

Outside the frame:

Unaccompanied children
denied care and protection



Every Child Protected
Against Trafficking

Introduction

This report focuses on concerns about children arriving in the UK alone who are being unlawfully excluded from the duties and protections afforded to all children in England, placing them at significant risk of harm including exploitation and going missing, whilst outside of the well-established local safeguarding framework under the Children Act 1989.

The past two years has seen a raft of legislative changes which diminish the support and protection available for child victims of trafficking, and for all children and young people subject to immigration control. These include the recent passage of the Nationality and Borders Act 2022 amongst other changes to the law and existing guidance.¹

Since the summer of 2020, unaccompanied children arriving in England have had their rights systematically breached and have been denied the protections they should be afforded under the Children Act 1989. They have not had their needs assessed and have been unlawfully excluded from and denied the care of local authorities for unlimited periods of time, and instead are being placed directly by the Home Secretary in Home Office-sourced hotels. Many children have gone missing as a result of this policy.

The Children Act 1989 requires that local authorities protect and look after children who are without parental care – central government has no statutory powers to act as a corporate parent for any of these children, which means they are left without any corporate parent at all.

Following a Freedom of Information Request issued by ECPAT UK (Every Child Protected Against Trafficking UK), with the assistance of Article 39 and the Helen Bamber Foundation, we have obtained data regarding the total number of unaccompanied children who have gone missing from Home Office hotels between 1st June 2021 until 31st March 2022 when unlawfully accommodated outside of the child welfare system.

We fear that the use of hotels by the Home Office, operating outside of England's care system for children, has led to children suffering significant harm, with over 10 children going missing in just one of the reported months.

ECPAT UK is a leading children's rights organisation campaigning to ensure children can enjoy their rights to be protected and to live free from trafficking and exploitation. We promote and uphold children's rights to protection, provision and participation in the UK and outside of the UK through an integrated model involving research, policy, training and direct practice.

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Author: Laura Durán



FRONT COVER:

'Untitled' by 'TB', ECPAT youth programme member

¹ ECPAT UK. (2022). *Harmful Nationality and Borders Act passes*; ECPAT UK. (2021). *Briefing. New Plan for Immigration: immigration outcomes for child victims of trafficking*

Background



Local authorities in England have a legal duty to safeguard and promote the welfare of children within their area who are in need. This obligation is found in Section 17 of the Children Act 1989 for all children in need, and in Section 22 of the Children Act 1989 for those in need of care and being looked after by the local authority. This landmark legislation does not distinguish the needs of children by any characteristic, including their immigration status. There is no requirement for a child to be 'ordinarily resident' to trigger these duties – the child's presence is sufficient.

Children seeking asylum who have no responsible adult to care for them are clearly 'in need' and will in most cases require children's services to care for them and accommodate them under Section 20 of the same act. Section 20 of the Children Act 1989 imposes a duty on a local authority to provide accommodation for a child within their area if that child needs it due to the child being lost or abandoned, or if there is no person with parental responsibility for that child. The Department of Education has issued Statutory Guidance, *Care of unaccompanied migrant children and child victims of modern slavery*.² The guidance must be complied with by local authorities when exercising these functions, unless there are exceptional reasons which justify a departure. It clearly states:

² Department for Education. (2017). (publishing.service.gov.uk) *Care of unaccompanied migrant children and child victims of modern slavery: Statutory guidance for Local Authorities*: issued under Section 7 of the Local Authority Services Act 1970 which requires local authorities, in exercising their social services functions, to act under the general guidance of the Secretary of State

"Local authorities have a duty to protect and support these highly vulnerable children. Because of the circumstances they have faced, unaccompanied migrant children and child victims of modern slavery, including trafficking, often have complex needs in addition to those faced by looked after children more generally. The support required to address these needs must begin as soon as the child is referred to the Local Authority or is found in the Local Authority area. It will be most effective where this support is provided through a stable, continuous relationship with the child."

After a decade of austerity, there is a chronic funding crisis facing children's social care, a significant increase in the number of children on child protection plans, and a plethora of early help services have been cut.³ The greatest challenge facing children's services is sufficiency of homes or places to care for children, especially for the most vulnerable children.⁴ The COVID-19 pandemic has reduced the number of suitable places even further.⁵ In order to support local authorities caring for unaccompanied children, they are entitled to receive a funding contribution at a rate of £143 per child per night for those transferred under the National Transfer Scheme (NTS).⁶ This scheme began operating in 2016 in accordance with the Immigration Act 2016 which provided for the transfer of responsibility for the care of unaccompanied children seeking asylum from the local authority where they arrive to the care of other local authorities with greater capacity on a voluntary basis.⁷ The scheme is operated under a protocol which provides guidance on its operation, and which can be updated including the threshold for 'greater capacity' which is currently calculated on the

³ Department for Education. (2021). *Children Looked After in England including adoptions*; Local Government Association. (2021). *Eight in 10 councils forced to overspend on children's social care budgets amid soaring demand*

⁴ OFSTED. (2021). *The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2020/21*

⁵ Ibid

⁶ Home Office. (2021). *Funding to Local Authorities Financial Year 2021/22*

basis of the number of unaccompanied children in care being less than 0.07% of the total looked after child population of each local authority.⁸ Legislation was amended in 2018 to extend the scheme to include local authorities in Scotland, Wales, and Northern Ireland.

Despite this increased rate, the Local Government Association and other local government representatives have stated they remain concerned about the funding, given the financial pressures councils are already under.⁹

Despite these challenges, local authorities remain under a legal obligation to safeguard and promote the welfare of children, and central government must ensure local government budgets are sufficient to meet their statutory obligations.

It is important to note that Section 11 of the Children Act 2004 imposes a specific duty on a range of public authorities to make arrangements to ensure that their functions are discharged with regard to the need to safeguard and promote the welfare of children, and to give appropriate priority to their responsibilities towards the children in their care or with whom they come into contact. It also imposes duties to encourage agencies to share early concerns about safety and welfare of children and to ensure preventative action is taken before a crisis develops. This duty was extended to the Home Secretary via Section 55 of the Borders, Citizenship and Immigration Act 2009.

⁷ Sections 69-73 of the Immigration Act 2016 contain provisions for the transfer of responsibility for unaccompanied children seeking asylum between local authorities

⁸ Department for Education and Home Office. (2021). *National Transfer Scheme Protocol for Unaccompanied Asylum Seeking Children Version 3.0*

⁹ Easton, M. and May, C. (2021). *Councils to be forced to take child asylum seekers*



When were hotels first used and what has happened to date?

The process of normalising the use of hotels operated by the Home Office for this group of children began on the 17th August 2020 when Kent County Council (KCC) announced it would stop caring for unaccompanied children, citing they had reached safe capacity.¹⁰ KCC announced it would resume their duties to children on 7th December 2020.¹¹

During this four-month period in which KCC relinquished its duties, HM Chief Inspector of Prisons conducted an unannounced inspection of the Kent Intake Unit, a short-term holding facility where most children are held on first arrival.¹² The report found that unaccompanied children were

often held overnight with adults and that they were held longer than the average for adults. One of the reasons cited for this was KCC Children's Services' refusal to take responsibility for them, with children therefore waiting a long time for social workers to arrive from other local authority areas. The report found shocking safeguarding failures of children who were never seen by a social worker before being taken to 'dispersal accommodation', children sent by themselves to accommodation in a taxi and a 12-year-old child 'dispersed' to hotel accommodation in London with his 18-year-old brother, with no contact made by children's services.¹³ The Children's Commissioner for England also found in her report significant failing at the Kent Intake Unit, with unaccompanied children regularly being detained for over 24 hours.¹⁴

¹⁰ James, J. (2020). *Kent County Council to resume taking in unaccompanied child asylum seekers*

¹¹ Ibid

¹² HM Chief Inspector of Prisons. (2020). *Report on an unannounced inspection of the detention of migrants arriving in Dover in small boats*

¹³ Ibid

¹⁴ Children's Commissioner for England. (2021). *Detention of unaccompanied children arriving in Kent during 2020*

Subsequently, on 11th June 2021, KCC once again relinquished its duties and stopped taking unaccompanied children into its care, citing 'extreme pressure' on its services and threatening legal action against the Home Office to ensure it mandates the NTS.¹⁵

Later that month, the Home Office announced that, due to the "unprecedented number of small boat arrivals" it had decided to accommodate children in hotels whilst they were awaiting placement via the National Transfer Scheme.¹⁶ In July 2021, Children England with ECPAT UK as a signatory, among other organisations and experts concerned about the practice of placing unaccompanied children in hotels, wrote to the Department of Education.¹⁷

KCC subsequently announced on the 9th September 2021 that it would resume responsibility for unaccompanied children. On the 23rd November 2021, the Minister for Safe and Legal Migration announced the government's intention to temporarily mandate the scheme to all local authorities with children's services across the UK.¹⁸ Despite these changes, the Home Office has continued to place children in hotels outside of the care of local authorities.¹⁹

The total number of children unlawfully placed in hotels has so far only been provided in response to Parliamentary Questions. On 21st March 2022 the Immigration Minister, Kevin Foster, stated that between 14th July 2021 and 22nd February 2022 there have been 1,251 children accommodated in hotels by the Home Office upon arriving in the UK.²⁰ In a subsequent question he stated that between the

22nd February 2022 and 1st June 2022 there were 355 children.²¹

This comes to a total of 1,606 children unlawfully accommodated by the Home Office.

The Minister also stated the number of hotels available on the 28th February 2022 was four and that they are 'situated along the south coast in close proximity to arrival locations.'²² The total number of hotels used since the first period of 2020 until now is still unknown. In a more recent Parliamentary Question, the Minister further confirmed that children under the age of 10 have been placed in Home Office-commissioned hotels.²³

The Office for Standards in Education, Children's Services and Skills (OFSTED) has publicly stated this practice is completely unacceptable.²⁴ Despite these public admonitions, and despite indications that OFSTED's annual report would make recommendations to ensure this practice is eradicated, the current published report makes no mention of this group of vulnerable children.²⁵

The continued placement of children by the Home Office in hotel accommodation is also a breach of the department's own obligations under Section 55 of the Borders, Citizenship and Immigration Act 2009.

¹⁵ BBC News. (2021). *Kent to turn away lone child migrants from Monday due to "extreme pressure"*; BBC News. (2021). *Kent council in child migrant legal threat to Home Secretary*

¹⁶ Department for Education and Home Office. (2021). *National Transfer Scheme Protocol for Unaccompanied Asylum Seeking Children Version 3.0*

¹⁷ Children England. (2021). *Letter to Education Minister*

¹⁸ Department for Education and Home Office. (2021). *National Transfer Scheme Protocol for Unaccompanied Asylum Seeking Children Version 3.0*

¹⁹ BBC News. (2021). *Kent County Council resumes taking unaccompanied minors*

²⁰ *Parliamentary Question by Mrs Emma Lewell-Buck 18th February 2022 and Answer by Minister Kevin Foster*

²¹ *Parliamentary Question by Mrs Emma Lewell-Buck 1st June 2022 and Answer by Minister Kevin Foster*

²² *Parliamentary Question by Mrs Emma Lewell-Buck 21th February 2022 and Answer by Minister Kevin Foster*

²³ *Parliamentary Question by Mrs Emma Lewell-Buck 18th February 2022 and Answer by Minister Kevin Foster*

²⁴ BBC News. (2021). *Asylum children living in hotels 'unacceptable' - Ofsted*

²⁵ Woolcock, N. (2021). *Migrant children left alone in hotels*

The risks: human trafficking, modern slavery and missing children

It is important to recognise that trafficked children are not always unaccompanied, and they may not always claim asylum.²⁶ The majority of children identified as potential victims of modern slavery in the UK are British nationals, accounting for 55% of child referrals in 2021.²⁷ But the other 45% of child referrals were foreign national children (with the primary nationalities being Vietnamese, Albanian, Eritrean and Sudanese) who account for some of the top nationalities of unaccompanied children seeking asylum.²⁸ Conversely, not all unaccompanied children are victims of trafficking, although being unaccompanied significantly increases their vulnerability to exploitation.

Through years of research, ECPAT UK has established that child victims of trafficking are at significantly high risk of going missing.²⁹ The most recent findings from a joint ECPAT UK and Missing People report found that 13% of unaccompanied children went missing from care in 2020 (692 of 5,263). This was a decrease from nearly 15% of unaccompanied children going missing from care in 2019 (799 of 5,387), likely due to the COVID-19 pandemic's impact on migration reducing the number of unaccompanied children in local authority care in 2020. Asylum applications for unaccompanied children rose again in 2021 to 3,762, a 36% increase from the previous year.

Feedback from members of ECPAT UK's youth groups for victims and survivors of child trafficking identified the care and support they receive in their 'home' as the number one priority for preventing missing episodes, with the presence of trained, knowledgeable carers and the support of guardians with whom trusting relationships can be established rating most highly.³⁰

Local authorities have specific obligations regarding children in care who go missing. These are set out in the *Statutory guidance on children who run away or go missing from home or care*³¹ and in the *Statutory Guidance for local authorities care of unaccompanied migrant children and child victims of modern slavery*.³² Statutory guidance must be followed unless there is a very good reason not to.

Unaccompanied children placed in Home Office-commissioned hotels and not looked after by local authorities will not be subject to these statutory duties. This will leave them at further risk of going missing and places them outside the safeguarding framework and responses from safeguarding partner arrangements if they do.

The statutory guidance includes specific sections detailing missing episodes for looked after children who may have been trafficked, particularly unaccompanied children or other migrant children.³³ Reference is made to the risk children face in their initial placement, with most going missing within one week of becoming looked after and many within 48 hours, emphasising that those who go missing immediately after becoming looked after should be treated as potential victims of trafficking. The guidance requires proportionate safety measures which take into account a child's best interests to safeguard them from going missing from care and being re-trafficked. Other duties include the assessment of need to inform the care plan by establishing:

- relevant details about the child's background before they came to the UK
- an understanding of the reasons why the child came to the UK
- an analysis of the child's vulnerability to remaining under the influence of traffickers.

These duties are not being implemented in Home Office-commissioned hotels, nor would the Home Office have the authority to exercise the statutory functions of the child's corporate parent.³⁴ Clearly the safeguarding procedures in these hotels have been completely inadequate given the statement made by the Parliamentary Under-Secretary for



the Department for Education on the 24th February 2022, which said there were no serious incident notifications made to the Child Safeguarding Practice Review Panel in respect of any unaccompanied children seeking asylum from 1st July 2021 to 31st January 2022.³⁵

ECPAT UK has received reports of Albanian boys aged just 11-12 going missing from these hotels, with one report of a child 'jumping out of windows'.

²⁶ Child trafficking is defined as the "recruitment, transportation, transfer, harbouring or receipt" of a child for the purpose of exploitation. The internationally accepted definition of human trafficking comes from the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000, 'Palermo Protocol'), which the UK ratified in February 2006

²⁷ Home Office. (2022). *Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary, 2021*

²⁸ Refugee Council. (2022). *Children in the Asylum System*

²⁹ ECPAT UK and Missing People. (2016). *Heading Back to Harm; ECPAT UK and Missing People. (2018). Still in Harm's Way; ECPAT UK and Missing People. (2022). When Harms Remains*

³⁰ Ibid

³¹ Department for Education. (2014). *Statutory guidance on children who run away or go missing from home or care*

³² Department for Education. (2017). *Care of unaccompanied migrant children and child victims of modern slavery: Statutory guidance for local authorities (publishing.service.gov.uk)*

³³ Ibid

³⁴ Department for Education. (2018). *Applying corporate parenting principles to looked-after children and care leavers. Statutory guidance for local authorities*

³⁵ *Parliamentary Question by Mrs Emma Lewell-Buck 18th February 2022 and Answer by Minister Kevin Foster*

Findings

ECPAT UK issued a Freedom of Information request to the Home Office on the 31st March 2022 for the following:

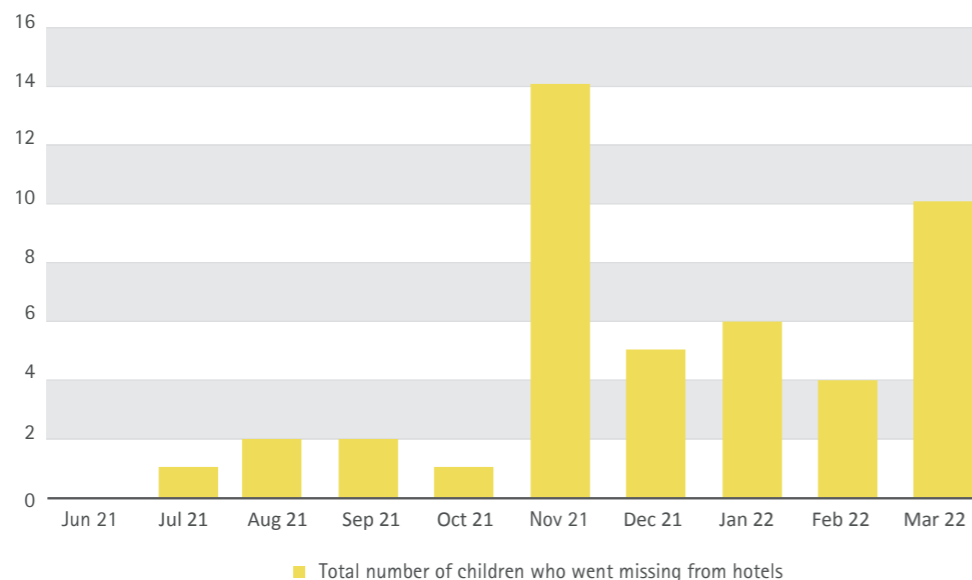
Please provide the monthly average and the monthly highest number of unaccompanied children seeking asylum placed in Home Office-commissioned hotel accommodation outside of the care of local authority children's services from June 01 2021 to March 31st 2022.

Using the definition of 'missing' below, please provide the number of unaccompanied children who went missing from Home Office commissioned hotel accommodation outside of the care of local authority children's services from June 01 2021 to March 31st 2022.*

The Home Office response stated the department does not hold the data requested for the monthly average and the monthly highest number of children placed in hotels. ECPAT UK is seeking an internal review regarding the disclosure of this data.

The response did provide the total number of unaccompanied children who went missing each month from the hotels which amounts to an average of four to five children going missing per month, or one per week. The total number of children going missing is 45 in a 10-month period.

Total Number of Children Who Went Missing from Hotels



*a child who is not at their hotel accommodation or the place they are expected to be (e.g. school) and their whereabouts is not known.

Conclusion & Recommendations

Conclusion

Based on the information available, ECPAT UK can only conclude that this is a very serious child protection emergency which needs urgent attention. It is happening whilst existing legal safeguards for looked after children, unaccompanied children and child victims of trafficking are being eroded. A year has now passed since we and over 65 other charities raised the red flag about the practice of placing unaccompanied children in hotels with the Education Secretary³⁶ and still this unlawful practice continues, leaving children at significant risk of harm.

The Department for Education must take the lead and support local authorities to fulfil their statutory safeguarding, child protection and care duties towards all children in their area.

Recommendations

- The **UK Government** must prioritise cross-departmental collaboration particularly between the Home Office, the Department for Education and the Department for Levelling up, Housing & Communities to ensure the lawful care and protection of unaccompanied children.
- The **Home Secretary** must immediately cease to unlawfully accommodate unaccompanied children and fulfil the statutory duties under Section 55 of the Borders, Citizenship and Immigration Act 2009.
- The **Secretary of State for Levelling Up, Housing & Communities** must ensure local authority children's services have sufficient resource and capacity to fulfil their legal obligations to care for children in need in their area.
- The **Secretary of State for Education** must ensure that all cases of unaccompanied children going missing are considered at high risk of exploitation and that serious incident notifications are made to the Child Safeguarding Practice Review Panel.

³⁶ Children England. (2021). *Letter to Education Minister*



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