan Travis, ‘Post-Brexit Immigration White Paper Delayed Until Late Autumn’ *The Guardian* (London, 02 October 2017) <<https://www.theguardian.com/politics/2017/oct/02/post-brexit-immigration-white-paper-delayed-until-late-autumn>> accessed 11 November 2025.

<sup>20</sup> Ruth Brittle, ‘A Hostile Environment for Children? The Rights and Best Interests of the Refugee Child in the United Kingdom’s Asylum Law’ (2019) 19(4) *Human Rights Law Review* 757.

the Borders, Citizenship and Immigration Act (BCIA), 2009 was incorporated to guarantee the best interests of the children in the asylum and immigration process. Section 55 BCIA states:

“the Secretary of State must make arrangements for ensuring that – a) the functions... are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom and b) any services provided by another person pursuant to arrangements which are made by the Secretary of State and relate to the discharge of a function... are provided having regard to that need.”

There are three main ways by which the UK government is preventing the arrival of the refugees, as identified by J.R. Campbell: *first*, externalising the refugee flow, *second*, funding the ‘push back’ to control the entrance of refugees, and *third*, shutting down the legal process for applying for refugee status.<sup>21</sup> This migration policy has been recognized by Agier as a ‘thick border’ featuring restrictive methods and practices such as arrest, detention, eviction, deportation, etc.<sup>22</sup> In addition, the UMC is also becoming the victim of the ‘structural violence’ because immigration departments are restricting carriers, collaborating with other countries, and using new technology to divert them from borders and refuse to provide humanitarian assistance.<sup>23</sup> The instances of structural violence are also evident when the immigration rule requires the relocation of the UMC from other countries in Europe, and they are kept in the refugee camps in the UK. This happens because of the failure of the Home Office to implement the ‘Dubs Agreement’, which has been incorporated into section 67 of the Immigration Act 2016.<sup>24</sup> After Brexit, the UK government has withdrawn from the Dublin III regulation, which actually prevents the seekers from European countries from applying for asylum and being reunited with their families in the UK. To deal with this issue, a new plan for immigration.<sup>25</sup> has been adopted by the government, which is no longer in operation;

---

<sup>21</sup> John R Campbell, ‘Why the “Best Interests” of Unaccompanied Asylum-Seeking Children are Left at the Border: Structural Violence and British Asylum Policies’ (2020) 37(4) *Journal of Borderlands Studies* 3.

<sup>22</sup> Michel Agier, *Borderlands: Towards an Anthropology of the Cosmopolitan Condition* (1st edn, CUP 2016).

<sup>23</sup> Cecilia Menjivar and Krista M Perreira, ‘Undocumented and Unaccompanied Children of Migration in the European Union and the United States’ (2019) 45(2) *Journal of Ethic and Migration Studies* 197.

<sup>24</sup> Campbell (n 21) 11.

<sup>25</sup> Secretary of the State for the Home Department, ‘New Plan for Immigration: policy statement’ (*Home Office*, 2022) <<https://www.gov.uk/government/consultations/new-plan-for-immigration/new-plan-for-immigration-policy-statement-accessible>> accessed 11 November 2025.

resultantly, the UMCs are becoming the victims of these ‘cruel and inhuman’ actions.<sup>26</sup>

Moreover, a child rights impact assessment on law, guidance, policy, and funding must be conducted by the State to identify their impacts on the child or the group of children.<sup>27</sup> But unfortunately, in the UK, there is no such impact assessment of the hostile environment policy. As a result, the UASC are challenging the decisions of the Home Office before the higher courts of the UK and upholding their rights guaranteed by the UNCRC. The immigration law in the UK has been described by the Supreme Court as an “impenetrable jungle of intertwined statutory provisions and judicial decisions”. Sometimes, it happens that the trial courts are overlooking the rights of the children under section 17 of the Children Act (CA), 1989, which have been rectified by the Appeal Courts.<sup>28</sup> Thus, the decisions of the apex courts give a ray of hope to the vulnerable groups of children.<sup>29</sup> So, the hostile environment policy has a detrimental impact on the interests and rights of the UMC.

The hostile environment policy has been intensified by the initiation of the Immigration Act 2014 and its subsequent amendment in 2016. These laws empowered the Home Office to examine the status and credibility of the immigrants in a wider context and also created the new categories of ‘bordering agents’ across the society to make the life of illegal immigrants difficult e.g., checking the immigration status by the private landlords, prohibiting from opening the bank accounts, cancelling their driving licence depending on immigration status, etc. So, the hostile environment policy is not confined to the border; rather, it is moving inside the border

---

<sup>26</sup> Helen Stalford, ‘Why the UK’s New Plan for Immigration Misrepresents the facts and could be in breach of the law’ (University of Liverpool, 2021) <<https://news.liverpool.ac.uk/2021/04/22/why-uk-new-plan-for-immigration-misrepresents-facts-and-could-breach-law/>> accessed 11 November 2025; as cited by Nuria Sanchez-Clemente and others, ‘Beyond Arrival: Safeguarding Unaccompanied Asylum Seeking Children in the UK’ *Archives of Disease in Childhood* (2023) 108(3) 160–165.

<sup>27</sup> Committee on the Rights of the Child (CRC), ‘General Comment No 5: General Measures of Implementation of the Convention on the Rights of the Child (arts 4, 42 and 44, para 6)’ (27 November 2003) UN Doc CRC/GC/2003/5, paras 45–47; CRC, ‘General Comment No 14: The Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art 3, para 1)’ (29 May 2013) UN Doc CRC/C/GC/14, para 35.

<sup>28</sup> *M v Islington and SSHD* [2004] EWCA Civ 235; as cited by Sheona York, ‘The Law of Common Humanity: Revisiting Limbuela in the ‘Hostile Environment’ (2017) 31(4) *Journal of Immigration, Asylum and Nationality Law* 308, 318.

<sup>29</sup> *Patel and Others (appellants) v SSHD* [2013] UKSC 72.

and targeting diverse groups of migrants.<sup>30</sup> Specifically, the best interests of the UMC have been subordinated by this policy, and the austerity is also shrinking the welfare approach and limiting their entitlement to social support.

So, the hostile environment policy in the UK has victimised the UMC in many ways. Several immigration and asylum laws restrict the services and benefits to the UMC and identify them as undeserving.<sup>31</sup> The main aim of the policy is the deter illegal immigrants and those who have no right to stay in the UK, but ultimately this policy is affecting the interests and rights of the UMC.<sup>32</sup> Consequently, this policy has violated the international standards and obligations created by the UNCRC.<sup>33</sup> The hostile environment policy has been reflected in the restrictive measures of the UK's local authorities.

#### **4. Flaws in the Protective Framework of Law**

The main responsibility to look after the rights and interests of the UMC has been conferred upon the local authorities in the UK by the CA, 1989, which has incorporated relevant provisions to ensure the best interests of the children. However, the protective framework of law has also been suffering from many flaws that undermine the rights and interests of the UMC. Such flaws include the exclusion from the care leaver support, less access, and barriers to educational facilities and health care support. The various risk factors in private foster care also make the life of the UASC unbearable and horrible. All these instances undermine the best interest principle of the UNCRC and affect the well-being of the UMC.

##### **4.1 Subordination of the Best Interest Principle by the Home Office**

The best interests principle has been manifested both in children's law and in asylum law<sup>34</sup> in the UK. It is the State's responsibility to ensure the reflection of the best interests principle in asylum and immigration laws, guidance, policies, assessment processes, and at the implementation

---

<sup>30</sup> Irene Gedalof, 'In the wake of the hostile environment: migration, reproduction and the Windrush scandal' (2022) 23(4) *Feminist Theory* 6.

<sup>31</sup> Simon Guentner and others, 'Bordering Practices in the UK Welfare System' (2016) 36(3) *Critical Social Policy* 391.

<sup>32</sup> The phrase 'hostile environment' was first used by Theresa May (in her capacity as Home Secretary) in an interview in 2012 with the *Daily Telegraph* newspaper. She declared that she wanted to create a 'hostile environment' for people who had no right to be here or with no leave to remain. The creation of this hostile environment agenda is implemented through legislation, i.e. The Immigration Act 2014, ss 20–28, 38–47; The Immigration Act 2016, ss 34–35; 39–45.

<sup>33</sup> Brittle (n 20) 753.

<sup>34</sup> The Borders, Citizenship and Immigration Act 2009, s 55.

stage.<sup>35</sup> Therefore, if any decision has been taken without protecting and promoting the well-being of the children in asylum and immigration matters, then such a decision will be unlawful.<sup>36</sup> To ensure the best interests and to safeguard the well-being of the children in asylum and immigration proceedings, the UK government has prepared and published statutory guidance. But there are number of instances which portray that the best interest of the UMC has been subordinated by the Home Office, *first*, after ratification of the UNCRC, the process of assessing the initial asylum claim of the UMC has not been changed, *second*, the UMC on arrival in the UK has to apply for asylum and recent statistics show that the rate of granting adult asylum seeker's claims is higher than the rate of granting the UMC's asylum claims, *third*, the Home Office has exercised the discretion on wide variables at the time of deciding the asylum claims of the unaccompanied migrant children, *fourth*, the failure of the Home Office to implement 'Dubs Agreement' which confers the responsibility<sup>37</sup> on the Secretary of State of the Home Office to support and relocate the UMC from other countries in Europe.

## 4.2 The UMC in the Immigration Detention

In two situations, the immigration authority will have the right to detain people: *first*, when they do not have the leave to enter, and *second*, pending deportation or removal.<sup>38</sup> In addition, on national security grounds, a person can be detained by the government.<sup>39</sup> While waiting for a decision from the Home Office, an asylum seeker may be detained in immigration detention.<sup>40</sup> In asylum and immigration proceedings, detention has been used as a sanction.<sup>41</sup> Although the Home Office recommends that a person should not be detained unless necessary, detention can be justified only as

---

<sup>35</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and Committee on the Rights of the Child, 'Joint General Comment No 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No 22 of the Committee on the Rights of the Child on the General Principles Regarding the Human Rights of Children in the Context of International Migration' (16 November 2017) UN Doc CMW/C/GC/3-CRC/C/GC/22, para 29.

<sup>36</sup> *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 23.

<sup>37</sup> Immigration Act 2016 (n 33) s 67.

<sup>38</sup> The Immigration Act 1971, sch 2, para 16.

<sup>39</sup> *ibid*, The Nationality, Immigration and Asylum Act 2002, s 62 introduced a free-standing power for the Secretary of State to authorize detention.

<sup>40</sup> The Asylum and Immigration Appeals Act 1993.

<sup>41</sup> Ala Sirriyeh, 'Sanctuary or sanctions: children, social worth and social control in the UK asylum process' in Malcolm Harrison and Teela Sanders (eds), *Social Policies and Social Control* (Bristol University Press 2014) 81.

a last resort.<sup>42</sup> But in practice, the immigration authority has used detention frequently and for long periods of time. The UMC has been placed in detention on the presumption that they are the abusers of the immigration system and not genuine asylum seekers.<sup>43</sup> By virtue of Section 55 of the Border, Citizenship and Immigration Act, 2009, the immigration authority will have the responsibility to protect and ensure the well-being of the children. Under the new policy of the government, an alternative to detention has been introduced in the name of ‘pre-departure accommodation’ for the UASC. In 2019, 20 children were entering detention facilities, and in 2020, 23 children were reported as entering in detention; the number is low in 2020 because of pandemic situations.<sup>44</sup>

### 4.3 Double Hybrid Asylum Process

The asylum and immigration proceedings have been seen as an example of a hybrid system, as they combine elements of both penal and administrative law, and also incorporate features of both adversarial and inquisitorial systems. In the absence of any guidelines for assessing credibility, it becomes difficult for the immigration judges to determine the credibility of the UMC.<sup>45</sup> The case workers working at the Home Office are not adequately trained to conduct detailed interviews with the UMC. Sometimes, the hostile and unfavourable attitudes of the interviewers made the UMC unwilling to provide necessary information, which might have a detrimental impact on their claims. Due to time limitations, the interviewers must conclude the interview shortly without collecting all the relevant information.<sup>46</sup> At the time of adjudicating immigration cases and assessing the credibility of the UMC, the judges have been confronted with many barriers, such as submitted documents that are not properly translated,

---

<sup>42</sup> Home Office, ‘Enforcement Instructions and Guidance’ para 55.1.3 (10 December 2013) <[https://assets.publishing.service.gov.uk/media/5a81985ee5274a2e87dbe787/Section\\_55\\_v12.pdf](https://assets.publishing.service.gov.uk/media/5a81985ee5274a2e87dbe787/Section_55_v12.pdf)> accessed on 20 April 2020 (The paragraph no longer exists in the current version of the guidance, which has been revised and updated on 03 November 2016).

<sup>43</sup> Farhat Bokhari, ‘Separated Children in the UK Policy and Legislation’, in Emma Kelly and Farhat Bokhari (eds), *Safeguarding Children from Abroad: Refugee, Asylum Seeking and Trafficked Children in the UK* (Jessica Kingsley Publishers 2012) 156.

<sup>44</sup> Leon Feinstein, and others, ‘Conceptualising and Measuring levels of risk by immigration status for children in the UK’ (2021) 16(5) *Contemporary Social Science* 538.

<sup>45</sup> John R Campbell, ‘Examining Procedural Unfairness and Credibility Findings in the UK Asylum System’ (2020) 39(1) *Refugee Survey Quarterly* 56, 60.

<sup>46</sup> *ibid* 61.

inadequate interpretation facilities during examination, and negligently maintained transcripts of interviews with the UMC.<sup>47</sup>

#### 4.4 Complicated Age Assessment Process

The first legal issue confronted by a UMC in the asylum process is the determination of age. If the UMC is assessed as below 18, then he/she will be entitled to receive the protection and care under the CA, 1989.<sup>48</sup> In addition, the UMC will be entitled to receive the protection under the best interest principle of the UNCRC.<sup>49</sup> Once the UASC has been identified as an adult, he will not be eligible to get the support that is provided to the children. So, the assessment of age is very crucial to determine the status of the asylum seeker. A decision is required to be taken by the Home Office when there is doubt about the age of the asylum seeker, and he/she is claiming to be a child but suspected of being an adult, and there is no reliable evidence in support of his/her claim.<sup>50</sup> An asylum-seeking child's age can be disputed at any stage of the asylum process. Age may be disputed on arrival, at the time of the screening interview conducted by the Home Office, at the police station, by the local authority, and also in immigration detention.<sup>51</sup>

#### 4.5 Lack of Legal Aid

After the amendment in 2013 in the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO), 2012, there is a curtailment in the legal aid fund, which made the UMC ineligible to get legal aid support in the immigration proceedings.<sup>52</sup> Such a change in legal aid will undermine the asylum claims of the UMC. Two initiatives had been taken in 1999<sup>53</sup> and 2004<sup>54</sup> to improve the service under the legal aid scheme, but such

---

<sup>47</sup> Evidentiary barriers include: the weight accorded to preliminary interviews and variations in recall, inconsistency between statements, and limited attempts by an Immigration Judge to adequately elicit the applicant's full account.

<sup>48</sup> Sheona York and Richard Warren, 'Dilemmas and conflicts in the legal system' in Sue Clayton, Anna Gupta and Katie Willis (eds), *Unaccompanied Young Migrants* (Bristol University Press 2019) 50.

<sup>49</sup> Anna Gupta, 'Caring for and about Unaccompanied migrant youth' in Sue Clayton, Anna Gupta and Katie Willis (eds), *Unaccompanied Young Migrants* (Bristol University Press 2019) 83.

<sup>50</sup> Home Office, 'Assessing Age' (v 3.0, 23 May 2019) 7.

<sup>51</sup> Campbell (n 21) 8.

<sup>52</sup> Ayesha Christie, 'The Best Interests of the Child in UK Immigration Law' (2013) 22 Nottingham Law Journal 39.

<sup>53</sup> The Immigration and Asylum Act 1999 introduced a new regulatory body named 'Office of the Immigration Supervision Commissioner (OISC).'

<sup>54</sup> The Services Commission (LSC) introduced a separate accreditation scheme.

endeavours went in vain because of inherent flaws and shortcomings. The reform project relating to the UMC is not getting success because of cultural disbelief that they are taking the chance in the asylum process.<sup>55</sup> Meanwhile, an amendment was initiated in 2019 to nullify the curtailment in the legal fund<sup>56</sup> which opened the door for the separated children to benefit from the legal aid scheme in the immigration proceedings.<sup>57</sup>

#### 4.6 Lack of Child's Participation

In immigration proceedings, children's views have not been taken properly by which the best interest of the child has greatly affected and devalued. Children are seen in these cases as 'parasitic' rather than the main 'protagonists'.<sup>58</sup> The UMC will have the right to challenge the initial decision of refusal taken by the Home Office. But all the stakeholders of the decision-making process, i.e., the Home Office, local authority, legal representative, and tribunal, are taking decisions without consulting the UMC, which is required by Article 12 of the UNCRC. Article 12 of the UNCRC guarantees the right of every child to express their views freely, and the views of the child must be given due weight, considering the age and maturity of the child. In every judicial and administrative proceeding, there shall be the opportunity for the child to be heard and to be represented through a lawyer in line with the domestic procedural law.

#### 4.7. Exclusion from the Care Leaver Support

After arrival in the UK, the UMC will get support and care from different agencies and service providers. The basic law relating to the protection of the rights of children in the UK is the CA, 1989, and its corresponding regulations and guidance.<sup>59</sup> Article 3 of the UNCRC, which provides for

---

<sup>55</sup> Heaven Crawley, 'Between a rock and a hard place: negotiating age and identity in the UK asylum system', in Nigel Thomas (ed), *Children, Politics and Communication*, (Bristol University Press, Policy Press 2009) 90

<sup>56</sup> The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 (Legal Aid for Separated Children) (Miscellaneous Amendments) Order 2019, art. 2; This amends sch 1 of the LASPO 2012.

<sup>57</sup> See LASPO Act 2012 (n 58) s 31A (4).

<sup>58</sup> Helen Stalford, 'David and Goliath: Due Weight, the State and Determining Unaccompanied Children's Fate' (2018) *Journal of Immigration, Asylum and Nationality Law*, 32 IANL 258

<sup>59</sup> Department for Education, 'Care of Unaccompanied migrant children and child victims of modern slavery: Statutory guidance for local authorities' (2017) <[https://assets.publishing.service.gov.uk/media/5a823a6e40f0b6230269b850/UASC\\_S\\_tatutory\\_Guidance\\_2017.pdf](https://assets.publishing.service.gov.uk/media/5a823a6e40f0b6230269b850/UASC_S_tatutory_Guidance_2017.pdf)> accessed 20 August 2022; Department for Education, 'Children looked after in England (including adoption), year ending 31 March 2017' (SFR 50/2017, 28 September

the best interests of the children, is the primary consideration when public or private institutions, courts, administrative authorities, or legislative bodies are making any decision relating to the children. After removing the reservation in relation to art. 22 of the UNCRC by the UK government, it becomes the responsibility of the immigration officer to ensure the best interest and safeguarding the welfare of the unaccompanied children as enshrined in section 55 of the Borders, Citizens and Immigration Act, 2009. Nonetheless, the unaccompanied migrant children in the immigration system are experiencing stressful and degrading treatment. Moreover, inadequate guidance in the formal adversarial system made them helpless and hopeless.<sup>60</sup>

In compliance with the provisions of the UNCRC, CA, 1989, it also ensures the best interest principle in all aspects of the welfare needs of children. Section 17, CA 1989, confers a general duty on the local authorities to promote and safeguard the welfare of the children in need within their localities. After completing the age assessment procedure by the social workers, if they find an unaccompanied asylum-seeking child below 18 years, then they will be accommodated as looked-after children (LAC) under Part III of the CA, 1989.<sup>61</sup> Such a UMC is entitled to receive the protection under section 20 of the CA, 1989, which provides that the local authority will have the duty to provide accommodation to the unaccompanied children in their area. Section 20 does not confer upon the local authority any parental responsibility. For attaining parental responsibility, the local authority has to apply for a care order from the court under section 31 of the CA, 1989. So, the local authority will have the responsibility to take care of the children who need care and attention,<sup>62</sup> and refusal of such support is unlawful.<sup>63</sup> If the unaccompanied migrant children have been assessed as over 18 years, he/she will be referred to the adult asylum system, where they will receive support from the National Asylum Support Service (NASS). When the UMC has been assessed for 16 years, then they will be entitled to foster care or residential home and will receive support from carers as well as extended payment for clothing. It becomes clear from the *Hillingdon Judgement* that the level of support that

---

2017)<[https://assets.publishing.service.gov.uk/media/5a81c34340f0b62305b90ad7/SFR50\\_2017-Children\\_looked\\_after\\_in\\_England.pdf](https://assets.publishing.service.gov.uk/media/5a81c34340f0b62305b90ad7/SFR50_2017-Children_looked_after_in_England.pdf)> accessed 20 August 2024.

<sup>60</sup> Children's Commissioner for England, 'Children's Voice: A review of evidence on the subjective wellbeing of children subject to immigration control in England' (November 2017) <<https://assets.childrenscommissioner.gov.uk/wpuploads/2017/11/CCO-Voces-Immigration-Control-November-2017.pdf>> accessed 20 August 2024

<sup>61</sup> Frances Wright, 'Social Work Practice with Unaccompanied Asylum-Seeking Young People Facing Removal' (2014) 44(4) *The British Journal of Social Work* 1027.

<sup>62</sup> *MPAX, R (A) v Westminster City Council* [1997] EWCA Civ 1032.

<sup>63</sup> *R (Adam, Limbuela and Tesema) v SSHD* [2005] UKHL 66.

can be expected by the UMC from the local authorities will include the support under section 20 of the CA, 1989, until their assessment has been completed. When children are not accommodated for the protection under section 20, then they have to be placed under section 17 of the CA, 1989. Only looked-after children who received protection under section 20 CA, 1989, are entitled to leaving care support once they reach 18 years of age and if they have been in care for 13 consecutive weeks or more, from 13 years of age upwards. Therefore, UMC that receive support under section 17 are not eligible for any form of leaving care support under the Care Leavers (England) Regulations, 2010, as amended in 2014.<sup>64</sup> So, for the UMC, the bright line rule is 18 years; this blanket rule will exacerbate vulnerability and also increase the precariousness.<sup>65</sup>

Before the Immigration Act 2016, the local authority could provide accommodation and financial support to the UMC whose appeal rights had been exhausted following an unsuccessful asylum claim. Now, the UMC will not receive the leaving care support. The purpose of Section 12 of the Immigration Act, 2016 is to prevent all adult migrants from getting support from the leaving care system, as they do not have any right to remain in the UK.<sup>66</sup> In addition, once the appeal rights are exhausted, the UMC are absconding from the local authority on the apprehension that they will be sent back to their home country. Subsequently, they have started to stay in the community as illegal migrants. Because of the curtailment in the budget and the inappropriate role of the inexperienced social workers of the local authorities, the UMC is not getting adequate support and care.<sup>67</sup>

It is the responsibility of the local authority to develop a pathway plan for the children before they turn 16. The plan has been developed on the basis of an assessment of the needs of children, which will assist their transition to adulthood. The plan will cover areas such as: accommodation, practical life skills, education and training, employment, economic support, specific needs, and contingency plan.<sup>68</sup> The pathway plan provides solution-focused theories and an opportunity for the UMC to design the plans.<sup>69</sup> The pathway

---

<sup>64</sup> Bokhari (n 45) 157.

<sup>65</sup> Devyani Prabhat, Ann Singleton and Robbie Eyles, 'Age is Just a Number? Supporting Migrant Young People with Precarious Legal Status in the UK' (2019) 27(2) *International Journal of Children's Rights* 242.

<sup>66</sup> HC Deb 17 November 2015, vol 602, cols 520, 521.

<sup>67</sup> Gupta (n 51) 79, 83

<sup>68</sup> Department for Education, 'Children Act 1989 guidance and regulations volume 2: care planning, placement and case review' (08 July 2021) <[https://assets.publishing.service.gov.uk/media/60e6fb43d3bf7f56896127e5/The\\_Children\\_Act\\_1989\\_guidance\\_and\\_regulations\\_Volume\\_2\\_care\\_planning\\_placement\\_and\\_case\\_review.pdf](https://assets.publishing.service.gov.uk/media/60e6fb43d3bf7f56896127e5/The_Children_Act_1989_guidance_and_regulations_Volume_2_care_planning_placement_and_case_review.pdf)> accessed 20 August 2024.

<sup>69</sup> Wright (n 63) 1034.

plan must be developed in line with the government guidance and policy, and it will not offer the UMC anything unrealistic. In addition, social workers will develop ‘triple planning’, considering the 3 possible outcomes when the UMC turns 18. The triple plan will consist of three options, *first* option would address the needs of the UMC if they gain permanent residence in the UK, *second* option will prepare them for the possibility of returning to the home country and *third* option deals with the UMC who will not have the right to remain in the UK and appeal rights have been exhausted and subjected to removal. The communication problem due to not understanding English is the main barrier to developing a pathway plan or triple plan by the social workers. So, language learning opportunities are crucial to enable the UMC to express its specific needs.

#### **4.8 Deprivation in the Health Care Services and Educational Facilities**

S.17 of CA 1989 has conferred upon the local authority a general duty to protect and promote the well-being of the UMC and to conduct the necessary assessment to understand their needs and support housing, pedagogy, and health care. In most cases, the UMC will receive support and assistance under section 20 of the Children Act 1989. The local authority must provide support to the UMC following the ‘*Hillingdon Judgement*’,<sup>70</sup> but exceptions have been seen in many circumstances. The UMC will receive an initial assessment of health (IHA) within twenty-eight days of registration with the local authority. The assessment has been conducted by a community pediatrician and follows up with annual physical and mental health assessments.<sup>71</sup> The rates of mental health disorders among the UMC are very high because of traumatic experiences, including physical violence, torture, imprisonment, etc. The research shows that there is a huge gap between the need for mental health support for the UMC and the actual services provided for them.<sup>72</sup> The mental health condition of the UMC has further deteriorated due to unsuitable accommodation, low living arrangements, and inappropriate placement in adult detention facilities.

In the UK, education is free and compulsory for all who are under the age of 16, irrespective of their nationality and immigration status. Educational institutions must consider and give priority to the UMC so that they can get access to educational facilities. Unfortunately, many UMC have

---

<sup>70</sup> *London Borough of Hillingdon v Secretary of State for Education and Skills* [2007] EWHC 514.

<sup>71</sup> Amy Jane Stevens, ‘How Can we meet the health needs of child refugees, asylum seekers and undocumented migrants’ (2020) 105(2) *Archives of Disease in Childhood* 191.

<sup>72</sup> Nuria Sanchez-Clemente and others (n 26).

experienced long delays in getting access to educational institutions. In addition, the distance between the educational institution and the accommodation of the UMC is too far so that they have to undergo a long journey on a daily basis. Some schools are not offering the ESOL (English for speakers of other languages) course; consequently, the UMC are not getting the facility to learn English.<sup>73</sup>

#### 4.9 Risks in Private Foster Care

Private foster care has been defined in section 66 of the CA, 1989. If a child is in the care of anyone who is not the parents, step-parents, siblings, brothers or sisters of a parent, grandparents and aunts and uncles (whether half-blood, full-blood, by civil partnership or marriage), and if the placement extends beyond twenty-eight days, the arrangement can be addressed as a private foster care. There is a difference between foster care and kinship care. Kinship care involves ties with children of their carers within the meaning of section 105 of the CA, 1989. In the case of kinship care, it is not necessary to inform the local authority.<sup>74</sup> However, the UMC can also be placed in semi-independent accommodation. In the UK, the UMC and looked-after children must be visited by their social workers at least every six weeks while aged under eighteen years. The advantages of private foster care are that it offers a family environment where there is continuity of cultural and language connectivity. Moreover, in foster care, a sense of belonging developed, which is not possible in stranger care, which helps to preserve the child's identity, and they can share their feelings by which can get redemption from the pain of displacement. But the number of disadvantages is higher in comparison with the advantages. In many private foster care services, children are treated like servants, forced to serve as sex workers, and become the victims of emotional and material deprivation. Even a child in foster care becomes the victim of trafficking, but he/she somehow manages to escape before the incident happens.

Article 19 of the UNCRC provides that the child will have the right to remain free from violence, maltreatment, and neglect, and Article 32 provides the child's right to be protected against economic exploitation and child labour. The testimony of a child in private foster care narrates the situation of suffering and level of exploitation, which portrays that she has

---

<sup>73</sup> Jo Wilding, 'Unaccompanied Children Seeking Asylum in the UK: From Centres of Concentration to a Better Holding Environment' (2017) 29(2) *International Journal of Refugee Law* 280.

<sup>74</sup> Helen Connolly, 'For a while out of orbit: Listening to what unaccompanied asylum-seeking/refugee children in the UK say about their rights and experiences in private foster care' (2014) 38(4) *Adoption and Fostering* 334.

to work and clean the whole house, washing dishes all the time, not allowed to go out, not permitted to talk with anybody. The situation was completely horrible. The inadequate monitoring on the part of the local authority also creates an environment in the private foster care which is contrary to the best interest of the children. For that reason, kinship care is recommended for the children rather than private foster care. It is the responsibility of fostering adulthood to inform the local authority about a fostering arrangement. According to section 67 of the CA, 1989, the local authorities will safeguard all the children being privately fostered in their areas. The Children Act, 2004, Section 44, and Children (Private Arrangements for Fostering) Regulations, 2005 are aimed at strengthening the notification and regulation system of private fostering.

When the child has been identified as a child in need, then he/she will be provided with financial support by the local authority for private foster care.<sup>75</sup> Experiences of the UMC in the private foster care are not satisfactory, rather full of dissatisfaction and sufferings such as shabby and crowded housing, lack of pedagogical and health facilities, lack of entertainment opportunities, sexual abuse and exploitation, physical violence, mental torture, and no heed to the UMC's urgencies.<sup>76</sup> The main problem in the housing facilities is the sexual maltreatment of the UMC.<sup>77</sup> Sharing facilities with adults of different genders raised the opportunities of sexual harassment. The UMC can't even complain to the police station about their harassment because of a language barrier. Moreover, they cannot inform the social workers as they do not get the opportunity to talk with them personally. So, the protection regime for the UMC has not complied with the best interest principle as the local authorities are not getting enough funding, and also failed to administer the welfare services in a proper way.<sup>78</sup>

## 5. Recommendations

To protect the best interests of the UMC in the prevailing hostile environment, a number of initiatives have to be taken to improve its conditions.

*First*, there should be a strategy document for dealing with the UMC which outlines the responsibility and detailed service standards in relation to the

---

<sup>75</sup> *ibid.*

<sup>76</sup> *ibid* 335.

<sup>77</sup> Margaret Lay and Irena Papadopoulos, 'Sexual maltreatment of unaccompanied asylum-seeking minors from the horn of Africa: a mixed method study focusing on vulnerability and prevention' (2009) 33(10) *Child Abuse & Neglect* 728.

<sup>78</sup> Wilding (n 75) 270.

protection, health, and development of children, as well as long-term care planning in their best interests. The Department for Education can be tasked with coordinating the development and continuing oversight of the strategy and appointing a national lead for its implementation. The responsibility to grant funding to the local authorities should be in the hands of the Department of Education for the care of the UMC. Such funding should be allocated according to the real costs that arise in safeguarding the UMC within each local authority area.

**Second**, there must be a clear focus on welfare needs as well as immigration control when gathering information from the UMC relating to an asylum claim. A well-understood distinction between the screening process and substantive information-gathering must be drawn. Screening a child should be expressly limited to gathering biographical and biometric data at the outset of a claim, while gathering information with which to assess a claim should begin only when children are settled and supported. Furthermore, children must be provided with proper access to interpreting facilities and rest periods and should be engaged in a way that takes proper account of their age, status, and background.

**Third**, the UMC can be detained by the immigration officer if the age is disputed, and they can also be placed in detention before removal or deportation. Keeping the UMC in immigration detention is causing serious harm to their physical and mental well-being. By detaining the UMC, the UK government has violated the international standards set out by the UNCRC. Though the detention is permitted as a last resort but in practice the Home Office has used it frequently. So, initiatives must be taken to make immigration detention completely prohibited.

**Fourth**, the UMC should be provided with funded specialist legal advice and representation during the asylum process. During a period of discretionary leave, decision-making should be encouraged as soon as there is sufficient evidence against which to evaluate a claim. Where it is in the best interests of the child to remain in the UK, indefinite leave to remain should be granted as early as that judgment can be made, to enable children to access higher education and enter the labour market. Where return is considered to be appropriate, a care plan should be constructed to inform and prepare a child for return in adulthood. In either case, support should persist until the objectives of a properly considered care plan are met. Moreover, the government should affirm its commitment to uphold Articles 29 and 30 of the UNCRC and ensure equal access to education for children regardless of their immigration status. It should assess how primary and secondary education is provided to the UMC, with a view to ensuring that their educational needs are met.

**Fifth**, the toughest hurdle faced by the UMC in the immigration proceedings is the age determination procedure. The immigration authority will assess the age first, then the local authority. There are lots of judicial pronouncements and guidelines in this regard, but unfortunately, the immigration officer and the social workers are not following this guidance at the time of assessing the age of the UMC. If the age assessment procedure is disputed, the UMC can challenge the decision of the local authority through judicial review, but this is a complicated and expensive procedure. There should be some other appellate body within the local authority that can review the initial decision of the social worker. So that the UMC can get the remedy without incurring financial expenses.

**Sixth**, the legal aid budget must be increased to provide the lawyers sufficient remuneration for dealing with immigration matters of the UMC. The views of the UMC must be considered respectfully, and due importance must be given. The immigration judges must take sufficient measures to ensure that the UMC are feeling comfortable in court and can follow the instructions of the court. If the UMC cannot understand English properly, then the arrangement of an interpreter must be confirmed by the court. The cases of the UMC must be disposed of with caution and sympathy. The Home Office staff must act in a child-sensitive manner and decide within the prescribed timeframe. A legal guardian can be appointed for unaccompanied migrant children who should provide support in relation to the asylum and immigration process, support services, and future planning, help children develop wider social networks, and ensure that children's views are heard in all proceedings that affect them.

**Seventh**, the Government should conduct or commission a mapping exercise that sets out a comprehensive picture of local authority support services for the UMC. This exercise should, in particular, seek to identify the best-performing local authorities to develop them as centres of excellence for the benefit of unaccompanied migrant children throughout the United Kingdom.

**Eighth**, the UMC must be properly supported in the transition to adulthood. The Government must ensure that children receive bespoke and comprehensive plans that focus on educational goals, reintegration, and rehabilitation. Such plans should consider all possible outcomes for the child, including family reunification and reintegration, whether in the home country, the UK, or a third country. Care plans should take full account of the wishes of the child and remain applicable up to the age of 21 or 25 if the young person remains in education, to enable children to realise their maximum potential.

## **6. Conclusion**

The UMC must be given the leaving care support to ensure the best interest principle. To develop an effective pathway plan and triple plan, the social worker must consult with the UMC and design the plan accordingly. In case of UMC not understanding English, assistance from the interpreter can be taken. There shall be sufficient arrangements to conduct the regular health check-up of the UMC. As the UMC has been suffering from different types of mental health conditions, attention must be given to improve the mental health care support of the NHS. The local authority should arrange separate residential facilities for the UMC based on gender and age. Sufficient funding and proper monitoring of the private foster care by the local authority can eradicate all the difficulties experienced by the UMC.

The UMC is the most vulnerable segment of British society, which does not have its own voice to raise about its rights and deprivation. There are some provisions of laws, rules, and regulations to protect and safeguard their rights in compliance with the best interest principle of the UNCRC, but unfortunately, the promulgation of those provisions is heavily influenced by the culture of disbelief and 'hostile environment' policy. The UMC has been stigmatised as 'precarious' and is facing a lot of obstacles and barriers in the entire journey from their initial interviews to final disposal. So, this article tries to propagate the rights of these less privileged and deprived parts of the British community who are staying based on discretionary leave and passing their adolescence under the veil of immigration restrictions and welfare limitations. Finally, effective implementation of the above-mentioned recommendations can safeguard and promote the rights of the UMC in compliance with the best interest principle of the UNCRC and pave the way to establish a better system for the UMC in the UK.