Examining The Legal Landscape for Street Involved Children and Youth:
United Kingdom 2015

By Pro Bono Volunteers From

Baker & McKenzie and Accenture

In preparation for International Summit on the Legal Needs of Street Youth
# Table of contents

**International Street Youth Project Contributors List** ........................................................................................................... 1

**Before Entering the Criminal Justice System** .......................................................................................................................... 2

1. Initiatives or strategies to prevent street youth committing crimes through early intervention and/or support ................................................................. 2

**Entering the Criminal Justice System** ........................................................................................................................................ 3

2. Criminal laws that street youth could be prosecuted for as a direct result of homelessness ........................................................................................................ 3

3. Criminal laws that street youth could be prosecuted for as an indirect result of homelessness .......................................................................................... 3

4. The impact of homelessness on the likelihood of street youth committing crimes as an indirect result of homelessness ......................................................................... 4

5. Protections available in the UK to street youth who are accused of committing crimes ........................................................................................................... 5

6. The enforcement of criminal laws against street youth ................................................................................................................................. 5

7. The role of criminal law in protecting street youth ................................................................................................................................. 6

8. Support available to street youth in the criminal justice system ............................................................................................................................. 7

**International Street Youth Project - Human Rights** .................................................................................................................. 9

1. Introduction ..................................................................................................................................................................................... 9

2. Scope .......................................................................................................................................................................................... 9

3. Right to act as a citizen ......................................................................................................................................................... 10

4. Right to act as a legal person ........................................................................................................................................ 15

5. Access to legal redress, legal counsel and the courts ............................................................................................................. 16

6. Conclusion ............................................................................................................................................................................. 18

**Sources** .................................................................................................................................................................................. 20

- Websites ................................................................................................................................................................................ 20

- Legislation (as amended where applicable) .......................................................................................................................... 20

- Cases 21

**International Street Youth Pro-Bono Research Project** ........................................................................................................ 30

1. Introduction ............................................................................................................................................................................. 30

2. Legal Restrictions on the Employment of Children ..................................................................................................................... 30

3. Legal Restrictions: Help or Hindrance? .............................................................................................................................. 31

4. Practical Restrictions ......................................................................................................................................................... 31
5. Proposals for Reform........................................................................................................31
6. Legal age requirements for education........................................................................32
7. Homeless children........................................................................................................32
8. Incentives to remain in education ..............................................................................34
9. Comment......................................................................................................................34

Appendix - Source Material..........................................................................................35
1. Primary Sources........................................................................................................35
2. Secondary Sources ....................................................................................................35
3. Endnotes......................................................................................................................35

International Street Youth Project Group B: Child Welfare ........................................38
1. Introduction.................................................................................................................38
2. Overview of the child welfare system.........................................................................38
3. Older youths...............................................................................................................39
4. Forced, child, forced marriages and commercial sexual exploitation and trafficking..................................................................................................................41
5. Chemical abuse and substance dependency.............................................................41
6. Comment......................................................................................................................43
We are deeply grateful for the support of the following volunteers from **Baker & McKenzie** and **Accenture** and the many public interest law experts, who made this International Street Youth Project possible.

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Before Entering the Criminal Justice System

1. Initiatives or strategies to prevent street youth committing crimes through early intervention and/or support

1.1 Government information refers to three main prevention programmes, further outlined below, run within local communities for young people who:
- have been in trouble with the police
- are ‘at risk’ of committing a crime
- are involved in anti-social behaviour

1.2 Youth inclusion programmes
These are for eight to 17 year-olds and usually last for set lengths of time, e.g. six months. Sometimes a young person can attend for longer if they need to, if they find the activities helpful.

1.3 Youth inclusion and support panels
These panels - made up of people like local youth or social workers - work with eight to 13 year-olds to make sure they get access to local services that will help them stay out of trouble. These services could be things like getting extra help at school, or treatment for health or mental health problems.

Both this and the youth inclusion programme use something called an ‘intervention plan’ that all involved parties must agree on, including the young person and their family. This plan describes what the young person is expected to do, as well as what support the young person will get.

1.4 Mentoring
A mentor is a specially trained volunteer who spends time helping someone.

They can help a young person with things like:
- doing better at school
- coping with bullying
- applying for jobs or colleges

Sometimes this personal help can be more effective than sending a young person on a group activity. A mentoring programme doesn’t usually have a set time limit - a young person can be mentored for as long as is helpful.

Mentors are not connected to the police or a school.
Entering the Criminal Justice System

2. **Criminal laws that street youth could be prosecuted for as a direct result of homelessness**

2.1 There are certain laws currently in place in England and Wales that have the effect of making criminal acts that are typically associated with being homeless, e.g. begging and sleeping out. In effect, these laws technically make the act of being homeless a crime in itself.

2.2 Although a number of these laws may be considered "archaic" in their nature and arguably of little relevance today, statistics obtained from the Metropolitan Police for 2009 and 2014 show that these are still used as a basis to arrest and prosecute people in England and Wales today.

2.3 **Begging**

Section 3 of the Vagrancy Act 1824 makes the act of begging a criminal offence, as well as the act of causing or procuring any child or children to beg. This is a recordable offence and carries a level 3 fine, which is £1,000 as at the date of this publication (the Criminal Justice Act 1982 established "the standard scale" of fines for summary offences, and the monetary amounts corresponding to each level are updated from time to time).

The statistics obtained from the Metropolitan Police show that, in 2013, the total number of arrests for offences committed under section 3 of the Vagrancy Act 1824 was 725. The statistics do not distinguish between the act of begging and the act of causing or procuring any child or children to beg.

2.4 **Obstructing pavements**

Section 137 of the Highways Act 1980 makes it a criminal offence for a person to wilfully obstruct the free passage along a highway. This offence carries a level 2 fine, which is £500 as at the date of this publication.

2.5 **Harassment, alarm or distress to the public**

Section 5 of the Public Order Act 1986 makes it a criminal offence for a person to cause harassment, alarm or distress to another person in public. This offence carries a level 3 fine or a penalty notice of £80.

3. **Criminal laws that street youth could be prosecuted for as an indirect result of homelessness**

3.1 In this section, we set out those crimes that indirectly result from homelessness, including 'survival crimes', i.e. those that could be viewed as committed by the street youth out of necessity so as to safeguard his or her survival. In the next section, we outline the impact of homelessness on the likelihood of street youth committing such crimes.

3.2 **Theft**

Section 1 of the Theft Act 1968 makes it a criminal offence for a person to dishonestly appropriate property belonging to another with the intention of permanently depriving the other of it. The broad nature of this criminal offence covers a number of different scenarios, including petty theft and shoplifting. A person convicted of this offence is liable to imprisonment for a term not exceeding seven years.

3.3 **Sex work**
Section 1 of the Street Offences Act 1959 makes it a criminal offence to solicit or loiter in a public place for the purposes of prostitution. Section 56 of the Sexual Offences Act 2003 extends this offence to apply to men, as well as women. This offence carries a penalty of £500 for the first offence and £1,000 for offences thereafter.

Before a person can be prosecuted for this offence, it must be shown that the individual is a common prostitute, i.e. that he or she regularly operates as a prostitute and has received two or more cautions in the past. This process aims to provide sufficient time for the individual to be referred for appropriate support. If an individual has been convicted and fined on at least three occasions, the court may impose a community order.

3.4 Squatting

Section 144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 makes it an offence for a person to reside in a residential building if he or she is a trespasser. The offence does not apply in respect of a non-residential building. A person convicted of this offence is liable to imprisonment for a term not exceeding 51 weeks and/or a level 5 fine, which is £5,000 as at the date of this publication.

3.5 Violent behaviour

The Offences Against the Person Act 1861 is the main piece of legislation that deals with violent behaviour inflicted by one person on another and makes it an offence to cause harm and/or injury to another person. The penalties vary and include fines and/or imprisonment. The amount of the fine and the term of imprisonment will depend on the nature of the offence and, in particular, the level of harm and/or injury suffered by the victim.

3.6 Substance abuse

The Misuse of Drugs Act 1971 makes it an offence to possess and/or supply certain controlled drugs. The penalties vary and include fines and/or imprisonment. The amount of the fine and the term of imprisonment will depend on the nature of the offence.

Under section 7 of the Drugs Act 2005, in certain areas with high levels of drugs-related crime, police officers can test those arrested for certain 'trigger' offences (including begging and theft) to determine if they were under the influence of drugs when they committed the offence. Those who test positive must attend a compulsory drug assessment to determine the extent of their drug problem and to help them obtain treatment. Those who fail to provide a sample or comply with a required assessment face a fine of up to £2,500 and/or up to three months' imprisonment.

4. The impact of homelessness on the likelihood of street youth committing crimes as an indirect result of homelessness

4.1 There are various factors related to homelessness that can lead to street youth committing the crimes outlined in the above section. Theft, sex work and squatting can easily be categorised as 'survival crimes' and their link to homelessness therefore requires little further explanation. In respect of violent behaviour and substance abuse, although less easily categorised as 'survival crimes', it is not difficult to make the connection between such crimes and homelessness: the frustration, anger, despair and desire for escapism caused by homelessness make street youth more likely than other youth to succumb to such crimes.

4.2 In the case of substance abuse, this can lead to street youth committing further crimes against people and property. Substance abuse can also be associated with street youth being the victims of such crimes.

4.3 Research also suggests that some homeless street youth commit crimes, particularly minor ones such as shoplifting or anti-social behaviour, in order to receive a custodial sentence and, therefore, be given...
accommodation in prison. Equally, some homeless street youth attempt to be admitted to Accident & Emergency departments in order to spend the night at a hospital.

4.4 A high number of street youth, especially females, also turn to or are forced into sex work in order to obtain money to fund accommodation or substance abuse, or simply to spend the night at someone else's house.

5. Protections available in the UK to street youth who are accused of committing crimes

5.1 We set out below the main protections available to those accused of committing a crime. These protections apply to anyone so accused and are not specific to street youth; we are not aware of any protections that apply specifically to street youth.

5.2 Representation at police station

Every person convicted of a criminal offence is entitled to free legal advice and representation at a police station following his or her arrest. Legal aid (on which, see further below) should be available in order to meet the costs of legal advice and representation associated with the offender's appearance at court.

5.3 Civil actions against the police

It is possible to bring a civil action against the police if a person thinks that they were wrongfully arrested, subjected to unreasonable force, received improper care, or had property that was lost or damaged during their arrest and time in police custody. It is advisable for a person to take legal advice before commencing a civil action. Legal aid may be available to a person to bring a civil action, otherwise, pro bono advice would be an alternative means of obtaining advice without having to pay. In practical terms, it seems unlikely that street youth would have the wherewithal or fortitude to bring a civil action against the police for mistreatment.

5.4 Legal aid

Heavy restrictions on the availability of legal aid in England and Wales were introduced in 2012. The effect of these restrictions is that legal aid is only available in very limited circumstances. Legal aid should, however, be available to street youth who have been accused of a crime or face prison or detention and cannot afford to pay for legal costs.

5.5 Pro bono

Some law firms, barristers and other independent organisations provide legal advice and representation to individuals on a pro bono basis (i.e. free of charge). Given the restrictions on the availability of legal aid outlined above, pro bono legal advice providers are in high demand and, therefore, pro bono legal advice may be difficult to obtain.

6. The enforcement of criminal laws against street youth

6.1 In the United Kingdom, children as young as ten can be imprisoned for committing a crime and all children tried for serious offences are tried in adult courts. Having said that, the criminal justice system does not treat children in the same way as adults when it comes to enforcing criminal laws. Children are usually dealt with by youth courts, often given different sentences and sent to special secure centres for young people such as young offender institutions, secure training centres and secure children's homes. In addition, procedural safeguards are in place for children under 17 at the police station, although children aged 17 and above are not provided with the same safeguards.
6.2 There are a variety of sentences imposed on children, including life sentences, which are mandatory for children who are convicted of murder. Civil orders, known as ‘Anti-Social Behaviour Orders’ (ASBOs), which if breached can lead to sentences of imprisonment, can be imposed where a child is considered a social nuisance. Children can also be made subject to sex offender notification requirements for life if they receive a sentence of imprisonment for certain sexual offences of over 30 months or more.

6.3 Over the years, important legislation has been implemented to create new penalties and sentences specifically relating to children. The Criminal Justice Act 2003 brought in new sentences with the aim of ensuring ‘public protection’, including indefinite sentences where appropriate to achieve public protection. If a child is given such a sentence, he or she will be released on the completion of a successful parole application, following which the child will remain on licence for a period of at least ten years, or until the parole board cancels the licence. Furthermore, the Criminal Justice and Immigration Act 2008 overhauled the structure of some of the public protection sentences and granted the courts wider discretion in deciding when to impose them.

6.4 A protection afforded to children by the justice system is the scope for Family Courts to impose a child safety order if a child is considered to be at risk; this can lead to the child being supervised in the community by a criminal justice professional.

7. **The role of criminal law in protecting street youth**

7.1 In 1969, the age of criminal responsibility was increased from seven to 10 years old. At this time, many measures were implemented to create a welfare based criminal justice system. In spite of this, it may be argued that these measures have unfortunately not taken off and serve to increase the range of criminal sanctions available to the courts.

7.2 In contrast to the rest of Europe, English criminal justice policy appears to focus primarily on punishment as opposed to preventing child crime. However, there is evidence to suggest that incarceration and imprisonment for public protection in particular can have a detrimental impact on mental health. As a result of this, detention of a child should always be the last resort and sanctions should be kept to the minimum necessary. Rule 9 of the European Rules for Juvenile Offenders states that "sanctions or measures shall be implemented without undue delay and only to the extent and for the period strictly necessary".

7.3 In terms of legislation that ostensibly serves to protect children accused of crimes (including street youth), under section 7 of schedule 2 of the Children Act 1989, local authorities are required to take steps to reduce the need to bring criminal proceedings against children, to encourage children within their area not to commit criminal offences and to avoid the need for children within their area to be placed in secure accommodation.

7.4 In section 44(1) of the Children and Young Persons Act 1933 (the ‘Welfare Principle’), it is stated that "(1) every court in dealing with a child or young person who is brought before it, either as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training."

7.5 At paragraph 23 of *ZH (Tanzania) v Secretary of State for the Home Department* [2011] 2 WLR 148, the Supreme Court held that the Welfare Principle is reflected in the Children Act 2004 (section 11): "this is a binding obligation in international law, and the spirit, if not the precise language, has also been translated into our national law. Section 11 of the Children Act 2004 places a duty upon a wide range of public bodies to carry out their functions having regard to the need to safeguard and promote the welfare of children…".
8. Support available to street youth in the criminal justice system

8.1 According to the Howard League\textsuperscript{xii}, there is a strong link between lack of support and accommodation and the likelihood of reoffending. According to research carried out by the Youth Justice Board (2007), 40 per cent of children in custody have previously been homeless or have sought formal housing support. Since the aim of the youth justice system is to prevent reoffending (section 37 of the Crime and Disorder Act 1998), it is essential that measures be taken at all stages of the criminal justice system (pre-sentence, in custody and post-custody) to help young offenders find suitable accommodation and support.

8.2 Under the current system, youth offenders can find support from:

(a) personal officers;
(b) chaplains, social workers or teachers;
(c) doctors, nurses or health workers;
(d) the local Youth Offending Team (YOT), which is part of the local council and separate from the police and courts. They work with, amongst others, health, housing and children's services; and
(e) the advocacy service. Advocacy services are confidential services provided by children's charities (e.g. Barnardo's).

8.3 With regard to young offenders' specific resettlement needs, a number of cases including \textit{R(M) v Hammersmith and Fulham} [2008] 1 WLR 535 have emphasised that young offenders will require not only accommodation but also help and support. Even if the non-accommodation resettlement needs are met by the YOT, YOT involvement will usually end when a sentence expires or when a young person transfers to probation. If a young person is still in need of support, he or she may need to rely on the help of social services.

8.4 In terms of the accommodation resettlement needs of street youth, the landmark case of \textit{R (G) v London Borough of Southwark} [2009] UKHL 26 has provided that local children's services authorities cannot avoid their duty to accommodate homeless youths under section 20 of the Children Act 1989 (outlined in the below paragraph) by claiming they are merely providing assistance using their powers under section 17 of that Act (also outlined in the below paragraph), or by helping the young person to get accommodation through the homelessness legislation\textsuperscript{xii}. This case affirmed that the ongoing duty to accommodate and assist homeless 16 and 17 year olds will normally fall to the children's services authority and not the housing authority, and that a homeless 16 or 17 year old will normally trigger a duty on the children's services authority to help and support the youth in the transition to independent adult living, unless the problem is relatively short-term. In addition, if the young person becomes homeless again when aged 18, 19 or 20 they will, even if they spent only one day in accommodation provided under section 20, have a priority need for accommodation under the homelessness legislation.

8.5 Section 17 contains a general duty on local authorities to safeguard and promote the welfare of children in their area who are in need by promoting the upbringing of children by their families and providing a range and level of services appropriate to those children’s needs. Such services may include the provision of accommodation (section 17(6)). Section 20(1) requires a children’s services authority to provide accommodation to any "child in need" who lacks suitable accommodation or care as a result of:

(a) there being no person who has parental responsibility for him;
(b) his being lost or having been abandoned;
(c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.
1. Introduction

There is no single definition of "human rights", particularly as applied to children. The UN and regional organisations have sought to express what "human rights" are but there is no absolute definitive list. However, all the human rights declarations contain a similar common core of rights. For the basis of this section we have used the Universal Declaration of Human Rights as a starting point, supplemented by the United Nations Convention on the Rights of the Child ("CROC").

Human rights are generally recognised and respected under English law. The UK is a signatory to the Universal Declaration of Human Rights and it has also ratified the CROC and the European Convention of Human Rights ("ECHR"). This latter step means that individuals can enforce their convention rights through the European Court of Human Rights in Strasbourg. Certain convention rights were also incorporated into English law by the Human Rights Act 1998 ("HRA") so individuals can also enforce these convention rights through English courts. Individuals retain the right to enforce convention rights through the European Court of Human Rights when its domestic law rights (e.g. under the HRA) have been tried or are unavailable.

The way that the ECHR has been incorporated into English law by way of the HRA does allow for derogations and an English law which is not compatible with the ECHR is not automatically disapplied. However, following the HRA, it is unlawful for a public authority to act in a way which is incompatible with the ECHR and, so far as possible, UK legislation should be interpreted in a way which is compatible with ECHR rights.

In the UK, there is no specific legislation setting out the human rights of children or young people. The UK has ratified the CROC but it has not been directly incorporated into domestic law. As a result, whilst the UK is bound to respect its CROC obligations (and courts will take it into account in interpreting UK legislation), individuals do not have a direct ability to enforce their CROC rights. England, Scotland, Wales and Northern Ireland have each appointed Children's Commissioners who are required to promote and protect the rights of all children in the relevant jurisdiction with a particular focus on children and young people with difficulties or challenges in their lives, and in particular those living away from home, in or leaving care, or receiving social care services. However, the Children's Commissioner does not have any direct power to enforce children's human rights.

In principle, children in the UK are recognised individuals with the same human rights as adults. There are some variations as to how certain rights apply to children which generally provide extra protection to children dependent on their age, level of understanding and ability to make informed decisions on their own. In addition there is specific legislation, e.g. the Children’s Act and various consumer laws, which aim to apply additional protection to children to safeguard their welfare, safety and rights. We explore in this section the way that certain key human rights for young people (including street children and street youth) are incorporated into English law.

2. Scope

Whilst we acknowledge the indivisible, interrelated and interdependent role of all human rights in the overall framework of the human rights for street youth, this Basic Human Rights chapter will explore only the following rights, for the reasons that: (i) the following rights relate to a child's legal status, generally have a wide impact and affect the enforcement of other rights too; and (ii) some of the other rights omitted in this section will be explored more fully in other chapters of this report.

1) Right to act as a citizen and have an identity
This section explores both the regulatory landscape, and practical application of provisions governing the aspects of citizenship (namely access to identity documentation/registration, government assistance, benefits, and healthcare) for street children with bona fide UK citizenship.

2) **Right to act as a legal person**

This section explores the ability of a child to enter into contracts, financial and otherwise.

3) **Access to legal counsel and the courts**

This section explores the ability of a child to obtain access to legal redress and analyses the standing of a child generally in the English law justice system.

3. **Right to act as a citizen**

This section 3 explores both the regulatory landscape, and the practical application of provisions governing the aspects of citizenship (namely access to identity documentation/registration, government assistance, benefits, and healthcare) for street children with bona fide UK citizenship.

3.1 **Legal position:**

(a) **Identity Registration/Documentation:**

The principal means of demonstrating identity in this section focus on holding a valid passport and/or driving licence. Thought is given to the concept of legal identity in terms of name and national insurance number. There is not a specific ‘human right’ attached to being able to register one's identity; however, the ability to do so can be classified as a ‘moral right’ and it relates to access to goods and services which in turn may be deemed necessary components of other enshrined rights. It is also referred to in the CROC in Article 8 – ‘State Parties undertake to respect the right of the child to preserve his or her identity’.

(i) **Passport**

Both driving licenses and passports are generally recognised as valid means of identification, for purposes such as entering into a contract of sale for restricted items or setting up a bank account.

Passports are granted under royal prerogative, and the process of application is administrated by the Passport Office, a Home Office sub department. Since passports are granted by the executive, the granting of a passport is discretionary.

To apply for a passport in the UK, a child under 16 is required to have parental permission (or the permission of a party who has parental responsibility for that child). For a child 16 or above (inclusive of those approaching their 16th birthday), the child may make an application for a passport without seeking further permission to do so.

Where a court order is in place forbidding an individual to leave the UK, an application for a passport can be denied, or existing passport cancelled.

In order to support a passport application, the following documentation must be made available to the Passport Office (in respect of those born after 1983 in the UK): birth/adoption certificate, mother’s or father’s UK birth certificate, Home Office certificate of registration/naturalisation, a British passport belonging to one parent that was valid at the point of the child’s birth or a British passport number for either parent, evidence of one parent's immigration status in the UK at the time of child’s birth, parents’ marriage certificate (where father’s details are being used in support of the application.)
If born outside of the UK, the following documentation is required: naturalisation or registration certificate, passport used to come into the UK or foreign passport the child was included on, full birth certificate, evidence of parent’s British nationality (where applicable.)

(ii) Driving Licence:

Driving licenses are issued by the Driver Vehicle Licensing Authority (DVLA), an executive agency for the Department of Transport. The requirement to hold a valid licence for the purpose of driving a vehicle on the road is governed by s.192 Road Traffic Act 1988.

A valid driving licence for a car/similar vehicle is obtainable from the age of 17, and 16 for certain types of motorbikes. For those individuals who are entitled to Personal Independence Payment (PIP) or Disability Living Allowance (DLA) the age of validity of a licence in respect of a car is 16.

(iii) Legal Name:

There is a duty for the birth of a child to be officially registered (under ordinary circumstances within 6 weeks of the child’s birth). This formalises the child’s legal name, and generates a principal identity document, the birth certificate.

A deed of name change (most often referred to as deed poll) can be executed in order to change one’s legal name. It does not effect a change to the name shown on a birth certificate.

For a child acting independently of an adult/carer, this can be executed from the age of 16 onwards, without parental permission.

It is also possible to effect a name change by way of Statutory Declaration obtained from a Magistrates Court.

(iv) National Insurance Number

A National Insurance number is automatically issued to eligible residents on approach to their 16th birthday. It is usually issued as a card, which is useful in terms of seeking to prove identity, but is essential in the sense that employers need this number in order to administrate national insurance payments and for tax purposes.

Where a National Insurance number has not been assigned/communicated to a person under 20, they may obtain one by contacting the national insurance helpline, and if required, attending an interview at the Jobcentre, and presenting the required supporting identity documentation.

(b) Government Assistance and public resources

Government assistance and public resources are split into two arms. The first is covered in the form of monetary support via the Child Benefit scheme (more fully described at point c) below). The second is covered by local authority in a given area.

Every Local Authority (LA) must protect and promote the welfare of children in its area. To do this it must work with the family to provide support services that will enable children to be brought up within their own families. This may include day care facilities for non-school age children, home help, counselling et al.

The LA (or equivalent) has a duty to provide services it considers appropriate for the following children:
- disabled children
- children who might otherwise be made subject to care proceedings
- children who are likely to be involved in crime.

In England, from 1 April 2011, a LA must provide breaks from caring (respite care) for the parents of disabled children.

The LA can give financial help in a wide range of circumstances, when a child is in need. The help may be in the form of a loan, a cash payment, or payment in kind, for example, vouchers for a particular shop, or an item of food, clothing or furniture.

The duties placed on LAs revolves around children within a family structure, or those who will fall under the care of the State.

(c) Benefits and social services

Benefits from the government are provided via the Child Benefit scheme. This is available to an individual who is responsible for a child who is under the age of 16 (or under 20 years old if they stay in approved education or training). Registering for Child Benefits also ensures the child is automatically registered to get a National Insurance number at the age of 16. Child Benefit is paid directly to the parent/guardian of a child, and it cannot be paid into a Child Trust fund account, child’s account, or a joint account (if the child is one of the account holders). The intended beneficiary of this assistance is the child, however, it can only be utilised via a parent/guardian, which means this benefit is not useable by children who are not in the care of a parent/guardian.

(d) Access to Healthcare:

Access to healthcare is enshrined under the HRA and CROC. In the HRA the (in)ability to access required healthcare has been framed under Article 3, as part of "inhuman or degrading treatment" and also Article 2, right to life, and in the CROC it is enshrined in Article 24.

A parent/guardian can provide consent to medical treatment on that child’s behalf, and in the event of non-conflict (i.e. the medical profession does not argue that the medical treatment is not in the best interests of the child, or the child attempts to refuse consent) access to medical treatment will ordinarily be granted without further impediment.

In terms of children’s access to healthcare, in order to be able to receive medical treatment (in the absence of parental consent) a child must be deemed capable of giving informed consent to the receipt of medical attention. The test for capacity to give such consent emanates from case law and the central determination is whether the child has ‘sufficient understanding and intelligence to enable him or her to understand fully what is proposed’. [Gillick v West Norfolk & Wisbech Area Health Authority [1986] AC 112 House of Lords. Judgement of Lord Fraser].

There is a general presumption that children aged 16 upwards do have such capacity, and the onus would be on a medical professional to substantiate why they do not, in the event of refusal to treat the potential patient. The presumption is reversed with regard to children under 16 years of age, where the presumption is that the concerned individual will not have capacity to give informed consent, and the onus is on the child/their agents to convince otherwise.

Where a child has obtained a legal ruling that the child has capacity to consent, a parent/carer cannot override that consent, and the procedure/treatment the child is consenting to can go ahead, regardless of the wishes of the parent.
With regard to refusal of consent to medical treatment, the matter is predominantly discussed in the context of life-saving / life changing treatment (e.g. surgery which will potentially save a life / enforced sterilisation etc.).

Where a young person refuses to consent to medical treatment, a court may decide to overrule that decision based on a determination of the best interests of the individual involved. When deciding on the best interests of a child, the court/medical professional must take into account a number of factors which together determine the best interest of the child (see s1 (3) Children Act 1989). In emergency situations / where urgent treatment is required medical professionals are permitted to act without obtaining consent in the best interests of the child and to avoid harm to the child.

3.2 Practical Application

(a) Identity Registration/Documentation:

It seems that a child under the age of 16 would have significant difficulty in applying for a passport without the assistance of a person/institution with responsibility over the child. A passport is a key piece of identity documentation, and not being in possession of one makes the process of attempting to apply for other identity documentation, and also necessary services, for example banking services, that much more difficult. Where a child is not under any kind of adult care the lack of adult intervention to apply for the document and provide the necessary consent and supporting documentations would likely make an application unsuccessful. It is possible in theory, that since the granting of a passport is an act for which the executive has discretionary powers, that a child could be permitted to make an application without adult consent, however, this would seem more applicable to a scenario where a child is in parental or state care and that party is for some reason unfairly withholding assistance or consent to the child obtaining a passport.

For a child aged 16 and above, the main obstacle to a street youth obtaining a passport it is likely to be practical. Supporting documentation is required, such as full birth certificate, proof of parent’s nationality (for example British Passport numbers, full names and birthdate and place of birth and marriage). A street youth may not have access to the required documentation, or have knowledge of how to obtain it. Supposing the young person did seek information from the Registry office to obtain the documents relating to themselves and as proof of parentage, there would be a fee for the provision of the documents, alongside the application fee for the passport, plus also travel costs where the passport is a first-time passport, requiring the individual to attend an in-person interview at the Passport Office.

As part of the application process for a driving license or a national insurance number (should one not have been received on reaching the age of 16), there is an assumption that other identity documentation may already be in the possession of the applicant; a driving license, for example, can be applied for using the document number found inside a biometric passport, without which, other original documentation is required (for example birth certificate, accompanied by another evidentiary document e.g. national insurance card, benefits claim letter/book, P45/60/payslip, college card, school record, PASS CitizenCard). The situation becomes circular, because the same practical difficulties in obtaining the documentation prevail. If a street youth has managed to obtain a passport already, the process of obtaining other types of identity document may prove less difficult.

Since passports and driving licences are often required documents in order to obtain other useful services, such as banking services and bank account, not being able to obtain them could cause inconvenience and hardship in other areas of a street youth’s day-to-day existence. Similarly, a national insurance number is required by UK employers.
Finally there is the unusual and unfortunate situation of a child or young person whose existence has never been formally recorded, and for whatever reason there is no record of their birth. The difficulty of obtaining any form of identity documentation is exacerbated, because a birth certificate is the evidentiary document that is required in order to obtain any of the above mentioned forms of documentation. Such an individual will not have a legal name capable of being changed via deed poll, nor received a national insurance number. In this situation, the child would need the intervention of the state and parents/relatives, should they be traceable.

(b) Government Assistance and public resources

An LA provides services and support without the need for documentation, proof of identity or other form of legally recognised papers. A UK street child should therefore be able to access these public resources.

Each LA does have autonomy in providing the services and support stipulated as being available by government so the quality provided might differ. There have also been a number of papers written over recent years detailing the impact upon said services with the removal or reduction in funding provided by government.

(c) Benefits and social services

As we have seen above, the government assistance provided in the form of Child Benefits is only made available to the individual who is in charge of a child under the age of 16 (or under the age of 20 subject to certain criteria). The money is paid directly into the individual's bank account, and the government makes it quite clear that any money provided as a benefit for the child should never be given directly to the child. In practice a child who does not have a parent/guardian or whose parent/guardian does not apply Child Benefits for the benefit of the child will not have the benefit of Child Benefits funds. Even if the money could be paid into the child’s bank account, that child would need an adult to be present to open said account along with other documents necessary to prove address of residence, which many children in need or on the streets will not have access to.

Social services is often a useful organisation for street children, as their main focus is to safeguard and promote the welfare of vulnerable children. Although the intention is sound, the practical implication of ensuring this objective absolutely is often missed or in extreme circumstances neglected ("Baby P", "The Case of Child A Haringey Council 2008 – 2011"). There is heavy reliance upon information of neglect from the general public and medical records before action can be taken. Many services are provided by social services, however, there is an element of reliance upon the child as an individual to make contact or seek the support on offer.

(d) Healthcare:

It is easier for any child to seek medical treatment and obtain consent for that medical treatment with the support of an adult, such as a parent, who can provide that consent on their behalf. Therefore access to medical treatment is impeded for those that fall outside of a situation where a supportive adult is available to in effect ‘sign-off’/endorse the youth’s wishes; especially anyone aged below 16.

The test for capacity places a lot of discretion on the medical professional to make a judgement of the child’s ability to give consent; it is possible that this could mean it is more difficult for a street youth to demonstrate requisite capacity, owing to factors such as demeanour, appearance, dress, how they articulate themselves – all of these factors may be affected by the fact the child is not in a nourishing environment, may not be in full-time education and/or may have experienced a troubled existence.
It is possible that children outside of a family environment and who are homeless may be more likely to fall into a category where, irrespective of age, they will be deemed to not possess capacity to give consent owing to mental health/drugs issues.

As a matter of practicality, in order to receive non-emergency medical treatment, for example, at a doctor’s surgery, there is a requirement to provide a residential address, NHS number and other details that a street youth may not be able to provide. Walk-in clinics which may not require such a level of detail are limited in the extent of services that can be provided. Therefore it may be difficult for street youths to even be able to access a non-emergency medical environment at all.

Since a street youth may find it more difficult to receive non-emergency medical care, and may live in conditions which are not conducive to good health, there is the possibility that this group is disproportionately likely to end up requiring urgent or emergency care, and therefore the right to give or refuse consent cannot be triggered because this group is unable to be in a position to actively use it.

In relation to ability to refuse consent to medical treatment, children with the backing of parents/guardians are most likely to be in a better situated to defend their position should they choose to refuse consent, under the set of criteria determining the best interests of a child. A street youth is less likely to be able to successfully support a genuine desire to refuse consent; the best interests test will likely weigh in favour of the child receiving the treatment.

Since lack of access to satisfactory medical treatment has previously been successfully argued to be in contravention of the Human Rights Act, it is possible that this is an avenue that could be pursued against the NHS trust in a local area, where a street youth has been unable to access such care, however, it is more likely that there would be seen to be a failure of another duty of care towards the youth, and that the focus of attention would be around why the young person is not in the care of a parent or local authority, and through that means they would have access to healthcare.

4. Right to act as a legal person

The UK approach to child welfare starts with the premise that a child will be under the protection of a parent or legal guardian until they reach adulthood. As such, the system assumes that for the most part, children do not, and should not, have to make major financial decisions or take on financial commitments. However, for children who are trying to survive independently of adult supervision, the very measures designed to protect them can create barriers. Children leaving home or local authority care, particularly 16 and 17 year olds, may have to access goods and services necessary to build a life – such as renting accommodation, obtaining utilities, buying food and other household or leisure goods. A child may also need to have a bank account for any money earned from work.

Legal position

In England, a child does not reach the age of capacity until 18 (in Scotland it is 16 years). Beneath that age, a child can only enter into a contract for specific things:

a) For necessaries
b) For education, apprenticeship or service.

A child can enter any other contract but it will be voidable at the child’s election, meaning it is unenforceable against the child. The supplier is bound to perform but the child is not. This could mean that the vendor was still obligated even if the child rejected the contract but in practice this has been mitigated. If the child rejects the contract, it is unlikely the supplier would be required to fulfil performance and a child may be required to hand
back goods and services received under the contract or at least pay for them. A child can ratify an agreement made in their minority when they reach adulthood and that will be binding.

Much rests on the interpretation of "necessaries", which has been defined as goods suitable for the age and condition in life of the minor and suitable for his actual requirements at the time of the sale and delivery. They include life's absolute essentials such as food, drink, clothing, lodging and medicine but can also include articles purchased for "real use" (as long as such items are not purely ornamental or to be used for comfort or convenience). It is therefore a rather subjective test and the burden of showing that the goods supplied are necessary falls on the supplier. Credit agreements are not necessaries. It is not permitted for a child to take out a loan or credit agreement.

Housing in a necessary item and children can enter into contracts for rent of property. The landlord can enforce (reasonable) rent against the child, so there is no legal need for a guarantor to guarantee the child’s obligations. Children be licensees of a property and they can also be tenants in their own name, but only as an equitable tenant (the landlord holds the legal title to the tenancy in trust for them).

**Effects**

While the intention of the legal position is to protect children from exploitation by suppliers taking advantage of their young age and inexperience, it can create practical barriers.

For example, children cannot take out subscription services. Therefore, they are required to have pre-pay meters for utilities and "Pay as You Go" mobile services. While these type of services have low entry requirements and no ongoing financial commitments, they are often more expensive per unit than other types of service offering.

Looking at a number of high street banks, it is possible for children from the age of 11 to open a bank account, including getting a debit card. However, there are some restrictions. Depending on the bank, parental approval may be required for under 16s to either open the account or to get a debit card. Services may be restricted by withdrawal limits and no overdraft. In addition, even where parental consent is not required, a child still needs to provide ID and proof of address, such as passport, utility bill (which you will not get if on a pre-pay meter), council tax bill, previous bank statements. In practice, this may be more difficult for a child, particularly if they are not in settled circumstances.

The contracting rules can also make suppliers more careful about selling to children. A child may well have difficult purchasing items such as furniture, a television or car. This is because a child would not be able to get lawful credit to purchase such items – a child may need to save up cash or obtain money from unlawful sources or lenders, which carry additional risks. Equally, some companies may be reluctant to have a child as a customer if there is a risk that the contract is not enforceable. The onus is on the supplier to show that the item or service purchased was necessary for the child. This may restrict the purchasing options for a child. One area where a child may have particular difficulty is online, which contain some of the best deals. As well as the usual requirement for card payments online, some vendors, such as Amazon and Tesco, exclude under 18s as customers.

Even for necessary items, children may face barriers to contracting based on misunderstandings of the law. For example, landlords are sometimes quite reluctant to rent to young people or require an adult guarantor for the rent, mistakenly fearing that they may not be able to enforce the tenancy agreement and obtain rent. Therefore, children may often find that avenues for normal adult purchases of goods and services are in practice restricted for them. As well as potentially creating hardship if a child cannot buy what they need, it may push them towards crime or relying on adult sources of help which may be harmful to the child.

5. **Access to legal redress, legal counsel and the courts**

Whilst access to legal redress, counsel and the courts is not in itself a human right, it is clear that without such access a number of other human rights could be affected incidentally as a child is unable to enforce its rights.
Therefore the ability of any child - but particularly a street youth - to access the legal system, cannot be underestimated.

Article 12 of the CROC states that children have the right to express their views freely and such views should be given due weight in accordance with the child's age and maturity. As a result, a child shall be given the opportunity to be heard (directly or through a representative or appropriate body) in any judicial and administrative proceedings affecting them, in a manner consistent with the procedural rules of national law. Whilst this right is not enshrined in UK law, certain measures and provisions exist which provide children with the right to be heard in respect of legal matters which affect them. These are discussed in brief below.

Access to legal redress
The reforms to the judicial review procedure in the UK, which were introduced by the Criminal Justice and Courts Act (which received royal assent in February 2015), coupled with the reforms to the legal aid system, are expected to have a significant and disproportionately negative effect on vulnerable litigants such as children and their ability to seek legal redress.

Access to legal counsel
On the assumption that a street youth would be unable to instruct counsel on a funded basis, the options available to them are:

- legal aid services - if the individual youth passed the eligibility requirements, however as noted above, its scope and application has been considerably limited;
- pro bono - either via direct access to solicitors willing to provide legal advice for no cost, or on a shorter-term basis e.g. at a legal advice clinic run by volunteers;
- possible fee arrangements, such as, "no win no fee"; or
- there are a number of organisations in the UK which offer advocacy services directly to children and young people and which aim to plug the gap left by the organisations which focus on the child only in family proceedings. Examples include: The National Youth Advocacy Service, which provides advocacy and legal representation (among other things) to children, young people and vulnerable adults, including in respect of issues of homelessness; and Coram Children's Legal Centre, which provides free legal information and advice (primarily via a helpline) and also free representation to children and young people (as well as others in their lives) who qualify for legal aid.

If a street youth has limited or no access to the internet however, it may be difficult for them to access resources which provide them with information about the services available to them.

Access to the courts
Separate regimes exist in respect of family court proceedings involving children, criminal proceedings and general civil proceedings involving children.

Family proceedings
The Family Courts in England handle a variety of cases, primarily involving adoption proceedings, parental disputes, divorce etc. However, the Family Courts also deal with local authority intervention to protect children, which could have some application to street youth. If a child wishes to apply to the court for an order under the Children Act 1989, including to vary or discharge an existing order (e.g. a contact order), they must obtain the permission of the court before making such an application. The rules of procedure are set out in the Family Procedure Rules 2010, the objective of which is to enable the court to deal with cases justly, having regard to any welfare issues involved. Homelessness is not specifically addressed.

The Children and Family Court Advisory Support Service ("CAFCASS") is responsible for child welfare in the family courts in respect of public law (e.g. care or supervision orders for a child) and private law proceedings.
(e.g. divorce). However, CAFCASS is focussed on children who are still within some form of family unit or who will instead be put into 'care', unlike street youth who may have formally or informally severed ties with their family, or have no family to speak of and will also not be living in care.

Civil proceedings

Part 21 of the Civil Procedure Rules of 1998 (the "CPR") governs the involvement of children in civil proceedings (either brought by or against the child). In such proceedings, a child must have a 'litigation friend' to conduct the proceedings on their behalf. However, if a child wishes to conduct civil proceedings without a 'litigation friend' they can make an application to the court for permission to do so. Even if a child is given permission to conduct their proceedings, the court may later decide to appoint a 'litigation friend' for them. The appointment of a 'litigation friend' automatically ceases once the child in question turns 18.

At the first instance (and unless a child has been granted an order to proceed without a 'litigation friend'), in situations where the child would be a defendant, the claimant may not make any application against a child or take any steps in proceedings (other than issuing and serving a claim form) until a 'litigation friend' has been appointed. The court retains oversight over 'litigation friends' at all stages and has the ability to prevent someone acting as a 'litigation friend' and terminate or substitute an existing appointment.

If a street youth chose to act for themselves in proceedings, there could be difficulties in the service of documents on them (by the court or by the other party(ies)), as a litigant must have an address for service of documents during proceedings. The CPR contains specific rules of service where a 'litigation friend' is involved - the claim form must be served on a parent/guardian/an adult with whom the child resides or is in the care of and all other documents must be served on the 'litigation friend'. The normal rules of service apply to those children who conduct the proceedings themselves. Documents must be served on an individual by leaving it with that individual, which would be difficult to achieve with a litigant who is a street youth. The provisions in the CPR concerning children are designed to give greater protection to children compared to ordinary litigants. The ability to apply to conduct proceedings on their own behalf also gives children a degree of autonomy. However in the case of a street youth, it is difficult to see how they could participate in proceedings other than with a 'litigation friend', as service of documents upon them would be very difficult, if not impossible to achieve.

Criminal proceedings

The Police and Criminal Evidence Act 1984 (PACE) provides that children arrested on suspicion of committing a crime are entitled to legal representation during interrogation and trial (if the case proceeds). Legal aid is also available for those who are tried in an adult criminal court.

The Youth Justice and Criminal Evidence Act 1999 (the "YJCEA") provides protection for children accused of committing offences or who act as witnesses in criminal cases. It also provides that all individuals at whatever stage of criminal proceedings are competent to give evidence, unless they are unable to understand the questions put to them as a witness or to give answers which can be understood. This will be assessed by the court.

Children are not required to swear an oath unless they are 14 and have a sufficient appreciation of the solemnity of the occasion and of the particular responsibility to tell the truth. Testimony given by under 14 year olds is always unsworn. The YJCEA also provides for witnesses under 17, other than the defendant, to be eligible for special measures to help them with giving evidence in criminal proceedings. These special measures include the use of screens in the court room and the absence of wigs and gowns for example. There are no specific provisions which address concerns that street youth may have. However, the criminal process generally contains significant procedural safeguards for children involved in criminal proceedings.

6. Conclusion

Broadly speaking, the framework for basic human rights for a child in the UK is fairly robust, though as we describe above, there is potential for improvement to plug some of the gaps between the existence of human rights (and the moral "spirit" underpinning those legal rights), and the way that such rights are realistically
exercised on a practical every-day basis. In this chapter, we have not covered all the human rights of a child and have focused only on a particularly pertinent aspect of basic human rights which can be viewed as a platform for many other human rights for a child - the rights to act as an independent person. We have explored the ways that a child can be prohibited by the policies set by certain financial or local council authorities in situations surrounding a child's ability to enter into contracts, access prescribed medicines, or benefit from Government assistance such as Child Benefits where they attempt to do so independently without the consent of a parent or guardian. Many of the problems we have highlighted in our section arise from a tension that legislation and policy designed to protect child welfare can inadvertently have the effect of creating a barrier for children acting independently and exercising their right to do so. Whilst there is a clear positive intention to preserve basic human rights for children in the UK (including by allowing children to access the courts and begin proceedings), it may not necessarily match with the practical realities of how street youth actively exercise those rights.
Sources

Websites

1. Coram Children's Legal Centre ([http://www.childrenslegalcentre.com](http://www.childrenslegalcentre.com))
2. Civil Liberties and Human Rights – Helen Fenwick
4. Family Law Week ([www.familylawweek.co.uk](http://www.familylawweek.co.uk))
6. Gov.UK ([www.gov.uk](http://www.gov.uk))
13. Websites of high street banks, including Barclays, Lloyds, HSBC and Santander
14. Websites of major retailers, including Dixons, Tesco, Amazon

Legislation (as amended where applicable)

1. Age of Legal Capacity (Scotland) Act 1991
2. Children Act 1989
5. European Convention on Human Rights 1950
6. Family Law Reform Act 1969, s1
8. Law of Property Act 1925, s1(6)
10. Police and Criminal Evidence Act 1984
11. Road Traffic Act 1988
14. Universal Declaration of Human Rights 1948
15. Youth Justice and Criminal Evidence Act 1999

Cases

1. *Association X v UK Application No 7154/75 14 DR 31* -(Article 2 claim)
2. *Barnes & Co v Toye [1884] 13 QBD 410* – vendor still bound even if did not know purchaser was a minor
4. *Gillick v West Norfolk & Wisbeck Area Health Authority [1986] AC 112 House of Lords*
6. *Nash v Inman [1908] 2 KB 179* – burden on vendor to show contract was necessary
7. *Peters v Fleming (1840) 6 M & W 42* – test for necessaries is subjective
8. *Southerton v Whitlock 93 ER 786*; *Williams v Moor 152 ER 798* – ability for minor to ratify an agreement once he/she reaches 18
10. *X v Denmark (1983) 32 DR 282* – (Article 3 claim)
Street Youth Pro Bono Project

Report on Minority Groups

First Draft

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25/03/2015
Contents

Introduction .................................................................................................................................................. 24
Ethnical / Racial Groups .......................................................................................................................... 24
Disability .................................................................................................................................................... 26
Lesbian, Gay, Bisexual, and Transgender (LGBT) ................................................................................ 28
Conclusion .................................................................................................................................................. 29
Introduction

Under the United Nations Convention on the Rights of the Child, Member States have agreed under Part 1 Article 2 to respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, social or ethnic origin, property, disability, birth or other status.

Research conducted by De Montfort University and Universities of Bristol and Derby on "Understanding the Impact of Connexions on Young People at Risk" for the Department of Education and Skills, showed many of the young people in their survey sample group had multiple or inter-related risk conditions or behaviours. This is shown below on Street Youth.

Looked After / Homeless

<table>
<thead>
<tr>
<th>Number of Risk Factors</th>
<th>Percentage of Sample</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>16.1%</td>
</tr>
<tr>
<td>2</td>
<td>21.5%</td>
</tr>
<tr>
<td>3</td>
<td>15.1%</td>
</tr>
<tr>
<td>4</td>
<td>14%</td>
</tr>
<tr>
<td>5</td>
<td>33.3%</td>
</tr>
</tbody>
</table>

The Risk Factors for the above table can be connected in any combination.

These Risk Factors are:
- Parent / Carer
- Disability / health problems
- Asylum seeker / refugee
- Substance misuse
- Offending
- Emotional / Behavioural problems
- Underachiever
- Learning Difficulties & Disability / Special Educational Needs
- School resisting

Ethnical / Racial Groups
Over 10% of the population in the UK belong to an ethnic minority. 'Street Youth Ethnic Minority Groups' can be vulnerable to social aversion. This could lead to bullying, violence, gang crime, and unfair justice, as their racial origins are discriminated against. The UK continues to push for better racial equality. Racial equality is promoted for children and youths by schools, legislation, social welfare, social policy, and youth charities. They are taught and protected, through the understanding of racial diversity and the acceptance of racial and cultural differences of people in society.

In UK, laws protecting the rights of children and youths belonging to different racial backgrounds are broad enough to apply not only to children and youths but adults as well. To ensure fairness and equality is maintained and upheld in ordinary society, youths of a minority race are largely protected against discrimination by the Equality Act 2010. The Act operates through protected characteristics, and if these are shown to have been threatened in any way it could mean a contravention of the legislation.

Subject to limited exceptions, discrimination, harassment and victimisation is prohibited in the provision of services, premises, employment, associations, and education. This explicitly includes admission of children to schools and higher education establishments.

There is legislation to protect children and youths from such racist bullying, both online and offline (see the Protection from Harassment Act 1997 and Section 1 of the Malicious Communications Act 1988). Sending a communication which is grossly offensive and has the purpose of causing distress or anxiety is construed as an offence.

The growth of racial minority groups in UK, from asylum seeking and migration, has meant an increase in racial diversity in communities, which has led to some children and youths becoming more susceptible to racism. The government's Fifth Periodic Report to the UN Committee on the Rights of the Child re-emphasises the importance of the Equality Act 2010. Romany, Gypsies and Irish Travellers are expressly protected by the Equality Act 2010 (including the law as it applies to schools).

The reassertion of fairer and equal rights for children and youths of all origins enhances the UK's ever-increasing awareness for racial equality and changing diversity in communities.

A child or youth of any race in the UK should have the same equal rights as any other person and therefore should not be prohibited or racially discriminated against in everyday ordinary life, in any institution or authoritative body.

Although there is recently updated law providing protection against racial discrimination for children and youths, the principles upheld in the Equality Act 2010 and UNCHR, particularly when it comes to children and youths, are not so easily understood. The results of this can be bullying in schools or on the streets, and differential treatment in the justice system. These are not examples of a lack in their rights, but an example of the disproportionate infringement of their rights, which are already set in place by law and social policy.

Whilst there is a strong political drive for better integration amongst communities, ethnicity can still be an important factor in many people's social networks. A 2010 report by the Department for Communities and Local Government showed nearly half the population of England do not have friends from other ethnicities.

Despite the study being carried out in 2010, a report on Differential Treatment in the Youth Justice System by the Equality and Human Rights Commission (Spring 2010) is still relevant in producing insight into the injustices against youth offenders of minority racial groups. This report reflects on the negative treatment young racial minorities receive as young offenders, and highlights contraventions of the Equality Act 2010.

The concern for young offenders to have fairer justice is significant in this study and identifies a disproportionate treatment of those young offenders belonging to Asian, African, or Caribbean descent. In addition, there has been concern that "stop and search" orders are disproportionately used against racial minority groups, which includes children and youths.
Disability

The Equality Act 2010 defines disability as "a physical or mental impairment that has a 'substantial' and 'long-term' negative effect on your ability to do normal daily activities." The Equality Act 2010 and the corresponding guide go on to define what is meant by 'substantial' and 'long-term' but as soon as you have found these definitions, they cross-reference to other sections which also need to be taken into consideration. This could be confusing especially in relation to mental impairment because the person has to meet the criteria defined as disabled, under the Equality Act.

The British Youth Council in their iGuide to Disability Discrimination clarifies what being disabled means. A disabled person might have an impairment such as: difficulties walking, seeing or hearing; a long term illness; learning difficulties or a mental health problem. A person is classified 'disabled' because there are barriers in society which exclude them from taking part in different activities, services and opportunities. Having a definition that is more easily accessible and understandable is a benefit to both the affected youth members and people/organisations that are trying to assist and offering services to the youth members. Youths benefit under the Equality Act 2010 as organisations are required to make changes to their services, and offer extra support, so that these services can be used by people with a disability. This shows growing awareness in services and the impact it has on disabled youth members benefiting from these services.

The Department for Children, Schools and Families have estimated that there are approximately 770,000 disabled children in the UK and that evidence suggests that disabled children & young people and their families do face discrimination and that they have difficulty using local services.

A number of factors can put young people at risk of becoming homeless, by circumstances like a housing crisis or eviction; family disputes; relationship breakdown; leaving school or other institutions; risk of abandonment. Other associated welfare factors include, exclusion from school; a lack of coping or practical skills; learning disabilities; anti-social behaviour; mental ill-health; substance misuse; and a history of sleeping rough or running away.

Some of the welfare factors raised by Connexions on Young People at Risk fall into the classification of disability, and these young members may have a disability which is the underlying reason behind some of the other factors. An example of this would be a young member who could have a learning disability which is not recognised, they are truant and misbehave, eventually getting themselves expelled from school, and the likely reason given is truancy and misbehaviour. The young member therefore is not getting the support and assistance required for a learning disability. This points towards a lack of understanding and knowledge about where to get the support, and also for the underlying issue to be recognised in the first instance.

The longer the timeframe is before the young members are able to get the support they need, the more the increase of issues that have to be dealt with by organisations offering support and advice to young members. Common issues are:

- Trust and orientation
- Making contact and identifying needs
- Referral routes and inter-agency communication
- The need for follow up

The organisations offering support to young members at risk or those already street youth who have a disability will need to have additional or specialist education and training to raise awareness and work closely with specialist and community agencies.

According to Homeless Link, 52% of people seeking help with homelessness are under the age of 25. More than half of homeless youths under 25 are seeking help for mental health problems, learning disability, substance misuse and/or offending behaviour.
The issues facing young members are complex and underline the need for effective support to help them leave the streets behind.
Lesbian, Gay, Bisexual, and Transgender (LGBT)

Sexual orientation and gender reassignment are protected characteristics under the Equality Act 2010. The first characteristic aims to protect against discrimination of individuals who are physically, romantically and/or emotionally attracted to those of the same gender or to either gender. The second characteristic is to protect against discrimination of individuals who want to, are in the process of or have already reassigned their gender by changing physiological or other attributes. Protection of all other transgender individuals (people who do not want to go through a full transformation but for whom their gender expression differs from the sex they were assigned at birth) should be reinforced.

The LGBT group is a minority in the UK (in 2012, 2.6% of 16-24 identified themselves as gay or lesbian). A recent survey conducted by Albert Kennedy Trust suggests that the proportion of people identifying themselves as LGBT is rising amongst the young homeless population (up to 24% of the homeless youth population in the country). The report suggests that many of the homeless young LGBT community are homeless due to parental rejection.

In order to decrease the number of LGBT homeless, the authorities’ effort is focused today on promoting housing access for the LGBT population. The Council of Europe recommends EU Countries to take appropriate measures to ensure access to adequate housing without discrimination on grounds of sexual orientation or gender identity specifically for LGBT people, including young people and children. The Council of Europe recommends the relevant social services to provide objective assessment of the needs of every individual, without discrimination. Within the UK, the Government Equalities Office has published two action plans in 2011 to help LGBT people access housing. Though the recommendations are not specific to the youth population, there should be encouragement for fairer access to housing for the LGBT community.

One way to prevent parental rejection is to provide information to families on the LGBT youth. This can be through teachers providing easy and free access to discussion groups, or to ensure better representation of marginalised groups in local councils and promote recognition of the LGBT population and their rights outside major cities.
Conclusion

The Equality Act 2010 has consolidated and updated previous legislation in the UK to advance the understanding and importance of equality, including racial equality, disability equality and LGBT equality. Public bodies and institutions also assist in advancing this understanding and importance, such as, social welfare, youth charities, and schools. However fairer justice for minority groups is paramount. Better education on awareness can be provided. Whilst the legal rights are there, the important focus now should be on ensuring those legal rights are effective and properly enforced.
1. Introduction

1.1 There is an obvious dichotomy between encouraging children to remain in some form of full time education or apprenticeship scheme until they reach 16 or 18 years of age, and allowing or otherwise facilitating the employment of those children who need to earn a living in order to support themselves or others. It is of course laudable to seek to protect children from exploitation through child labour, however, particularly in the UK, this is less of a practical concern compared with less developed jurisdictions, especially those whose economies are heavily reliant on manufacturing or agricultural industries where long, labour-intensive days of hard and often dangerous work may be all that is available for those seeking to earn a living.

1.2 It is important to have legislation in place to prevent the exploitation of children in the workplace. However, it is an unavoidable fact that there are a great many street-involved and/or homeless young people in the UK. When a child has been let down by their family and has not been caught by the local authority safety net (or, perhaps, only noticed when it was too late), there is little support for them outside of the over-stretched and under-funded charitable sector, whose resources vary hugely from one area to another. At present, the restrictions on youth seeking employment, especially when they have no fixed abode is damaging those individuals' chances of successfully re-establishing themselves in society and standing on their own two feet. Early school leaving remains a problem throughout Europe and further thought needs to be given to how to best encourage and support young people to remain in education or training in order to equip them with the tools and skills they need to support themselves through employment in later life and avoid being trapped in a cycle of homelessness and street crime.

2. Legal Restrictions on the Employment of Children

2.1 There is currently a legal distinction between a 'child' and a 'young person', with restrictions on employment applying mostly to children:

(a) A child is any person who is not over compulsory school age, i.e. he has not reached the end of the academic year following his 16th birthday;

(b) A young person is any person who is over compulsory school age but under the age of 18.

However, this distinction is likely to change when the compulsory school age is increased to 18 years old: young persons might be subject to restrictions similar to those that apply to children aged 15 and 16.

2.2 English law provides a graduated approach towards child employment:

(a) It is prohibited to employ children under the age of 13 years old, with limited exceptions for sports and modelling;

(b) Children aged 13 are permitted to engage in part-time 'light work', however they may only do so if local bye-laws provide for this, which many do not. Where permitted, their employment is
subject to certain restrictions set out in the Children and Young Persons Act 1933 ("CYPA"). For example, they may not work:

(i) Before the close of school hours;
(ii) Before 07:00 or after 19:00; or
(iii) For more than two hours on any day on which they are required to attend school or on a Sunday;

(c) Children aged 14 years old may take part in 'light work' without local bye-law approval, subject to the same restrictions under the CYPA as for children aged 13;

(d) Children aged 15 and 16 are permitted to work, subject to lighter restrictions, for example they may not work for more than two hours on a school day.

2.3 The above restrictions are in accordance with Articles 28 and 32 of the UN Convention on the Rights of the Child 1989 (the "UN Convention").

3. Legal Restrictions: Help or Hindrance?

3.1 In order to meet basic living costs, children are sometimes forced to leave education before reaching compulsory school age to join the workforce. As a result of the above restrictions on employment, they often find it difficult to obtain employment and secure a wage. Though intended to protect the child against economic exploitation, such laws sometimes prevent children from gaining employment where it is desperately needed. As one 10-year-old street vendor put it: "it would not be right to restrict children from working because they would not get money".

3.2 Indeed UNICEF, which champions children's rights, recognises the merits in allowing them to work, provided the tasks undertaken are "nothing more sinister than dropping newspapers through letterboxes, clearing café tables or shampooing hair". In such cases, children earn a much needed wage, as well as "learning how to operate in the adult world, and gaining independence and some sense of responsibility".

4. Practical Restrictions

4.1 Even where children are permitted under English law to work, they may still face obstacles due to their homelessness and related issues, for example:

(a) There is a concern that, without a permanent home address, it would be difficult for them to secure formal employment. In order to receive government Income Support, one does not require a home address: someone who sleeps rough or lives in a care home may still claim. However, the lack of a permanent residence can present an obstacle for a person seeking employment.

(b) Youth who have been involved with substance abuse may struggle to find employment, where such activity is noted on academic and local authority records.

5. Proposals for Reform

5.1 UK legislation and regulations would benefit from reform, to shift the balance between on the one hand protecting children and promoting education, and on the other permitting child employment, subject to carefully considered safeguards, where there is no other choice.

5.2 Proposals for reform range from encouraging full-time education to permitting full-time employment, and include:
(a) Financial incentives and similar measures to encourage children to remain in full-time education. Such measures are likely to be feasible only in the long-term; 

(b) The introduction of 'non-formal education', which permits children to divide their time between education and work. Such a scheme is seen to be more achievable in the short- to medium-term;

(c) The Department for Education has contemplated providing children below the compulsory school age with full "adult working rights". Children would be issued with a national insurance number, and would benefit from requirements such as the National Minimum Wage.

5.3 Whichever proposal is adopted, it is recommended that measures are taken to continue to ensure that children are not exploited for their labour:

(a) Steps can be taken to inform children of their rights under the UN Convention, because "with an awareness of their rights, and the resultant recognition that they have a choice in the matter, young people should feel more empowered to avoid, or extricate themselves from, exploitative situations."

(b) The system of regulating child employment can be simplified and standardised:

(i) The ability at present for each local authority to decide and implement its own restrictions on child employment creates a patchwork of regulations, with much "variation" and inevitable "confusion". 

(ii) It is proposed that the central government assumes the responsibility for such regulation and creates a national framework, which local authorities retaining an administrative function.

(iii) It is believed that such measures will benefit children by setting a minimum standard across local authorities without discouraging or preventing employment.

5.4 There appears to be no solution at present for children who struggle to obtain formal employment due to a lack of a permanent address.

6. Legal age requirements for education

6.1 Until 2013, compulsory schooling was applicable to children between the ages of 5 and 16 in the UK. In 2013, it became a requirement that all children be engaged in some form of education and/or training until the age of 17. That was extended to 18 in 2014.

6.2 The options for children between 16 and 18 are:

(a) full-time education (e.g. at a school or college);

(b) an apprenticeship or traineeship; or

(c) part-time education or training, as well as being employed, self-employed or volunteering for 20 hours or more a week.

6.3 The government introduced this extension of the leaving age to 18 on the strength of research showing that young people who carry on learning or training until the age of 18 earn more money, are likely to be healthier and less likely to be in trouble with the police.

7. Homeless children

7.1 Homelessness, or living in temporary or bad housing can have a profound impact on a child's education. Moving from place to place can disrupt their schooling and living in poor or overcrowded housing
conditions also affects a child's ability to learn. That can have a lasting impact on a child's chances of succeeding in life.

7.2 Homeless children are 2-3 times more likely to be absent from school than other children due to the disruption caused by moving into and between temporary accommodation. Poor accommodation also means that children are more likely to contract illnesses and infections, which mean that they miss school more frequently. And homeless children are more likely to have behavioural problems such as aggression and hyperactivity, which affect their ability to perform in school and form relationships with staff and other students.

(a) Family

Homeless children who stay with their families can face many problems with their education. The charity Shelter has released several papers highlighting case studies of those affected. It is common for the children affected to regularly move from school to school, often across different local authority catchment areas, for a number of reasons.

First, if the family's new accommodation is far away from the previous school, it is unlikely that the children will continue to attend the school that they were previously enrolled in. Second, schools may not have up to date contact information for the family, meaning that keeping track of the family can be difficult. Third, sometimes homeless children refuse to return to schools due to embarrassment at their social situation.

A combination of these factors make it extremely difficult for homeless children to stay in the schooling system. Charities such as Shelter carry out excellent work to help homeless children and families stay in or return to the UK schooling system. Sadly, however, many children fall through the net.

(b) No parent/guardian

Section 20 of the Children Act 1989 sets out that a homeless child with no parent or guardian must be provided accommodation by the local authority. The child becomes a "looked after child" ("LAC"), and the local authority becomes its corporate parent. The local authority must ensure that the LAC receives support and services that promote his/her overall wellbeing (including accommodation and education).

Some LACs succeed under this programme. However, LACs face many personal and emotional problems which can mean that staying in education is difficult. Shelter have experienced many examples of children who have had problems settling into foster families or other accommodation, and in some cases have gone missing. Depending on the age that the LAC is taken into the care of the local authority, he/she may have not made the same progress at school as other children his/her age. Shelter note that this is a common problem, and sometimes these children become disruptive and abusive towards teachers in order to distract attention away from the fact that they cannot read or write.

The budgets of local authorities have been cut in recent years. This has made the job of securing and maintaining accommodation and education for LACs very difficult.

7.3 Local authorities have statutory duties to provide sufficient school places for all children in their area. However, many homeless children do not stay in school. Homeless children are much more likely to face bullying, unhappiness and stigmatisation. If children fall out of the schooling system due to homelessness, especially if that is at a young age, they can face a myriad of issues which cause difficulties in later life.
8. **Incentives to remain in education**

8.1 The education maintenance allowance, or EMA, was abolished in England in 2010. In its place in 2011 came 16-19 Bursaries, which aim to support children aged 16-19 who are studying at school or college, or on a training course (including unpaid apprenticeships). However, the application for such financial support must be made through a school, college or training provider. Therefore, if an individual has already fallen through the gap and left school, or been unsuccessful in obtaining a place at college or on an apprenticeship scheme then the access to any financial support falls away.

8.2 Research shows that financial incentives do work. However, the 16-19 Bursaries alone do not reach or apply to a sufficient proportion of those who could benefit from such incentives. There is scope for more to be done to support those still in education, and to try to avoid young people truanting from school and turning to street crime or substance abuse.

8.3 In addition to financial incentives, it is important to recognise the value of education itself in encouraging those who may be considering leaving home or becoming disengaged with school to remain in education and/or seek the help or support they need. Pastoral care in schools is a vital resource, that when coupled with education around homelessness, substance abuse and street crime, can be effective in discouraging youth to become street involved. However, if that information is not provided to them, some individuals may feel they have no other way out of the situation they are currently struggling with.

9. **Comment**

9.1 Whilst the current situation in the UK is more favourable than many other countries, there remains a problem of unequal access to resources and opportunities according to class, education, region, gender and ethnicity, with the persistence of structural inequalities. There is a strong preventative role in education for greater knowledge to assist young people who may be vulnerable to becoming street involved or homeless, for them to have access to the resources that are currently available. Mentoring within schools and an emphasis on the availability (and confidentiality) of pastoral care could support PSHE (Personal, Social and Health Education) lessons to highlight the reality of leaving home at a young age.

9.2 There is good reason to further the debate surrounding what more can be done to assist young people who are or are at risk of becoming disengaged with or otherwise unable to access education or gain employment. A valuable resource in engaging the current young homeless population is to ensure that the Youth Homeless Parliament ("YHP") is involved in future discussions, including at Governmental policy level. The YHP is funded and supported by the Department for Communities and Local Governments and managed by St Basils homeless charity. By ensuring that future considerations on how to practically support the youth homeless and street involved community by way of increased support for and access to both education and employment opportunities, it is more likely that any regulatory reform pursued will have a greater chance of success and result in real tangible change for those who need it most.
Appendix - Source Material

1. Primary Sources
   - Children and Young Persons Act 1933
   - Children Act 1989
   - Education Act 1996
   - UN Convention on the Rights of the Child 1989

2. Secondary Sources
   - Employment of children, Practical Law Company: http://uk.practicallaw.com/6-500-2350
   - Government information on 16-19 Bursaries: https://www.gov.uk/1619-bursary-fund/overview
   - Income Support: https://www.gov.uk/income-support/eligibility
   - The Youth Homeless Parliament: http://youthhomelessparliament.co.uk/

3. Endnotes
   2 http://www.nspcc.org.uk/preventing-abuse/child-protection-system/england/referrals-investigations/
   4 Clarke, Hall and Morrison on Children, Division 6
   6 CA 2004, s. 11.
   7 Children (Leaving Care) Act 2000.
   8 It has been recorded that the average age of a trafficked child is 16-17: 1st Annual Report of the Inter-Departmental Ministerial Group on Human Trafficking, Oct. 2012.
   10 Children First’, para. 129.
   11 Children First’, para. 75.
   12 Children First’, para. 137.
   13 Children First’, para. 143.
   14 Children First’, para. 76.

‘Children First’, para. 79.


‘Children First’, para. 86.

‘Children First’, para. 106.

‘Children First’, paras 88-89.

‘Children First’, para. 146.

‘Children First’, paras 90-92.

‘Children First’, para. 76.


Forced Marriage Unit – Statistics January to December 2013.

Children Act 1989, c. 41, sch. 2.

Applicable Laws:


- Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, entry into force 11/19/2000, I.L.O. No. 182

- Children and Young Persons Act 1933 – restricts use of children in employment.

- Employment of Women, Children and Young Persons Act 1920, which prohibits the employment of children in any “industrial undertaking,” including mines and quarries, manufacturing industry, construction, and the transport of passengers or goods by road, rail, or inland waterway;

- The Offices, Shops and Railway Premises Act 1963, which provides that no young person may clean machinery if to do so would expose him to risk of injury;

- The Betting, Gaming and Lotteries Act 1963, which prohibits the employment of persons under eighteen in effecting any betting transaction or in a licensed betting office;

- The Licensing Act 1964, which prohibits the employment of children in the bar of licensed premises;

- the Licensing (Occasional Permission) Act 1983, which prohibits any person under eighteen from selling or serving alcohol in premises authorized under the Act (paragraph 5(1) of the Schedule);

- The Merchant Shipping Act 1970, by virtue of which no person under minimum school leaving age may be employed on a ship registered in the UK, except as permitted by Regulations made under the Act; and

- The Manual Handling Operations Regulations 1992, which prohibit children from handling any heavy load which is likely to cause injury to them.

- The Prevention of Accidents to Children in Agriculture Regulations 1998 SI No.3262 prohibit the riding by a child on certain classes of vehicle or machine used in agricultural operations.


DrugScope, ibid.


International Street Youth Project  
Group B: Child Welfare

1. Introduction

1.1 This chapter will summarise the legislative system of child welfare system in England and examine the extent to which the current system addresses, both through dedicated legislative provisions and in practice, three particular problems facing street youth, namely:

(a) Older youth, aged around 16 and 17, who often find themselves ignored by the welfare state despite their particular vulnerability;

(b) Child labour, forced marriage and child trafficking and exploitation; and

(c) Chemical use disorders, substance dependency and the accessibility of treatment for young people.

1.2 Unless otherwise indicated, the scope of this section of the note has been limited to the child welfare system in England on account of the different systems in place across the UK. The key themes and general approach is broadly similar across the UK.

2. Overview of the child welfare system

2.1 The child welfare system in England is underpinned by certain landmark legislation, namely the Children's Act 1989 and the Children's Act 2004, which work in conjunction with one another.

2.2 The Acts are at the core of the legal safety net which is in place for children in need and underpin various regulations and items of statutory guidance which are more practical in nature and set out what is expected of the relevant authorities from a child welfare perspective. In line with the provisions of the United Nations Convention on the Rights of the Child, the child is at the core of decisions made in respect of their welfare.

2.3 As with many other issues which fall under the umbrella of child welfare, much relies on a child being identified as being in need. Without a child's situation being assessed and the authorities being made aware that a child is at risk, there is a limited amount that can be done.

Child welfare services

2.4 At the top of the chain of child welfare services is the Department of Education, which is the governmental department with responsibility for child welfare. Direct responsibility for the provision of child welfare services lies with local authorities (LAs) who are responsible for planning and providing child protection services. There is a Local Safeguarding Children's Board (LSCB) within each LA which ensures that the key agencies involved in safeguarding children work together efficiently. The membership of each LSCB is comprised of members of the LA and police. There is also a Director of Children's Services (DCS) in each LA who is professionally accountable for the delivery of services and an elected councillor who is designated as the lead council member in respect of children's services. The DCS, lead member and LSCB are responsible for producing and implementing the various procedures in place for professionals working with children.

2.5 It is important to remember that the police have an key role in child welfare. Often they are the first port of call when concerns are raised about the welfare of a child. The improvements made to the system in recent years have been made with the ultimate aim of ensuring that the various authorities and responsible bodies work together more efficiently.
2.6 For children in immediate danger, the following types of action can be taken, by either the court or the police:

(a) Emergency protection order – immediately removes a child to a place of safety;
(b) Exclusion order – removes the abuser from the family home;
(c) Child assessment order – a social worker will assess the needs of the child if they cannot get consent from the parents or carers; and
(d) Removal by the police – the police can remove a child to a safe place for up to 72 hours without having to obtain a court order.

2.7 If the LA considers a child to be at risk of serious harm they may arrange for the child to be put into care. Various other court orders may be sought at this stage (e.g. a care order under which the LA will take on parental responsibility for the child) and granted if the court is satisfied that the necessary requirements have been met.

Care

2.8 Residential children's homes may be run by the LAs themselves, voluntary service providers or private sector providers. Two-thirds of residential children's home are owned by voluntary or private sector providers. Children may also be placed with foster parents and/or adopted. Many children will spend the majority of their lives under LA care in one or more residential homes.

Wardship

2.9 In addition to care services provided by LAs, there exists in English law the concept of wardship. This has its origins in the ancient concept of *patriens patriae* under which the monarch has ultimate responsibility for the safeguarding of their subjects. In modern times, this duty belongs to the Court of Chancery. Any decision made regarding a child who is a ward of the Court requires leave of the Court. This concept is one of the reasons why the CA 1989 came into force. Prior to its entry into law, local authorities had made use of wardship in order to care for children in need. The CA 1989 explicitly makes wardship and local authority care incompatible. Wardship is still made use of in certain circumstances, particularly where there is a cross border dimension - for example, in cases of international child abduction.

3. Older youths

3.1 In theory, in the child welfare system a ‘child’ is considered to be anyone who has not reached his or her eighteenth birthday, irrespective of whether he/she is living independently, in further education, caring for others, in hospital, in the armed services etc. Accordingly, the full gamut of legal rights available under the CA 1989 and 2004 and other legislation apply to 16- and 17-year-olds just as much as they do to younger children. For example, the statutory duty on local authorities to “safeguard and promote the welfare of children in need” applies up until such children’s eighteenth birthday. In addition, local authorities in England & Wales must keep in touch with children who have left care until they reach at least the age of 21.

3.2 Many sources have, however, recorded a difference between law and practice. Recent studies have shown that vulnerable 16- and 17-year-olds have a particular range of child welfare needs and yet are often worryingly overlooked by the child welfare system, with the nature and impact of abuse and neglect on older children is often poorly understood and not fully appreciated. This means that older youth pushed out of their homes do not always have access, or understand that they have access, to the same services as other age groups.
**Particular forms of abuse**

3.3 Studies indicate that children are especially exposed to risk of drug and alcohol misuse, educational difficulties, mental and emotional health problems, alienation from families, domestic abuse, trafficking and forced marriage. It has also been noted that many of these issues—in particular forced marriage and trafficking—are often seen primarily as problems of social integration of communities and only secondarily as child abuse.

3.4 A particular concern is that older children who have suffered years of abuse and neglect tend to accept their situation and thus are less likely to seek help. Similarly, older children may be particularly reluctant to seek help because they mistrust the relevant authorities or fear what might happen as a result of a complaint—or that nothing might happen. This is coupled with a general lack of awareness of where to find support.

**Attitudes to older children**

3.5 It has been noted that childcare professionals may perceive older children as more resilient and thus less a priority for social care; or, conversely, any particular difficulties in dealing with older children may be wrongly attributed to behavioural problems rather than to an underlying, and often longstanding, history of abuse or neglect. Consequently, older children are significantly less likely to be seen as victims, because any evidence thereof is either overlooked or unfairly used to blame the child in question.

3.6 A particular lacuna identified by the House of Commons Education Committee is teenage relationship abuse, which is not generally seen as a child protection issue or domestic violence.

**Gaps in the system**

3.7 It has been commented that young people between the ages of 16 and 18 often fail to receive the help they need because they fall between adult and children's services. Instead of a consolidated approach directed at their specific needs, older children tend on average to experience a greater range of services than their younger counterparts, which may also include criminal-law elements such as youth offenders' and probation services. This fragmentation of support often means that there in no single adult who understands the full picture of the child’s needs or is willing to stand up for the child’s best interests.

3.8 The tendency to mischaracterise older children’s problems as meriting a criminal response manifests itself in a number of ways. A particular example is how trafficked children can be treated as immigration offenders first and abused victims second. A similar issue is that many older children who seek asylum are wrongly identified as adults by the UK Border Agency, resulting in detention rather than assistance.

3.9 More generally, older foster-children typically experience a series of placements and are rarely considered for adoption, special guardianship or residential care; consequently, young people often find themselves in a hostel or similar accommodation.

3.10 While independent advocacy services are available to looked-after children with capacity and other mental health issues, these are not usually an option for other children in the care system.

3.11 A final ‘gap’ in the child welfare system for older children occurs when they leave care. Organisations have commented that greater monitoring is required of looked-after children at the moment they leave the social care system and have criticised local authorities for poorly assessing their accommodation needs.

3.12 Perhaps as a result of many of the above factors, the child protection system does not necessarily meet the needs of older young people.
4. Forced, child, forced marriages and commercial sexual exploitation and trafficking

4.1 Although associated with developing countries, child labour is prevalent across the UK in various forms and is closely linked with child trafficking and commercial sexual exploitation. Likewise, forced marriage is most prevalent in the developing world, however there is increasing evidence of occurrence in the UK. The number of British children being forced into marriage is hard to gauge, as these marriages are not usually officially registered, but recent statistics indicate that 40% of calls to the Forced Marriage Unit’s helpline during 2013 were regarding the marriage of children 17 years old or younger. Although published statistics showing the number of children on the street as a result of a forced marriage are hard to find, there is plenty of anecdotal evidence to suggest that this is an emerging issue in the UK.

4.2 The statutory framework for the basic protection of children once in England and Wales is provided for through the Children’s Acts. The CA 1989 places a general duty on local authorities to prevent children in their area from suffering ill treatment or neglect by ensuring services are provided for them and to investigate any situation where a child in their area is subject to an emergency protection order; is in police protection; or if there is reasonable cause to suspect that the child is suffering or likely to suffer from significant harm. The United Kingdom is also party to numerous treaties regarding the rights of children and there are extensive laws and regulations regarding child labor and exploitation in England and Wales. The prohibition of trafficking in children is addressed through a number of Acts of Parliament, notably the Immigration Act 1971 (the facilitation of illegal immigration); the Asylum and Immigration (Treatment of Claimants) Act 2004, (which introduced a new criminal offence of trafficking people into, within or out of the UK for the purposes of exploitation); and the Sexual Offences Act 2003 (where the maximum penalty for trafficking for the purposes of sexual exploitation is fourteen years imprisonment). Up until 16 June 2014, the courts were only able to issue civil orders to prevent forced marriage, but under the Anti-Social Behaviour, Crime and Policing Act 2014 (Part 10) forced marriage has been criminalized and carries a maximum penalty of five years in prison.

4.3 Despite the wealth of legislation designed to provide children in this country with the essential rights and protections against the worst forms of exploitation and abuse the general consensus amongst charities and campaigning bodies is that the law in this area is complex, difficult to decipher and largely inaccessible to the child victims who need to rely on them.

5. Chemical abuse and substance dependency

5.1 In 2012, a third of the youth homeless were recorded as being dependent on alcohol, while the figure increases to 40% for those with a drug dependency.

Legal framework

5.2 The UK has devolved power to England, Scotland and Wales in respect of the ways in which alcohol and drug misuse is treated. Each country has a separate government body responsible for the treatment of drug and alcohol disorders and dependencies. In spite of this, each government body has opted for a localised approach to the delivery of such treatments (rather than adopting an overarching programme for tackling the issue).

5.3 From 1 April 2013, Public Health England became responsible for treating alcohol and drug misuse in England and the national approach to tackling drugs and alcohol dependence in England is set out in ‘Drug Strategy 2010’, which was released by the Home Office in December 2010. Local authorities are responsible for commissioning substance misuse services to meet the needs of local communities. The services commissioned by the local authorities are funded by their public health grant, supported by health and wellbeing boards and delivered through local partnerships.
5.4 This localised approach, however, means that there are huge local variations and services can be patchy. The following examples demonstrate how localism can affect the outcome of the treatments on offer:1

(a) where drug treatment services and mental health services work well together positive results can be achieved with regard to reducing the number of individuals with alcohol and drug dependencies; and

(b) a shortage of supported housing can greatly impact on the success of treatment and how the abusers engage.

**Particular concerns for youths**

5.5 Young people with drug and alcohol misuse issues have very different needs from adults with the same problems and require a fundamentally different approach to treatment. For example, they are unlikely to require prescribed substitutes and rarely benefit from residential treatment.1 Young people entering specialist drug or alcohol treatment will often have multiple needs (including mental health issues, involvement with the criminal justice system, social exclusion, lack of education and training or employment issues) and therefore a holistic approach is critical to a successful outcome. Central to the success of this treatment is the ability to give the young person the ongoing support that they require.

5.6 As in other contexts, detection is the biggest problem as these young individuals frequently want to hide from authority, including the police, social services and health bodies, for fear of being returned home or to a care institution. They are unlikely to self-refer and there is little to compel them to seek treatment or receive counselling. With little to no adult supervision or support there is no-one making the difficult decisions for them, as one might expect in a home environment.

5.7 The NICE guidelines on Tackling Drug Use,1 which were published in May 2014, proposed amongst other recommendations the development of a local strategy to help reduce substance misuse in vulnerable young people. This is explored in greater detail in the NICE pathway on reducing substance misuse among vulnerable and disadvantaged children and young people,1 which proposes:

(a) identifying and supporting under-25s who are misusing or at risk of misusing substances;

(b) offering family based support to 11-to-16-year-olds assessed at being at risk of misusing substances;

(c) offering group-based behavioural therapy to 10-to-12-year-olds who are persistently aggressive or disruptive and assessed as highly likely to misuse substances;

(d) offering group training in parental skills to parents or carers of 10-to-12-year-olds with behavioural problems; and

(e) offering motivational interviews to children and young people aged under 25 who are problematic substance misusers.

5.8 It might be observed that the localised approach makes it harder to navigate the system as there is no single overarching strategy or co-ordinating body. It is likely that a young homeless person, on the street with a poor education, would struggle to gain meaningful access to resources and information. This would therefore suggest that a national programme coordinated by a single body would be beneficial – this was one of the recommendations of a Drug Scope report1 which suggested the development of a national policy framework for young adult services, particularly focusing on high street drug and alcohol information, support with assessments, brief interventions and referrals where appropriate.

5.9 For those young people under 18 years of age, this holistic and fully integrated service is meant to be provided by Drug Action Teams and Children’s Services who will meet to agree priorities for the child and will share responsibility for delivery of treatment.
6. Comment

Although in theory the English legal system has at its disposal a vast array of weapons for helping vulnerable children and young people, research indicates that the system is currently failing many street-involved youths. Aside from general, ongoing problems such as the invisibility of many vulnerable youths to the state, their unpredictable behaviour and a disinclination among many to seek help from those in authority, it appears that the system is also failing to address more specific problems facing particular groups in society, such as forced marriage and child exploitation and the effects of substance abuse. Moreover, all of these problems, it appears, may be exacerbated in relation to older youths, who may have suffered years of abuse and neglect and yet be less inclined than any other group to seek help.