

Understanding Criminalisation

Report A: Why Some Young People Seeking Asylum Come into Contact with the Criminal Justice System

Executive Summary



November 2024

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Since 2021, Commons Law CIC (“Commons”) and the Migrants’ Law Project (MLP), part of Asylum Aid, have been working to understand why some young asylum seekers and refugees come into contact with the criminal justice system – and what this means for their lives here in the UK.

Despite government and media rhetoric linking migration and crime, there is no statistically relevant evidence to support the claim that people who are seeking asylum are more likely to commit crime than the UK population. At the same time, we know that some people seeking asylum do end up in touch with the police or sitting in front of a magistrate or district judge, and there is limited research to explain why.

The impact of criminalisation on a person’s immigration status can mean that criminal prosecution has wider consequences for those individuals in need of refugee protection. The overlap between criminal law and immigration law is complex and might require practitioner co-working and the development of expertise specialism.

In order to both understand the issue of criminalisation and make a concrete difference to the lives of young people, who make up a particularly vulnerable and marginalised group, the MLP and Commons have been working together to develop expertise and also support increased knowledge-sharing throughout the sector.

As part of this effort research was commissioned. Two reports have resulted from this research. In this, our first report, we examine why some refugee and asylum-seeking children and young adults come into contact with the criminal justice system in the UK. The second report examines how refugee and asylum-seeking children and young adults experience the criminal justice system in the UK, and what the wider outcomes are for them.

Both reports make use of casework data; interviews with young asylum seekers and refugees, with practitioners, including criminal and immigration solicitors, caseworkers, and charity workers. We also undertook court observations and a literature review. This is the first research on the criminalisation of asylum-seeking young people in the UK since 2004.

Criminalisation of young people seeking asylum in London and Kent

Commons reviewed its criminal defence casework with refugee and asylum-seeking children and young adults. It breaks down as follows:

Crime Investigated	Number of cases
Travel offences (Driving without insurance, driving while intoxicated, use of private e-Scooter, etc.)	12
Violent offences (Affray, Assault, Grievous Bodily Harm, etc.)	9
Drugs offences (Possession, Intent to Supply, etc.)	8
Immigration offences	3
Fixed Penalty Notices (Covid-19 fine, Travel without ticket fine, etc.)	2
Criminal Damage	2
Failure to appear in court	2
Rape	1
Fraud	1
Possession of weapon	1

We conducted analysis of the different offences and grouped them within different themes. This analysis was further supported by accounts given during interviews.

Crime related to travel

This was the most common incidence of criminalisation. Many young people had poor understanding of regulations around the use of e-scooters. Also, young refugees with limited qualifications often sought work as delivery drivers and came into trouble through this work. Some young people were driving without valid insurance (or a licence) or whilst intoxicated. Some had been misidentified or wrongly convicted.

Crime exacerbated by failure to manage bureaucracy

In these cases, clients had been fined for minor infractions which had then become far more serious when, for example, fixed-penalty notices had not been paid. When asked why they had not resolved these issues earlier, clients showed an inability to manage bureaucracy; failure to understand the content of letters; lack of understanding of how to resolve fines. With the introduction of the Single Justice Procedure, some criminal charges are dealt with through written correspondence. Young people seeking asylum are regularly moved (either by the Home Office or their local authority) and post may not be forwarded. In several cases, avoidant behaviour – not seeking to resolve an issue due to stress or worry about the consequences – was identified as a possible cause. The above concerns are all exacerbated when a young person's English is not strong.

Crime that occurs at accommodation

Some of the young people in this study lived either in staffed hotel accommodation provided by the Home Office or in staffed accommodation provided by the local authority responsible for their care. In both settings, private companies most often manage the accommodation and staff. The accommodation itself can cause distress and frustration. Some young people have to share rooms with strangers, while they are forced to wait for many months for an asylum decision. Some professionals felt that young people reacted negatively to discrimination and mistreatment, or perceived mistreatment, by accommodation staff or other people that they had to live with. Disagreements between young people and staff, or young people and others they lived with, occasionally resulted in violence. One young person was arrested when protesting conditions. Another lashed out at a staff member who had shoved him and called him dirty and a third young person living in hotel asylum accommodation was the victim of an assault by a fellow resident, but was arrested himself after police were called.

Crime related to conflict and behaviour

Most cases that Commons worked on involved clients who either had formally diagnosed mental health conditions or were presenting with symptoms typically associated with one. Some clients were receiving treatment, others were self-harming or had suicidal ideation.

One client was acutely distressed at Court and sent his solicitor *“photos of dead bodies to show what happened to people in his country and what he saw”*. Other clients experienced worsening mental distress due to delays in bringing their case to court. Tragically, one client died by suicide during the period of this study. Some of the violent crime, property damage and other criminal conduct appeared linked to or exacerbated by mental health issues.

Crime related to the economic position of asylum-seekers

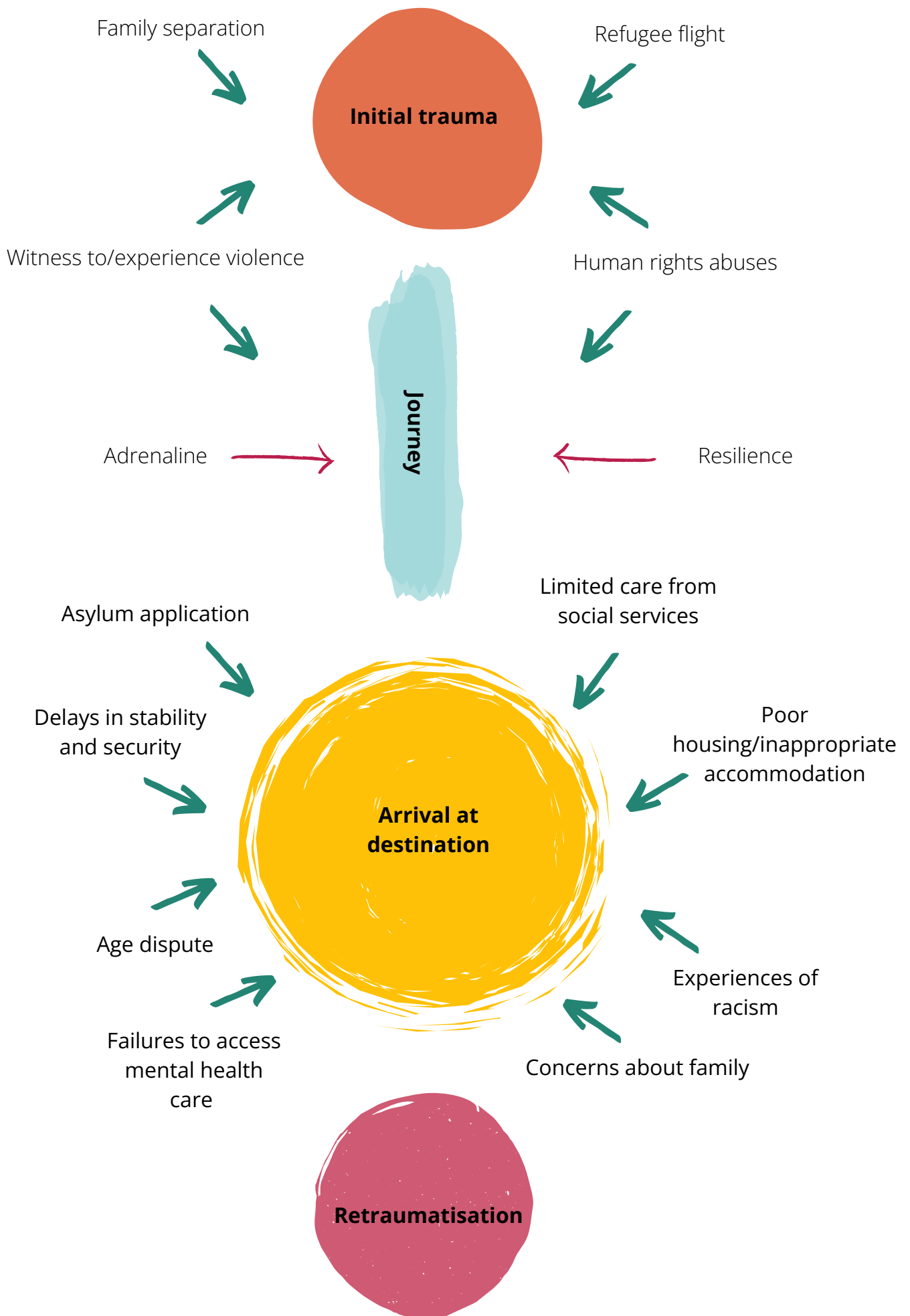
Some clients of Commons sought to gain income through illegal forms of work. Stuck in the asylum system, often for years, some are legally unable to undertake paid work. Yet they may still be under pressure to provide financially for their family living in poverty in a home country or in a refugee camp. They may experience the same social pressure as all adolescents to buy consumer items. Living on just over £49 per week (or under £9 a week if living in full-board accommodation such as hotels) for an extended period of time, accessing even the basic necessities of food and travel can be very difficult. Even those young people who have been granted legal status and are legally able to work face limited economic opportunities, due to language and educational barriers. Equally, trauma and mental health issues are an obstacle to work.

Crime involving exploitation

Some young people in this study were recognised victims of trafficking and modern slavery, while others showed signs of being criminally exploited or of experiencing debt bondage. This form of coercion could involve working in a cannabis farm, being forced to transport drugs, or illegal working. Delays in asylum decision-making, placement in inappropriate accommodation provision alongside adults and care-leavers already involved in ‘county lines’ drug-dealing, and inadequate support from carers and accommodation key workers, all increased the likelihood of exploitation.

Immigration crime

Immigration crime is a form of criminalisation that has seen a recent growth due to the expansion of the definition of illegal entry to the UK. In December 2021, the Court of Appeal quashed the convictions of three people seeking asylum jailed for between two and six years for assisting unlawful immigration after piloting small boats across the English Channel. Commons represented one of the defendants in this case. The Appeal Court Justices presiding on this case found that “as the law presently stands, an asylum-seeker who merely attempts to arrive at the frontiers of the United Kingdom in order to make a claim [of asylum] is not entering or attempting to enter the country unlawfully.” However, in 2022, UK law was changed to criminalise almost all means of arriving in the country to claim asylum. Consequently, hundreds of young people seeking asylum have been incarcerated.



Understanding the structural and systemic reasons for why some young asylum-seekers come into contact with the criminal justice system

Children and young people seeking asylum are often very vulnerable due to their life experiences, both before and after arriving in the UK. They have been forced to migrate, separated from their family, may have suffered violence or abuse on their journeys, and are retraumatised by the UK's asylum system. This vulnerability includes higher chances of poor mental health.

Prolonged exposure to stress in childhood disrupts healthy brain development which can manifest as emotional and conduct problems in childhood, and risk-taking and criminal behaviours in young adulthood.

Youth migration is often driven by conflict, human rights abuses, fear of death and persecution or natural disasters, as well as a lack of educational or economic opportunities. Some young people will have endured prolonged exposure to physical and sexual violence in countries where this is used as a weapon of war. Young people arriving from war-torn areas have suffered the direct and indirect consequences of conflict and disrupted infrastructure, leaving some with war-related injuries and disabilities, and with physical and mental health issues.

Research has shown that the UK asylum system itself is traumatising for young people and children seeking asylum. The burden of proof in an asylum claim rests with the child or young person: they may be required to disclose information about abuse, trafficking, or traumatic events in their asylum statement or substantive interview, and an asylum caseworker may further probe and question that account. After this distressing experience, children and young people are left in limbo while they wait for their claim, something that can take months or years. Children might also have their age disputed and might face a protracted battle to be accepted as a child.

Even where a child or young person is able to obtain asylum, it is unlikely that they will be reunited with their family if they were separated in their country of origin or on their journey to the UK. There is no allowance in the UK's immigration rules for children or young adults with refugee status to sponsor their parents or other family to join them in the UK, which can exacerbate existing trauma.

Systems in the UK increase vulnerability. Depending on whether they arrived before or after their 18th birthday, children and young people are often accommodated in harmful or inappropriate local authority or Home Office accommodation, sub-contracted to private companies, where they receive inadequate or no support.

Although less than 1% of the population have been in the care system, around half of the children currently in custody in England and Wales have been in care at some point. Large numbers of looked after children reside in unregulated accommodation. Unaccompanied asylum-seeking children are disproportionately accommodated in such provision. This is despite children seeking asylum representing only 6% of looked after children overall.

Young adults who arrive in the UK after their 18th birthday to claim asylum are not able to access local authority support and are reliant on mainstream Home Office support. There are widespread issues with both the use of 'dispersal accommodation' and 'contingency accommodation' by the Home Office, for asylum-seeking adults. Neither provide any kind of youth-specific provision for young people. However, a pilot program of Youth Welfare Officers has been successful in alleviating some of the difficulties young adults experience in the adult asylum system, and has now been expanded.

Behaviours related to vulnerability are surveilled and responded to in ways that increase the risk of contact with the criminal justice system. Unlike British young people living independently or with their families, the offending behaviour of children and young people seeking asylum and living in staffed accommodation are often responded to by way of the police.

The National Protocol on Reducing Unnecessary Criminalisation of Looked-After Children and Care-leavers strongly dissuades authorities from involving the police in incidents that occur in residential care placements. It asks that carers work to defuse and de-escalate as a first response. Despite this, there is still high levels of police involvement in managing challenging behaviour. In addition, there is no protocol for reducing criminalisation of young adults seeking asylum living in privately-run hotels or dispersal accommodation – even though they are likely to be of the same age and to have similar experiences to their looked after peers. Our casework data indicates that young people seeking asylum who commit minor offences are being pursued through the courts by the police and the CPS. Our research also indicates failures in recognising where a young person has been coerced into criminal activity.

Traumatised young person



Reduced window of tolerance



Pushed into 'fight or flight' mode



Anger and aggression



Poor judgement and decision making



Substance abuse



Lack of knowledge of UK law



Young person commits crime

Conclusions of the research

This study looked at the experiences of young people seeking asylum who have sought criminal legal representation for criminal offences, such as driving offences, immigration offences, non-payment of fines, drugs possession, violent crime, and criminal damage. Some key patterns emerged.

1. Young people seeking asylum are being criminalised for minor offences – riding e-scooters, not paying train fares, failing to pay a fine on time – but the consequences could be far greater for them than for other young people.

Such minor offences will have to be declared during the asylum application process and during further applications for status and citizenship – and could be disqualifying.

2. There are economic pressures that increase the risk of young people seeking asylum undertaking illegal work.

Asylum-seekers cannot normally legally work for the duration of their asylum claim – which can take years. They rely on small amounts of money from the Home Office or from local authorities during this time. Some young people are under pressure to provide for their families living in abject poverty abroad, or need money for medical issues or to (re)pay smugglers and move across borders. As a result, some young people do 'black market' or cash-in-hand work or become involved in the drugs trade.

3. Young people seeking asylum who are victims of coercive crime are still at risk of criminalisation.

Young asylum-seekers in London are being criminalised for possession of drugs with intent to supply and other crimes associated with criminal exploitation. In at least one case, the young person had a positive reasonable grounds decision in response to a referral to the National Referral Mechanism (NRM), and was still charged and required to attend court, before charges were later dropped.

4. Some young people seeking asylum arrested by the police and charged with a crime are innocent of any offence.

In a large proportion of the casework undertaken by Commons Law CIC involving young asylum-seekers who needed to attend court either the defendant was acquitted in court by magistrates or a jury, or no evidence was offered by the prosecution during trial (6 out of a total of 15 cases).

5. The Nationality and Borders Act 2022 has rendered the main route to claim asylum, which was previously legal, a criminal offence.

Entering the UK by clandestine means (inside of a lorry or on a small boat) to lodge asylum upon arrival has until recently been the main lawful route for asylum-seekers. Now, changes in the law mean that the majority are breaking the law and risk criminalisation simply by arriving on UK shores without leave to enter.

6. Young people seeking asylum are highly vulnerable due to their experiences before arriving in the UK.

Unaccompanied children and lone young adults who travel to the UK to claim asylum are often fleeing from conflict, oppression and human rights abuses. They are experiencing family separation. When crossing the external and externalised borders of Europe and the UK, they regularly experience abuse and deprivation.

7. By failing to provide stability and a sense of security, the UK's immigration system makes people seeking asylum more vulnerable.

Adults regularly wait years for a decision on their asylum claim and children face an even longer wait. The asylum process compounds trauma through its adversarial nature, and by requiring young people to declare traumatic experiences and have those experiences questioned by authority figures. Use of barges, military sites and 'prison-like' hotels as accommodation for asylum-seekers, particularly young people, is inappropriate and only increases their vulnerability.

8. Young asylum-seekers exhibit a number of coexisting risk factors for committing criminal offences.

They are likely to have had adverse childhood experiences, a high incidence of trauma and trauma-related mental health issues, or to have experienced bereavement; and to be young/adolescent; to be male; without legal status; alone and feeling a need to belong.

9. Trauma and poor mental health are key factors in understanding why some young people seeking asylum come into contact with the criminal justice system.

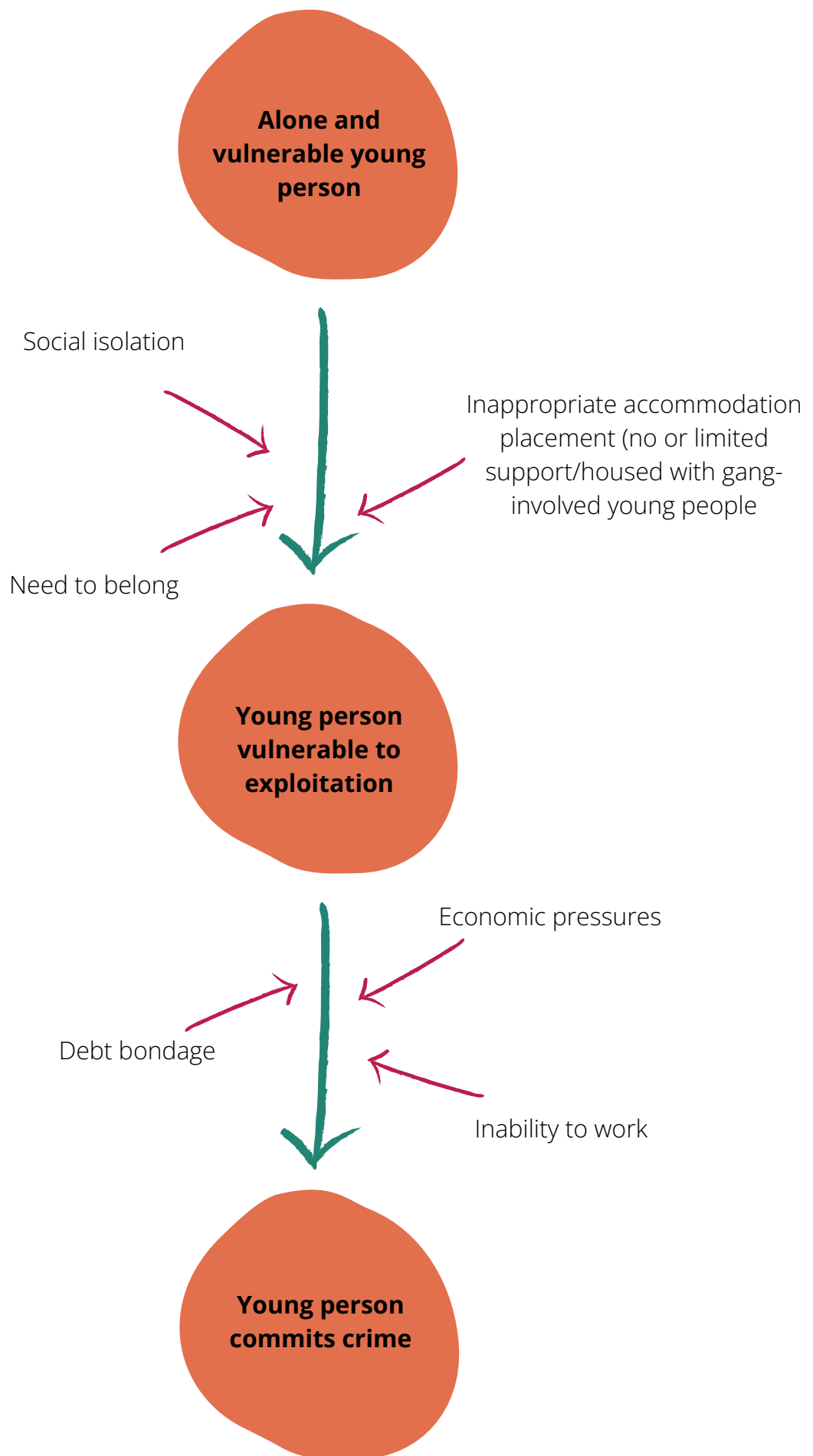
The majority of Commons' casework involved clients who either had formally diagnosed mental health conditions or were presenting with symptoms typically associated with a mental health condition. Research identified during the literature review indicates trauma and poor mental health as a risk factor for criminality.

10. A care system defined by a lack of resources, inappropriate accommodation placements and inadequate levels of support for care-leavers increases the likelihood of young people seeking asylum committing criminal offences.

The deteriorating mental health and wellbeing of children in care and care-leavers increases risks around criminality. Protective factors are likely to include having positive relationships with adult role models (such as teachers, youth workers, social workers, and accommodation key workers). Lack of support – due to lack of resources, a lack of intervention post-18, poor accommodation placements, and limited access to treatment for mental health difficulties – increases the risk of criminality and criminal exploitation.

11. Young people seeking asylum are more likely to come into contact with the police than their peers, which increases the risk of criminalisation.

This is due to living in staffed accommodation (in care or in the adult asylum support system) and due to being mostly from Black, Asian, and minority ethnic backgrounds. Both result in higher contact with the police and thus a higher risk of criminalisation.



Recommendations

In order to reduce criminalisation, central and local government should:

centre healing from trauma.

Young people seeking asylum are almost always survivors of violence and/or traumatic experiences. Reducing criminalisation means ensuring that these young people are supported to heal and recover from their trauma. This does not just mean access to mental health services and evidence-based treatments for their difficulties but also to other things important to wellbeing, such as good quality housing, access to community and familiar culture. In turn, this also means ending systems that result in re-traumatisation, including within the immigration and asylum system, and, where possible, allowing young people to reunite with their family.

address barriers to economic access.

Young people seeking asylum are normally not able to work for the duration of their asylum claim. Living on meagre amounts of money provided by the Home Office or local authorities, they face economic pressure to undertake illegal cash-in-hand work – and are at an increased risk of criminal exploitation. Reducing criminalisation means lifting the ban on work – but also ensuring access to skills-based education and training, apprenticeships and other opportunities that smooth entry into well-paid employment.

prioritise support for what research shows are ‘protective factors’ for mental health and wellbeing of young people seeking asylum.

Giving young people access to positive relationships with adults in their home environment and in places of education would reduce criminalisation. Allowing them to sponsor their family members to the UK is one way to ensure they can experience love and care from adults. Within homes where behavioural problems exist, adults should work to resolve matters without resorting to using the criminal justice system. A strategy to reduce criminalisation must also strive to improve young people in care's relationships with support workers, social workers and personal advisers. The introduction of Youth Welfare Officers in Home Office accommodation could provide similar support for young adults as exists for those in care. Other important ‘protective factors’ that should be supported through policy include ensuring young people seeking asylum have same ethnic group contact; are able to maintain connections to their culture; experience stable accommodation and minimal moves; and have access to religious or faith-based community; as well as stability in education.

not criminalise young people just for seeking asylum

The law should not unnecessarily criminalise young people seeking asylum. As it stands, the Nationality and Borders Act 2022 puts all asylum-seekers at risk of criminalisation simply for accessing a fundamental human right: the right to claim asylum. Hundreds of young people have already been imprisoned under this flawed new legislation, further traumatising very vulnerable individuals, many of whom go on to be granted asylum and then to live in our communities.

ensure the children's social care system and the police are better able to redirect young people away from the courts and criminal prosecution.

Young people seeking asylum live in environments (in care and in Home Office accommodation) in which their behaviour is surveilled and disciplined through contact with the police. Systemic change is necessary to ensure that all professionals working with these young people - from carers to keyworkers to social workers, and the police themselves - are taking action at all times to reduce police contact and divert young people away from the courts and criminal prosecution.

The criminal justice system must be better at engaging young people on their own terms. Discretion must be more actively used to not charge where it is not in the public interest to do so. Education should be prioritised over punishment. The Single Justice Procedure (SJP) should change so that young people aren't criminalised for failing to respond to mail that they perhaps don't fully understand. Recognising where a young person has been coerced into criminal activity - even where it does not meet the high threshold set by the Modern Slavery Act defence - would present unnecessary criminalisation of young migrants at risk of trafficking or other forms of criminal exploitation.

Finally, more research needs to be undertaken that can better inform policy.

The research that informed this report was small-scale and exploratory. We hope that further research will be undertaken that might better illuminate the mechanisms by which young asylum-seekers end up in touch with the criminal justice system – and can propose specific policy solutions that reduce and prevent criminalisation, and promote the wellbeing of these young people.