

## Unaccompanied Asylum Seeking Children: Hotel Accommodation, Removal from Child Welfare system, and Risk of Trafficking

Starting from July 2021, the UK Home Office has housed unaccompanied asylum seeking children arriving in the UK via small boats in hotels. Hundreds of these children have gone [missing](#) from the hotels and are suspected of being trafficked and exploited. In this blog post, I examine the evolution of the policy to accommodate unaccompanied asylum seeking children in hotels and the ensuing legal challenges of this policy domestically. I argue that the policy violates the UK's international legal obligations, particularly under the UN Convention on the Rights of the Child (CRC). This policy not only discriminates against unaccompanied asylum seeking children compared to children without parental care who are UK citizens by placing the former outside the welfare system, despite their entitlement to equal "special protection and assistance" under Article 20 of the CRC, but also denies them protections against abuse and exploitation under Articles 19, 32, 34, and 36 of the CRC.

### Background

In the UK, the duty to ensure safety and welfare of children with no adult to look after them is imposed on local authorities (the so-called "look after" duty). The majority of unaccompanied asylum seeking children primarily arrive in the UK in the area of Kent County Council. In an effort to ensure equitable allocation of responsibilities for unaccompanied asylum seeking children, the UK Home Office implemented a [National Transfer Scheme \(NTS\)](#), which facilitated the transfer of duties between various local authorities. For the last two years, Kent local authorities have taken large numbers of unaccompanied asylum seeking children as a result of its geographic location and have been [calling for changes](#) in the NTS. Despite the Home Office's efforts to enhance the scheme's effectiveness in June 2021, it has failed to alleviate the increasing burden on Kent County Council, resulting in the council declaring that it would cease accepting newly arriving unaccompanied asylum seeking children into its care, while continuing to accommodate other children, citing its purported [capacity constraints](#).

Consequently, the Home Secretary has arranged for hotels to house unaccompanied asylum seeking children pending a local authority accepting responsibility for them under the NTS, effectively placing them outside the care system altogether. The UK Department for Education [granted its approval](#) for this "temporary" strategy on emergency basis nearly two years ago. In total, over 5,400 unaccompanied asylum seeking children have been housed in hotels, with 32% of them under the age of 16. These children were accommodated in hotels in various locations, including Hove, Kent, East Essex, London, Oxfordshire, and Warwickshire. Unaccompanied asylum seeking children have gone [missing](#) from these hotels at high rates. There are credible reports ([here](#), [here](#), [here](#), and [here](#)) that some of the children had been subject to exploitation for criminal purposes.

While staying in these hotels, these children were effectively denied the "looked after" status under the [Children Act 1989](#). The duty to "look after" by local authorities is discharged in a variety of ways tailored to the specific need of each child (see [Section 22](#)). This duty goes beyond merely providing children with shelter. The local authorities are required to assess the social, educational, and healthcare needs of each child and devise plans to meet these needs. In particular, the law mandates the appointment of an Independent Reviewing Officer (IRO) for every looked after child. This is to guarantee that local authorities adequately plan to meet the

individual needs of each child, execute agreed-upon measures, and fulfil their legal duties. In situations where local authorities neglect their duties, IROs may initiate protective legal measures on behalf of children in care. Furthermore, children looked after by local authorities have the legal right to assistance from an independent advocate. This is crucial to inform them of their rights and ensure that their views and wishes are recognized and taken seriously. Consequently, unaccompanied asylum seeking children accommodated in Home Office-operated hotels were deprived of these legal entitlements.

## Legal Challenges to the Policy

Human rights and refugee organisations have criticised the government's continued use of hotels, including through applications for judicial review. For example, the charity [Article 39 sought urgent protection](#) of unaccompanied asylum seeking children through a wardship application in the Family Division of the High Court, arguing that there was a *de facto* lacuna in protection of unaccompanied asylum seeking children as they were left without a “corporate parent”, since the local authorities did not look after them, and the Home Office had no statutory responsibility for their care. The court [clarified](#) that there was no legal gap in protection and that the duty of a “corporate parent” firmly rested with the local authorities.

Another charity, [ECPAT](#), brought the [legal challenge against](#) the treatment of unaccompanied asylum seeking children by Kent County Council and the Home Office. The court [concluded](#) that the Kent County Council had violated its duties under the Children Act 1989 by failing to provide accommodation for unaccompanied children arriving in their area. Additionally, it found that the Home Office had acted unlawfully by placing newly arrived in the UK unaccompanied children in hotels. While the court did not find Kent County Council's action outright discriminatory, the court confirmed that none of the protections under the 1989 Act are contingent on a child's immigration status. Hence, it decided that the Council's refusal to provide housing and care for unaccompanied asylum seeking children breaches a fundamental aspect of the statutory scheme—that the duties of a local authority under the Children Act 1989 are applicable to *all* children, regardless of their immigration status, based solely on their individual needs ([para 160](#)).

On 15 September 2023, the High Court reconvened and [ruled](#) that the Home Office must take all possible steps to transfer all unaccompanied asylum seeking children currently housed in the Home Office hotels to the care of local authorities by 22 September 2023. In the hearing, it was confirmed that the government has suggested providing Kent County Council with a prompt cash injection of £9.75 million to aid in fulfilling its duties under the Children Act 1989. Additionally, it was agreed that a viable plan and funding structure would be determined as quickly as possible. Concurrently, Kent County Council has also initiated legal proceedings against the Home Office, [challenging](#) the effectiveness of the NTS.

Meanwhile, the [Illegal Migration Act](#), which entered into force on 20 July 2023, granted the Home Office the power to provide and arrange accommodation for unaccompanied asylum seeking children, where necessary (Section 16). The Home Office [maintains](#) that it is not assuming on “corporate parent” responsibilities for unaccompanied children. While recognising that the use of hotels to accommodate unaccompanied children is unsustainable, the Home Office plans to intervene “sparingly and temporarily”. However, the practice of placing unaccompanied asylum seeking children in hotels over the past two years was purportedly also intended as a short-term emergency measure.

On 19 October 2023, the Children’s Commissioner for England [reported](#) that children are still being accommodated in hotels in the UK, while the Home Office is working to move them to foster care or other local authority care. These developments have also coincided with renewed political [controversy](#) over age assessments for young asylum seekers. Unsurprisingly, there are now [reports](#) of unaccompanied asylum seeking children being misclassified as adults and placed in hotels with adults. It is [reported](#) that children wrongly placed in adult accommodation are at much higher risk of re-trafficking. This situation could be prevented if the Home Office referred children to local authorities, which provided them with adequate safe accommodation.

## **Obligations under the Convention on the Rights of the Child**

Under Article 20 of the [CRC](#), to which the UK is a party, grants children deprived of their family environment the right to “special care and assistance.” While states have considerable flexibility in implementing such care and assistance, they are obligated to guarantee that any measures they implement are consistent with other provisions of the convention (see [CRC Commentary](#), p. 729). This includes the prohibition of discrimination, which requires that the rights of “each child” be respected “irrespective of the child’s ... national, ethnic or social origin, ... birth or other status” (Article 2). Relatedly, the UN Committee on the Rights of the Child (CRC Committee), the monitoring body of the CRC, has recently advised the UK government to prohibit and prevent placement of children without family environment in unregulated setting such as hotels ([CRC Committee Concluding Observations on the UK](#), para 38 (e)). Furthermore, the Committee suggested promptly revising the Illegal Migration Bill to eliminate provisions that could potentially violate the rights of children under the CRC and other international treaties (para 50(a)). In addition, under Article 22 the CRC, a child seeking refugee status should receive “appropriate protection and humanitarian assistance,” a notably vague phrase. Similarly, this provision entitles unaccompanied asylum seeking children “the fullest extent to the enjoyment of all human rights granted to children in the territory or subject to the jurisdiction of the State” ([CRC Committee General Comment 6](#), para 76).

Despite these requirements of the CRC, the state practice concerning the reception structures for unaccompanied asylum seeking children largely [varies](#), leading to disparities in treatment and care conditions among different states. Although the standards of reception facilities and living conditions may differ from one state to another, the CRC underscores the importance of providing every child with a supportive, protective, and caring environment, particularly recognising a special risk of children without parental care ([CRC Commentary](#), p. 737). [Research](#) consistently demonstrates that children who lack a family environment often experience violence and abuse. Article 19 of the CRC is the central protective right in the set of rights under the CRC that are meant to safeguard children from various forms of violence and harm, including trafficking and exploitation ([CRC Commentary](#), p. 723). Other rights in this set that hold particular relevance for unaccompanied asylum seeking children in the UK housed in hotels include Article 32 (The Right to Protection from Economic Exploitation), Article 34 (Protection from Sexual Exploitation and Sexual Abuse), and Article 36 (Protection against All Other Forms of Exploitation).

## **Conclusion**

The case of unaccompanied asylum seeking children housed in hotels by the UK Home Office has raised significant legal concerns, including potential violations of the CRC. The CRC underscores the obligation of the UK to provide a nurturing and protective environment for all

children, irrespective of their immigration status. The policy's failure to afford unaccompanied asylum seeking children the same level of protection and assistance as their counterparts within the child welfare system not only violates Article 20 in conjunction to Article 2 of the CRC, but also denies them the safeguards against abuse and exploitation enshrined in Articles 19, 32, 34, and 36 of the CRC.

The prolonged use of hotel accommodation has accentuated the shortcomings of the National Transfer Scheme (NTS) and the broader child welfare system, leading to a systemic disregard of these children's rights and well-being. Recent court rulings and ongoing legal challenges have emphasised the necessity of urgent and comprehensive reform to address these systemic deficiencies and ensure the protection of unaccompanied asylum seeking children from harm and exploitation. Additionally, the newly acquired powers granted to the Home Office under the Illegal Migration Act to accommodate unaccompanied asylum seeking children may compromise the universality of protection mandated for *all* children without parental care, as outlined both the Children Act 1989 and the CRC.

The continued placement of these children in hotels, with reports of increased risks of exploitation and trafficking, points to a pressing need for the UK government to uphold its commitments under international law and implement effective measures to provide adequate care and protection for these children. To ensure the comprehensive protection and well-being of unaccompanied asylum seeking children, it is imperative that the UK government undertakes prompt and decisive action in line with the recommendations of the CRC Committee.