Child Migration Matters

Children and Young People's Experiences of Migration
About the Author

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<td>CFA</td>
<td>The Child and Family Agency (Tusla)</td>
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<td>CoE</td>
<td>Council of Europe</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child (see UNCRC)</td>
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<tr>
<td>DCU</td>
<td>Dublin City University</td>
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<tr>
<td>EASO</td>
<td>European Asylum Support Office</td>
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<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
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<tr>
<td>ECtHR</td>
<td>European Court of Human Rights</td>
</tr>
<tr>
<td>EEA</td>
<td>European Economic Area</td>
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<tr>
<td>ESCRs</td>
<td>Economic Social and Cultural Rights</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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<tr>
<td>FRA</td>
<td>European Union Agency for Fundamental Rights</td>
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<tr>
<td>GAL</td>
<td>Guardian ad litem</td>
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<tr>
<td>GNIB</td>
<td>Garda National Immigration Bureau</td>
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<tr>
<td>GRETA</td>
<td>Group of Experts on Action against Trafficking in Human Beings</td>
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<tr>
<td>HSE</td>
<td>Health Service Executive</td>
</tr>
<tr>
<td>ILO</td>
<td>International Labour Organisation</td>
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<tr>
<td>INIS</td>
<td>Irish Naturalisation and Immigration Service</td>
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<tr>
<td>NGO</td>
<td>Non-government organisation</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Cooperation and Development</td>
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<tr>
<td>ORAC</td>
<td>Office of the Refugee Appeals Commissioner</td>
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<tr>
<td>OSCE</td>
<td>Organisation for Security and Cooperation in Ireland</td>
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<tr>
<td>PICUM</td>
<td>Platform for International Cooperation on Undocumented Migrants</td>
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<td>SUSI</td>
<td>Student Universal Support Ireland</td>
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<tr>
<td>UNCRC</td>
<td>United Nations Convention on the Rights of the Child</td>
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<tr>
<td>UNHCR</td>
<td>The Office of the United Nations High Commissioner for Refugees</td>
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<tr>
<td>USSR</td>
<td>Union of Soviet Socialist Republics</td>
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FOREWORD

The Convention on the Rights of the Child (CRC) is a universal blueprint for the treatment of children under 18 years. With its ratification of the CRC in 1992, the Irish Government undertook to take all appropriate legislative, administrative, and other measures for the implementation of CRC rights and committed to respect and ensure CRC rights to each child within its jurisdiction without discrimination of any kind. Since 1992, much progress has been made in the implementation of children’s rights in Ireland and many concrete steps have been taken to incorporate the principles of the CRC into Irish law. The Constitution now underscores that the best interests of the child must be paramount in decision-making in family law matters and expects that children’s views are taken into account in such cases in line with their age and understanding.

Despite this and other progress, concerns remain about the treatment of migrant children as one of the most vulnerable groups of children in Ireland. In 2016, the Committee on the Rights of the Child expressed concern at the ‘continued inadequacy of the framework’ to fully address the needs of migrant children. The Committee pointed, in particular, to the lack of timely advice and information for such children, highlighting the fact that this frequently resulted in such children not receiving timely clarification of their migration status. Emphasising the requirement that all children are entitled to the full protection and implementation of their rights under the Convention, the Committee urged Ireland to ensure that the rights enshrined in the Convention are guaranteed for all children, regardless of their migration status or that of their parents. It made specific recommendations to adopt a comprehensive legal framework to address the needs of migrant children in accordance with human rights standards, to ensure that the legal framework includes clear and accessible formal procedures for conferring immigration status on children and their families in irregular migration situations and to take measures to ensure that children in irregular migration situations are provided with independent legal advice and timely clarifications on their migration status.

These observations and recommendations from the Committee on the Rights of the Child form the backdrop to this detailed and comprehensive report from the Immigrant Council of Ireland on the situation of migrant children. Following on from
the Committee’s recommendation that a legal framework be adopted to address the needs of child migrants, the Immigrant Council sought to document the migration experiences of children in Ireland with a view to identifying those needs. Crucially, the research heard from a number of young adults who had travelled to Ireland as children, recording their experiences of arriving in the State, engaging with the immigration system and living in the care of the State. The researchers also spoke to professionals who represent and support migrant children about the challenges they face supporting these young people. Taking into account the many national and international legal standards, the report draws conclusions about how the system needs to be reformed to properly meet the needs of migrant children. It concludes by setting out detailed and precise recommendations as to how this can be done.

There are many striking features of this study. First, the report provides a rich and honest testimony of the experiences of young migrants in Ireland. Although those who participated in the study were, by then, over 18 years, their accounts present important evidence of the contemporary experiences of migrant children in Ireland. Most importantly, the research speaks to the importance of hearing the voices of these young people, it facilitates the recording of their lived experiences as experts in their own lives. It presents an unequivocal case for reform as their experiences – positive and negative – highlight how best to shape our laws, policies and procedures.

Secondly, the case studies are varied and each one is a compelling narrative of a young life, full of challenge and complexity. They deal with the relationship between a child’s migration status and other rights by highlighting the impact that precarious immigration status can have on a child’s ability to access the right to education, right to access social welfare supports, right to earn a living and the right to respect for family relationships. The case studies illuminate how fundamental rights can be denied by default, when the lack of legal status deeply affects a child’s human needs, ability to socialise and integrate, to have friends – basic needs so crucial to a person’s health and well-being. The case studies also highlight the impact on these young lives of the lack of information, advocacy and support. The accounts of those young people who experienced abuse including sexual exploitation are
particularly harrowing and the reality that opportunities were missed to provide these vulnerable young people with protection is a shameful indictment of our lack of humanity.

At the same time, the case studies showcase positive outcomes. They highlight that when accurate information and advice is provided, when a Guardian ad Litem or social worker are appointed, or where structured supports are put in place, these measures can make a real difference to the realisation of young people’s rights. In this way, the case studies are not all about what the State does wrong or badly, they shine a light on the positive outcomes that can be achieved when we get things right - many of the case studies highlight how small measures can have a positive effect, not just on the person concerned but on their ability to contribute to society through educational achievement and work. Everyone gains. What is remarkable perhaps is that despite the challenges faced by these young people, their stories are so often full of hope, resilience, ambition and self-respect. Amidst this enormous adversity, these children have shown adults how to challenge despair and abandonment. Their stories suggest that we must never give up hope in finding a key to unlock the door to a new life of certainty and fulfilment.

Beyond the individual stories, the research illustrates very effectively how, in the immigration setting, the right to control borders frequently trumps the rights of migrant children. While Ireland is not unique in this - immigration law is often the least likely area to be permeated by children’s rights - it is nonetheless disappointing that we care less for migrant children than we do for ‘our own’. This report clearly highlights that we need to reflect more carefully on our priorities, to re-evaluate our commitment to be humane and respectful to all children as our commitment under the CRC requires. This must be followed by concrete and immediate action.

This research will stand out as a milestone in our understanding of the needs of migrant children. Its many important conclusions and practical recommendations will ensure the implementation of a legal framework is consistent with children’s rights. It is the stories of the young people captured here that are most powerful.
Having recorded the testimonies of these young migrants, we can never say that we did not know what they went through or that we did not understand how little was required to address their needs. We can only say that we decided not to respond. Unless that is, we decide to take the opportunity now to put the Convention on the Rights of the Child at the heart of the immigration system in the interests of migrant children. The decision is ours.

Professor Ursula Kilkeely

School of Law,
University College Cork
ACKNOWLEDGEMENTS

I would like to express my sincere thanks to the many people who contributed to this report.

I am deeply indebted to all of the young people who graciously gave their time to share their personal experiences and reflections for this project. Their thoughtful responses and insights allowed us to glimpse the reality, joys and frustrations of making Ireland their new home, and to identify steps that can be taken to improve the lives of migrant children in the future.

I am further grateful to the social workers, guardians ad litem, aftercare workers, youth advocates and others who participated in our outreach sessions for their honesty and helpful contributions. Thanks to Nasc, the Irish Immigrant Support Centre, for hosting the outreach session in Cork. Thank you to the legal practitioners and guardians ad litem who were interviewed on an individual basis.

Members of the project Advisory Committee; Norah Gibbons, Dr Ciara Smyth, Tanya Ward, and Chinonyerem Okeke, provided direction and insights on the research and valuable feedback on early drafts. I am enormously grateful to them for their commitment, candour, enthusiasm for the project and knowledge shared.

I would like to thank all the staff, interns, volunteers and board members of the Immigrant Council for their support of this research project.

In particular, sincere thanks are due to Leanne Caulfield, Legal Research Assistant, who reviewed existing literature, undertook international comparative research, carried out numerous research interviews, compiled and drew out the interview data, assisted in the delivery of outreach sessions and contributed significantly to the drafting and editing of the report. Her diligence and attention to detail are much appreciated.
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Lastly, thank you for reading. I hope that this report assists in our collective efforts to ensure that the rights of all children in Ireland are respected, protected and fulfilled.

Katie Mannion

Solicitor
December 2016
EXECUTIVE SUMMARY

Background

The Immigrant Council of Ireland is an independent, non-governmental human rights organisation that advocates for the rights of migrants and their families and acts as a catalyst for public debate as well as legislative and policy change. The Immigrant Council is an independent law centre that provides legal services to migrants and their families.

Over the past 15 years, much of our legal support and representation have included issues and rights that greatly affect children, either directly or indirectly. In the past 10 years, we have increasingly been asked to provide information, legal advice and representation directly to children and young people, and to their social workers and guardians ad litem.

Through our casework we found that many young people had arrived in Ireland as children but had reached adulthood without the appropriate steps being taken to secure their immigration status or apply for naturalisation as Irish citizens. In many cases, they found themselves as undocumented adults or with inappropriate permissions to reside. This was causing them significant hardship.

Reasons for research

In January 2016, the United Nations Committee on the Rights of the Child examined Ireland’s compliance with the UN Convention on the Rights of the Child (UNCRC). It recommended that Ireland adopt a legal framework to address the needs of migrant children. This research was undertaken to document what those needs were and how the absence of a framework for legal migration impacted children’s and young people’s lives. Until now, research and policy analysis on child migration has focused almost exclusively on the particularly vulnerable group of migrant children – those who are
EXECUTIVE SUMMARY

separated children seeking asylum.¹ This means that the broad range of experiences and needs of migrant children who have arrived in Ireland without seeking international protection have not been investigated. This includes children who travelled alone, those who moved with their families or travelled to join their families after they had settled. If policy and legislation is to be formulated to consider the needs of all migrant children, their particular needs must be researched, discussed, and understood. We hope this report will get the discussion started.

Children affected by migration face particular difficulties and barriers. Ireland’s immigration processes and policies are unclear and inconsistently applied. They do not address the wide range of situations in which migrant children find themselves or provide the support they need. We look at the steps that must be taken in law, policy and practice to respect, protect and fulfil the rights of children from migrant backgrounds. The Immigrant Council has devised a list of recommendations (see chapter 11) for key stakeholders in terms of processes, and law and policy reform.

Research methodology

We conducted research on the experiences of migrant children and young people in Ireland using both qualitative and quantitative methods of research. We spoke to young adults who had moved to Ireland as children about their experiences of migration, integration and navigating the immigration system in semi-structured, one-to-one interviews. We also examined case files from our independent law centre. We also spoke to professionals who represent and assist children and young people about the challenges they met in supporting young migrants, and the gaps they observed in the protections for children.

We received feedback from participants of training and outreach sessions with social workers, guardians ad litem (GALs) and other professionals working with migrant children. Questionnaires were completed by social workers and other professionals working with migrant children, and we held in-depth interviews with various professionals working with and representing migrant children.

We also reviewed literature and international, EU and domestic laws and policies relevant to the experiences of child migrants, and contrasted comparative practices.

**Case studies**

In this report, we include 32 case studies (see chapter 2) that reflect the experiences of the individuals who participated in this study. They include young people who moved to Ireland with their families who were taking up employment; who moved independently; who joined their parents after they had settled in Ireland; who were trafficked to Europe as children, who were stateless on arrival, and who were seeking international protection.

They provide an insight into some of the issues and difficulties that are uniquely experienced by migrant children and young people in Ireland.

**Legal background**

While States have the sovereign power to control their borders and formulate migration policies, they also have a duty to respect the human rights of migrants when implementing immigration law and policy. Ireland has obligations under international human rights law, EU law and the European Convention on Human Rights to respect children’s rights. These obligations include hearing the voice of the child, considering children’s best interests in decisions and policy-formation, and respecting children’s
rights without discrimination of any kind, including on the basis of nationality or immigration status. Ireland’s Constitution also expressly affirms the rights of all children. Despite these obligations, the interaction of migrant children with the immigration system is not addressed in a coherent way.\textsuperscript{2} Ireland’s law relating to immigration is based in a number of different instruments. Many aspects are not covered directly by legislation. Immigration law remains largely on an administrative basis. Immigration decisions on issues such as visas, residence permissions, type of permission granted, leave to land and naturalisation are based on Ministerial discretion and there is no independent appeals mechanism. This results in immigration decisions being made in an inconsistent manner. It also means that Ireland’s immigration law lacks transparency and clarity.

**Need for child-sensitive legal framework for migration**

The inadequacy of safe, legal migration paths to Europe has meant that people have risked their lives taking irregular migration routes on un-seaworthy boats or across land. This has resulted in the deaths of thousands of migrants and asylum seekers, including more than 600 children who died trying to cross the Mediterranean in the first nine months of 2016.\textsuperscript{3}

For the rights of children to be protected, legal migration routes must be put in place, resettlement programmes for refugees implemented and relocation mechanisms\textsuperscript{4} put into operation. There must be transparent systems in place to grant families entry visas to enable them to travel safely as a unit, as well as family reunification opportunities with reasonable requirements.

\textsuperscript{2} Proposed legislation to comprehensively reform the immigration, residency and asylum systems in a modern and coherent legislative framework has not been enacted. Instead, the aspects of the previous Bills relating to international protection were singled out and enacted. Better Outcomes Brighter Futures – The national policy framework for children and young people 2014-2020 envisaged that the proposed legislation enactment of the Bill would “address in a comprehensive way the interaction of migrant children with the immigration system”.

\textsuperscript{3} Save the Children press release https://www.savethechildren.net/article/600-children-have-died-mediterranean-year, 3 October 2016.

\textsuperscript{4} Resettlement is the transfer of refugees from an asylum country to another State that has agreed to admit them and ultimately grant them permanent settlement. For further details, see http://www.unhcr.org/resettlement.html. Relocation is the transfer of asylum seekers who are in clear need of international protection from one EU Member State to another European State. Their asylum application will only be examined once the relocation has taken place. For further details, see https://www.easo.europa.eu/; http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/2_eu_solidarity_a_refugee_relocation_system_en.pdf.
EXECUTIVE SUMMARY

Immigration law issues for migrant children in Ireland

Children in Ireland are directly affected by the absence of a comprehensive legal framework on immigration in Irish primary law. The absence of legal provisions setting out appropriate immigration status and rights for children in different situations, combined with a lack of guidelines and the reliance on Ministerial discretion results in different outcomes for children in similar circumstances. The system is not fair or transparent and creates confusion for children, their parents and other advocates.

International law requires that “all children, including children accompanied by parents or other legal guardians, must be treated as individual rights-holders, their child-specific needs considered equally and individually, and their views appropriately heard”. States are required to ensure due process and access to effective remedies. This includes the availability of an independent appeals mechanism. The Committee on the Rights of the Child recommends that children leaving care should be ensured access to long-term regular migration status and reasonable opportunities for completing education and integrating into the labour market).

However, children are largely invisible in Ireland’s immigration system. Their specific, individual rights and needs are not given adequate consideration. Their rights to due process are limited, and they do not have access to an independent appeals mechanism.

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5 Committee on the Rights of the Child, day of general discussion on the rights of “all children in the context of international migration”, 2012, Para 74.  
6 Article 2 ICCPR, Article 13 ECHR, Article 47 EU Charter on Fundamental Rights: “Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.”  
7 Committee on the Rights of the Child, Day of General Discussion on the rights of “all children in the context of international migration”, 2012, Para. 69.  
8 UN Committee on the Rights of the Child, Day of General Discussion on the rights of “all children in the context of international migration”, 2012, Para. 74.
Inconsistencies in stamps

Immigration decisions go to the heart of a child’s wellbeing. Yet, little policy consideration appears to be given to the appropriate type of permission to grant children when they are required to register at 16. The Irish Naturalisation and Immigration Service (INIS) does not provide guidance to its staff or to Garda National Immigration Bureau (GNIB) officers on the appropriate immigration permission or stamp to issue to children resident in the State.

The lack of policy guidance has resulted in stamps being issued to young people in an inconsistent manner as well as inappropriate stamps being granted. For example, young people have been inappropriately granted Stamp 2 for international students when their primary purpose in the State is as dependents of their lawfully resident non-student parents, rather than for study.

Young people granted Stamp 3 reported frustration that they could not access part-time employment or work experience to earn pocket money and gain experience.
Children under 16

Until a child reaches the age of 16, their immigration permission is assumed to be the same as that of their parents. They are not granted child-specific permissions and cannot access any confirmation that they have permission to reside in the State. This can lead to difficulties in establishing their personal residence history. Children in the care of the State face particular challenges in this regard where they may not have contact with the parents from whom their immigration status is assumed to derive, and in the absence of legal provisions specifying that children in care are lawfully resident in the State.

The absence of individual immigration permission for children under 16 is poorly understood and can lead to confusion. The position is not clearly set out on the INIS website. Some young people were asked to present proof of individual residence permission to Government Department bodies and to educational institutions. The provision of a standard letter to children confirming their lawful presence without the need for individual permission could alleviate this problem. Clear information and guidelines to GNIB and INIS regarding immigration permission for under 16s should be widely distributed and easily available from the Department of Justice. It should also be clarified that children who are in the care of the State have permission to reside in Ireland as well as clarifying the form such permission should take to ensure full access to rights.

Barriers to regularising immigration status

Practical challenges can sometimes prevent people from registering for the first time or keeping their immigration status up to date, which results in them being undocumented in the State.

Many of the young people experienced difficulties in obtaining a valid passport from their country of origin which they required in order to register. This meant that they did not register and became undocumented. It is vital that procedures are clarified and that young people and support workers can access information on applying to register without a passport in exceptional circumstances.
When young people turn 18, they are no longer exempt from the registration fee of €300. This emerged as a significant hurdle for many young people, particularly care-leavers, to remain documented.

**Assistance with immigration matters while in care**

Where children are in the care of the State, timely assistance in securing their immigration status or applying for naturalisation is essential to their ability to access services.

The support provided by the social workers while children are in care is crucial in engaging with immigration procedures. As one social worker observed: “You’re their ‘everything’. You’re their support, their mother, their advocate... who would do that if they’re adults?”

Many young people spoke of their social workers’ support in securing their immigration status or applying for citizenship. Action taken early resulted in positive outcomes for those young people. Others expressed frustration that they had received inadequate assistance in relation to immigration matters while they were in care.

Social workers reported that they had received advice to wait until a child reached 18 years to address their immigration status or apply for Irish citizenship. They outlined how this advice had been relied upon to the detriment of children and young people. As a barrister working in the areas of both immigration law and child care law has stated, failure to apply for formal permission for a child in care to live in Ireland before they reach 18 means they “may go into the general immigration process without the assistance and the weight of the Child and Family Agency behind them and in support, and it may leave the child very vulnerable in trying to navigate this incredibly complex and difficult system”.⁹

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Being undocumented, and the resulting uncertainty about the future, can cause young people significant stress.

Unresolved immigration status also limits life opportunities, affecting a young person’s capacity to engage in further education and employment, and access social welfare and housing support.

**Comparative practice: granting children independent residence status**

Many countries recognise children’s rights as individuals and grant children appropriate permissions independently of their parents’ permissions. For example, Germany and Canada allow children to hold independent residence permits in their own right.\(^{10}\)

Many countries also grant specific permissions to children in State care, recognising their special position and need for individual consideration. In Spain, children who are protected by the Civil Service or under court order by any other entity are considered to be regularly and lawfully resident in Spain.\(^{11}\) In the Czech Republic, the law provides an independent right of permanent residence to children who have been placed in the care of the State.\(^{12}\) Norway and the US have public policies or guidelines that outline the actions that social workers and other child welfare practitioners should take to determine and resolve the immigration status of children in care.\(^{13}\)

Ireland can learn from these practices to develop appropriate permissions for children, particularly those in the care of the State.


\(^{11}\) Article 35 (7) of the Spanish Organic Law 2/2009.

\(^{12}\) Czech Republic Act on residence of foreign nationals (No 326/1999 Coll).

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Family Life

The right to family life is a fundamental aspect of EU law\(^\text{14}\), international human rights law\(^\text{15}\) and Irish constitutional law.\(^\text{16}\) The Committee on the Rights of the Child recommends that “States should ensure that their migration policies, legislation and measures respect the right of the child to family life and that no child is separated from his/her parents by State action or inaction unless in accordance with his/her best interests”.\(^\text{17}\) However, immigration law and policy increasingly dictates that parents migrate first, leaving their children behind in the country of origin until they establish


\(^{11}\) Article 35 (7) of the Spanish Organic Law 2/2009.

\(^{12}\) Czech Republic Act on residence of foreign nationals (No 326/1999 Coll).


\(^{14}\) The Free Movement of Persons in the EU establishes the rights of EU nationals and their family members, including their children, to reside in Member States of the EU other than their own, subject to certain conditions. (Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. EU citizen children also enjoy the right to be joined or accompanied by their non-EEA national parents who are their care-givers. (Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department, Case C-200/02 (19th October 2004); Mary Carpenter v Secretary of State for the Home Department, Case C-60/00, (11th July 2002); London Borough of Harrow v Nimco Hassan Ibrahim and Secretary of State for the Home Department, Case C-310/08 (23rd February 2010); Maria Teixeira v London Borough of Lambeth and Secretary of State for the Home Department, Case C-480/08, (23rd February 2010). As EU citizens, children have a fundamental right to reside in the EU, which is separate to the Free Movement Directive. This means that States are prohibited from removing the custodial parents of minor children from the children’s State of citizenship where such removal would result in those children being unable to enjoy their right to reside in the European Union.

\(^{15}\) Article 10 CRC: Applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner; Article 8 ECHR (Right to private and family life). This is not an absolute right but the State must find a fair balance between the individual’s rights and the rights of the State to control its borders. The best interests of the child is increasingly a feature of the case law of the ECtHR.

\(^{16}\) Article 41.

\(^{17}\) Committee on the Rights of the Child, day of general discussion, 2012, para 83.
themselves legally, economically and socially.\textsuperscript{18} This causes prolonged family separations which can have negative effects on children’s wellbeing.\textsuperscript{19}

Ireland’s provisions on family reunification for Irish citizens and non-EEA nationals who are resident in Ireland are not based in legislation.\textsuperscript{20} Decisions are guided by the Family Reunification Policy document\textsuperscript{21}, and extensive discretion is retained by the Minister for Justice and Equality.\textsuperscript{22}

The discretionary nature of decisions on family reunification, which is not rights based, the long processing times and the absence of an independent appeals mechanism for family reunification decisions are of concern.

The guidelines impose unnecessary family separations through restrictive eligibility criteria. Migrants working in Ireland, on the basis of work permits, and Stamp 4 holders can only sponsor members of their nuclear family after one year, and other family members after 5 years.\textsuperscript{23} A further barrier to children joining parents who are working in Ireland is the high level of income requirements.\textsuperscript{24}

\begin{thebibliography}{9}
\bibitem{20} Persons granted international protection, EEA nationals and scientific researches enjoy a statutory right to family reunification.
\bibitem{23} Green card holders, investors, entrepreneurs and business permission holders are eligible to sponsor family members immediately and without having accrued prior earnings. They must have a net income that is above the family income supplement. They only become eligible to apply for members of their non-nuclear family members after five years.
\bibitem{24} Category B sponsors must have a gross income in each of the previous two years in excess of that applied by the Department of Social Protection in assessing eligibility for Family Income Supplement (FIS) See INIS Policy Document on Non-EEA Family Reunification, p 47-48.
\end{thebibliography}
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14 of the young people interviewed moved to Ireland to join their parent or parents after they had settled in Ireland. In the absence of post-reunification family support, some of those reunifications later broke down and children were taken into the care of the State.

Child victims of trafficking

Four of the young people interviewed as part of this research – Emma, Hope, Harmony and Maria – were trafficked to Europe as children. Their experiences highlight many of the deficiencies of Ireland’s mechanisms for the protection of vulnerable children, the protection of victims of trafficking and the formal identification system for victims of trafficking.

Ireland’s identification system for victims of trafficking is based in Administrative Immigration Arrangements, rather than in law, and is linked to immigration permission. Asylum-seekers, EU nationals and Irish nationals are excluded from the benefit of identification, in a discriminatory manner, which fails to respect their rights. Failures or delays in identifying victims of trafficking can lead to further trauma for the victims. The arrangements do not have special identification guidelines for child victims and do not provide for long-term solutions for them. The Council of Europe Committee recommended that Ireland sets up a specific identification mechanism which takes into account the special circumstances and needs of child victims of trafficking, involves child specialists and ensures that the best interests of the child are the primary consideration”.

25 The Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking
27 Group of Experts on Action against Trafficking in Human Beings, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland, 26 September 2013, Greta (2013) 15, Para 166.
Age assessment

Age assessments are carried out by States to determine a person’s age or age range to establish whether they are a child or an adult, so that appropriate protections are put in place.

There is currently no legal framework or standardised procedures for age assessment, and procedures are therefore unclear. The International Protection Act will introduce a medical model of age assessment in respect of international protection applicants, despite international and EU law stating that such a model should only be used as a last resort. It is regrettable that a social age assessment was not introduced. This would include psychosocial development and available documentation, undertaken by an independent interdisciplinary body consisting of people not involved with the child’s care or protection needs.28

The young people interviewed, who were engaged with age determination procedures, found the method in which their age was questioned intimidating and humiliating. One of the young people interviewed described how she was transferred to another country while her age assessment was ongoing. Due to an incorrect assessment, aged 17 and pregnant, she was placed in direct provision with adults and no support system, having escaped from a situation of trafficking.

Access to information for migrant children and care professionals

Access to information is an essential aspect of the right of access to justice and due process, as well as of children’s participation rights. It is critical for children to know and understand their immigration-related duties and to taking appropriate action. Children in Ireland face significant challenges in accessing clear, accurate and child-friendly

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information about their immigration status, routes to regular immigration status and their duties under immigration law. The absence of clear information is a significant barrier to maintaining regular immigration status.

The INIS website provides information on immigration and citizenship. However, both young people and social workers reported that they found the site difficult to navigate and could not find clear information regarding obligations or the practical implications of different immigration permissions. They also found it frustrating that they could not speak to a member of the Department of Justice.

Where someone does not have permission to reside in the State, the Minister may require that they reside or remain in a particular place, or report to an immigration officer or member of An Garda Síochána at specified intervals. A non-Irish national who does not comply with these requirements “shall be guilty of an offence”. They could ultimately be removed.

It is therefore essential that migrant young people are aware of the requirements to register their presence in the State when they turn 16 and have the necessary documentation to do so. However, our research found that many of the young people interviewed, particularly those in the care of the State and the young people who were trafficked as children, did not receive any advice or information about this duty. It was only when they had difficulties accessing a service that they realised that they needed, and did not have, immigration status. Many social workers and aftercare workers said they had little knowledge of immigration requirements and, therefore, did not know that they needed to assist the children and young people in their care with such matters. Where children are in voluntary care or have not been appointed a social worker, it is likely that they experience even more pronounced difficulties in accessing relevant information about their immigration status.

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29 http://www.inis.gov.ie
30 Section 14 Immigration Act 2004.
Although Aoife, Amanda, Ruth and Paul were in the care of the State, they were not provided with information about securing their immigration status at the appropriate time. To address this information gap, child-friendly, accessible information booklets and online materials on national identity and immigration matters should be made available. Social workers should receive training on immigration issues and there should be a contact point tasked with the provision of information to children in care and their social workers.

Access to legal representation

For some migrants, the complexity of both their individual situation and the law means that they need the services of specialist immigration lawyers. In those situations, access to legal assistance and legal aid is an essential aspect of the right to an effective remedy and to a fair hearing.

Young people typically do not receive legal advice or representation about their immigration status. Children’s access to legal representation is inconsistent. There is no right to independent legal advice for children in State care and there is no formal system or clear routes for children or their social workers to access legal representation. Some children in care gain access to legal representation either directly or indirectly, usually where their social workers are aware of the need to act and have personal contacts to rely on. Social workers described struggling to find solicitors with specific expertise on the relevant issues. They pointed to the valuable time lost in young people’s lives when specialised legal advice was not available. Some judges order that immigration advice is sought in relation to young people in care.

The experiences of many of the young people featured in the case studies draw attention to the missed opportunities and increased vulnerabilities resulting from the lack of timely legal interventions relating to their immigration status. In the case of victims of trafficking, a lack of timely access to specialised legal representation can further increase their vulnerability and leave them at risk of being re-trafficked or further exploitation. Young people who had been in the care of the State could not rely on their parents’ reckonable residence or, in many cases, could not access their parents’ documentation.
or files. Most of them were not offered legal advice or representation in relation to their immigration status or citizenship while they were aged under 18. The Committee on the Rights of the Child recommended that Ireland “take measures to ensure that children in irregular migration situations are provided with independent legal advice and timely clarifications on their migration status”.

Access to citizenship

Citizenship is essential to integration and is a key element in achieving social cohesion.\textsuperscript{32} Access to citizenship should be considered within a human rights framework and reflect the principles of respect for the rule of law, dignity, equality and proportionality.\textsuperscript{33} As well as the positive feelings of belonging and stability inherent in the conferring of citizenship, it enables access to certain rights which are confined to citizens.\textsuperscript{31}

Citizenship and naturalisation

Irish citizenship can be acquired through birth, descent or naturalisation. A child born in Ireland whose parent is Irish or British, or had permission to reside in Ireland for three of the previous four years, is entitled to citizenship at birth.\textsuperscript{34} A child born abroad who had a grandparent born on the island of Ireland or a parent who had claimed their Irish citizenship before the child’s birth is automatically entitled to claim Irish citizenship by applying for a foreign birth registration.\textsuperscript{35}

Children born in Ireland without an automatic right to citizenship and children who moved to Ireland can apply for naturalisation as Irish nationals when they have

\begin{footnotes}
\item\textsuperscript{31} Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Ireland, 1 March 2016, CRC/C/IRL/CO 3-4.
\item\textsuperscript{32} Immigrant Council of Ireland, Living in Limbo: Migrant’s Experiences of Applying for Naturalisation in Ireland, 2011.
\item\textsuperscript{33} Pilgrim, L, International Law and European Nationality Laws EUDO Citizenship Observatory (2011). See also, Faist, T, ed, chapter 7, Dual Citizenship in Europe: From Nationhood to Societal Integration Aldershot: Ashgate (2007) This is reflected by the Council of Europe Convention on Nationality 1997, which Ireland has not signed.
\item\textsuperscript{34} S 6 of the Irish Nationality and Citizenship Act 1956 as amended by the Irish Nationality and Citizenship Acts 2001 and 2004.
\item\textsuperscript{35} For practical details, \url{https://www.dfa.ie/passports-citizenship/citizenship/born-abroad/registering-a-foreign-birth/}
\end{footnotes}
completed a specified period of lawful residence in Ireland, in line with certain conditions. Naturalisation is granted at the absolute discretion of the Minister for Justice and Equality.

Children cannot apply for naturalisation independently. The application must be made by a parent or guardian. This does not respect children’s evolving autonomy. It can also prevent access to citizenship where the parent or guardian is not available or willing to submit an application for the child.

An application for naturalisation can be made by a parent or guardian for children born in Ireland when the child has completed five years reckonable residence. An application also can be made for children on the basis of Irish associations, meaning “related by blood, affinity or adoption to a person who is an Irish citizen”. The situations in which successful applications are made on the basis of associations are unclear, as Irish siblings have been refused while promising sports stars have been successful.

Children who do not fall under either of these categories cannot apply for naturalisation until a parent naturalises first. Children’s applications cannot be considered concurrently with their parents’. The provisions delay children’s access to citizenship. If a parent decides not to apply for naturalisation, or their application is refused, their child is penalised.

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36 Irish Nationality and Citizenship Act 1956 as amended by the Irish Nationality and Citizenship Acts 2001 and 2004, part III Conditions: 15 (a)(i) is of full age or (ii) is a minor born in the State; (b) is of good character; has had a period of one year’s continuous residence in the State immediately before the date of the application and, during the eight years immediately preceding that period, has had a total residence in the State amounting to four years; (d) intends in good faith to continue to reside in the State after naturalisation; and (e) has... made a declaration of fidelity to the nation and loyalty to the State, and (ii) undertaken to faithfully observe the laws of the State and to respect its democratic values.

37 Form 11.


39 For example, see case study of Farah.

40 For example, see case study of Faith
The particular situation of children in the care of the State has not been given adequate consideration in the legal and policy provisions on applying for naturalisation. It is unclear whether applications for naturalisation can be made by social workers acting as the child’s guardian, or whether time spent in the care of the State can be considered reckonable for the purpose of naturalisation regardless of a parent’s residence status. The failure to clarify these matters delays children’s access to citizenship, in many cases until they have reached adulthood.

Many other jurisdictions make specific provisions allowing children to apply for naturalisation independently of their parents’ naturalisation process. Some also have reduced residency requirements for children. Sweden, the UK, Norway and Finland have provisions specifying persons other than parents who can make applications for naturalisation on behalf of children. For example, in the UK, “anyone who has assumed responsibility for a minor may apply”. The UK, Australia, Greece and Austria make specific reference to applications for children in care. Generally applications can be made by those who have assumed or been allocated parental responsibility.

Another practical barrier to applying for Irish citizenship is the challenge of obtaining original birth registration documentation from children’s countries of origin where,

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41 In 2015, the District Court directed the Department of Justice to allow a social worker to sign an application for naturalisation in a child care case. It is understood that the Attorney General’s advice was sought on this matter and is awaited. There has, thus, been no clear change in legislation, policy or guidance to expressly allow for social workers to sign applications for naturalisation. Child Law Reporting Project, ‘Social worker can apply for naturalisation for non-national girl’, Case Histories 2015 Volume 1 http://www.childlawproject.ie/publications/social-worker-can-apply-for-naturalisation-for-non-national-girl/

42 Sweden, Finland, Italy, Austria, Norway, New Zealand, Spain, France, Switzerland, the United Kingdom, Australia, Greece and Slovakia.

43 In Slovakia, applicants over 18 years must have eight years of residence to apply for citizenship, but children can apply if they have three years uninterrupted permanent residence. If their legal representative or guardian is a citizen of the Slovak Republic or a legal entity appointed by a court of the Slovak Republic, only two years’ residence is required. Children in care are not required to have a minimum period of residency to make an application for naturalisation. In Spain, children in care can apply for naturalisation after a reduced period of residence of one year when they have been legally placed for two consecutive years under the tutelage, guardianship or in the care of a Spanish citizen or institution.

44 UK Home Office, chapter 9, Registration of Minors at Discretion section 3(1) British Nationality Act 1981.
parents are not available to assist and, individuals have been living out of their country of origin since childhood. Sworn affidavits of birth are accepted by the INIS Citizenship Division “in exceptional circumstances”. These circumstances are not defined and appear to be applied inconsistently.

Stateless children and access to citizenship

Ireland does not have a formal statelessness determination procedure and does not have any legislation or policy documents on statelessness. The Irish Nationality and Citizenship Act 1956 gives the Minister for Justice and Equality the power to dispense with the conditions for naturalisation in cases involving stateless persons. While the 1956 Act provides a safeguard for stateless children born in Ireland, there are significant practical obstacles to accessing that discretionary mechanism in the absence of a specific regime governing statelessness. The provision is of no assistance to stateless children who migrate to Ireland.

One of the young people interviewed, Boris, was stateless on arrival but he and his legal representatives engaged with the Department of Justice for six years and initiated High Court proceedings before he was granted permission to reside on the basis of being stateless. He encountered further difficulties and delays before he was granted citizenship because he had not been issued with a Certificate of Statelessness.

Issues specific to migrant children in the care of the State

Migrant children in the care of the State face additional barriers to realising their rights. Living away from parents from whom they can derive their immigration status, and in the absence of a specific tailored permission, they lack clarity and certainty about their immigration status and rights.

45 The INIS has set out in the Form 8 naturalisation application form (p 2), that “in certain limited and exceptional circumstances a birth affidavit may be accepted in lieu of a Birth Certificate where you can show satisfactory evidence that the certificate is not available and cannot be obtained. If you are not in possession of, or have lost, your birth certificate, an affidavit will NOT be accepted. You must obtain it from the relevant authorities before applying.”

http://www.inis.gov.ie/en/INIS/Form%208%20Ver%205.5%20Aug%2016.pdf/Files/Form%208%20Ver%205.5%20Aug%2016.pdf/
Although child care legislation does not explicitly require that a child’s immigration status should be addressed, Tusla has a duty to “do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child’s health, development or welfare”. This duty should be considered to extend to the resolution of a child’s immigration status in the State, given the importance of immigration status for children.

**Immigration status – duty to act**

Participants at the Immigrant Council’s outreach sessions said that young people’s immigration status was dealt with on an ad-hoc basis, usually when they encountered barriers to accessing services and often when young people had already aged out of care. They said that questions about immigration status were not being asked early enough in children’s lives. Social workers and other practitioners also said that children often raised their immigration status themselves when they were faced with related problems from the age of 16.

Practitioners also noted that young people would not have the support of social workers or aftercare workers later in life and would experience much greater difficulties in securing their immigration status later on.

Social workers said that immigration status did not generally form part of children’s and young people’s care plans or aftercare plans. A Guardian ad litem stated that its inclusion depended on the team in which a social worker was based and that “offices with a high proportion of migrant children are better at understanding the issues”. Immigration status should be included in care plans and aftercare plans from the earliest possible opportunity so that all necessary steps are taken to secure a child’s immigration status or apply for citizenship as early as possible.

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46 Section 18(3), the Child Care Act, 1991.
The introduction of statutory guidance on assisting young migrants in care to secure their immigration status[^47], coupled with increased knowledge and supports, could prevent many young people being undocumented when they leave care.

Statutory guidance in England states that care plans for children subject to immigration control must include a section on immigration status, including a description of how a child’s needs in relation to their status will be met.[^48] English local authorities have a duty to assist young migrants in their care to regularise their immigration status.[^49] Norway[^50] and the US[^51] provide policies and guidance to social workers and other child welfare practitioners on the significance of, and steps necessary to secure, the immigration status of a child in care at the earliest possible stage.

[^47]: In England, local authorities in England have a duty to assist young migrants in their care to regularise their immigration status.
[^51]: US Department of Health and Human Services Administration on Children, Youth and Families, Information Memorandum: Case Planning and Service Delivery for Families with Parents and Legal Guardians who are Detained or Deported by Immigration Enforcement, (Issued 20 February 2015), [http://www.acf.hhs.gov/sites/default/files/cb/im1502.pdf](http://www.acf.hhs.gov/sites/default/files/cb/im1502.pdf)
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Right to identity

Young people and social workers experienced significant difficulties in accessing original documentation to prove identity, particularly when parents or previous carers had left Ireland, were not contactable or did not cooperate. Other barriers included requirements in certain countries that their nationals present themselves, or reside, in the country of nationality to obtain a national passport.

As well as being essential for international travel, national passports issued from a person’s country of citizenship are necessary as proof of identity in many situations in Ireland. Without a birth certificate and passport, it is almost impossible to obtain other forms of identification. There are countless situations requiring proof of identification, which include registering your permission to reside, opening a bank account, instructing a solicitor, applying for a driving licence, seeking a PPS number and accessing many forms of employment. To be granted naturalisation in Ireland, proof of identity in the form of a national passport is required. One social worker described how young people without identity documents are “stuck in limbo”

Children and young people in care need to be assisted to obtain their original birth certificates and passports to preserve their identity. It is vital that information and documentation are gathered from parents or previous caregivers at the earliest possible opportunity, and that any fees arising are discharged.

The Minister for Justice should exercise discretion in processing applications for residency and naturalisation for children who have been in the care of the State; where Tusla records show that there has been no contact with a child’s parent(s); and reasonable efforts have been made to establish identity, and contact parents and relevant embassies to acquire documentation.
Allocation of social workers

Social workers have a key role to play in identifying immigration issues for children and in taking steps to secure status, including seeking legal advice and representation. Where no social worker is appointed to a child, they risk leaving the care system without lawful immigration status. Funding needs to be allocated to reduce the waiting lists for social worker allocation.

Equity of care for asylum-seeking children

All children in care should receive aftercare services when they turn 18, including access to or support with suitable accommodation until the age of 21 (or 23 if they are in full-time education). This includes asylum-seeking separated children who are currently placed in direct provision when they turn 18 until their application for asylum is being processed.

Data on migrant children in care

The collection and analysis of accurate data on children with migrant backgrounds is essential if Ireland is to formulate, implement and monitor effective public policy, law and practice relating to both children and migration. Accurate information on children in the care of the State who were born outside of Ireland and who may, or may not, be Irish citizens would assist in policy formulation, service planning and the identification of training needs.

Collecting data related to nationality, immigration status, birth certificates and passports for case files would help social workers to identify when steps need to be taken in relation to seeking identity documents, securing immigration status or seeking legal representation.

Implications of failure to address immigration status

Delays in addressing a child’s immigration status can restrict or prevent their access to further education, employment, social welfare and housing as access is dependent on secure immigration status.
The laws and policies that determine access to education, housing and social welfare have a significant impact on the lives of migrant young people. Policy-makers need to adequately consider the wide range of situations in which immigration permission is granted to individuals and how that affects their access to services.

**Access to third-level education**

Access to third-level education emerged as the top priority for the young migrants and support workers consulted for this research. Under the provisions of the Student Support Act 2011 and Student Support Regulations 2016, children with prescribed immigration permissions are eligible for financial support for third-level education. These include ‘persons granted permission to remain following a determination not to make a deportation order’. Many young people in the care of the State are granted permission to reside on exceptional or discretionary grounds without an intention to make a deportation order being issued against them, and therefore do not qualify for a SUSI grant. This is the case even when they have been lawfully resident and settled in Ireland for a number of years and have completed their secondary and, in many instances, primary education in Ireland. This arbitrary policy restricts access to education on the basis of immigration status and is in breach of Ireland’s ECHR commitments to respect the right to education without discrimination, including discrimination on the grounds of immigration status.52 Several of the participants who were care-leavers could not afford to attend third-level education because their immigration status restricted their access to financial support.

The barriers that restrict the access of young people with Stamp 4 on a discretionary basis to further education must be removed. Restricting access to further education also restricts job opportunities for young care leavers, which could stimulate a cycle of vulnerability and disadvantage. It also has a negative impact on the emotional and mental wellbeing of young migrant care leavers, as they feel unequal to their peers and have to cope with the stress and psychological effects of being prevented from achieving their goals and dreams.

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52 Bah v the United Kingdom 56328/07 [2011] ECHR 1448.
Access to social welfare

Access to social welfare requires demonstration of a “right to reside”. Failure to secure immigration status and becoming undocumented means that a person does not have a ‘right to reside’ and cannot access social welfare. Two of the young people, Paul and Amanda, described how they were left destitute as young adults because they could not access either employment or social welfare despite living in the State from the ages of 10 and 6 respectively. Both had been in the care of the State for a number of years but their immigration status had not been secured during that time.

Access to housing

Access to housing is another area where it appears that immigration decisions have unintended consequences for people’s lives. Young people whose immigration status was not secured as children, or who were granted permission to reside for reasons that are not envisaged by the national housing circular, face barriers to accessing housing. For example, those with a Stamp 4 issued on a discretionary basis are not eligible to apply for social housing and are therefore, also not eligible for the new Housing Assistance Payment (HAP) scheme.

Furthermore, to be eligible to receive rent allowance, migrants must hold a legal residence permission. Therefore, young people who are not assisted to secure their immigration status before reaching adulthood or before aging out of the care system can face serious difficulties in finding affordable housing.

Journeys, expectations and integration

The young people described their journeys, the extent to which they were involved in decisions to migrate and their integration in Ireland. Reasons for moving included seeking an improved quality of life and opportunities, to join family and friends and forced migration. Their feelings about moving were mixed. Many recalled the cold on arrival in Ireland. Issues of language acquisition were an important factor for children. Only two of the young people interviewed could speak English on arrival, and many
of the others experienced difficulties communicating. This was particularly difficult for young people whose younger siblings spoke English in the home. Additional English language support was vital to children achieving in school. It was regrettable to hear that some of the children lost their mother tongue over time, and supports for mother tongue education did not exist, apart from where the child’s mother tongue was French.

The young people also discussed the role of advocates and guardians in their lives, their experiences of education, access to young and community services, experiences of equality or discrimination, culture, identity and integration.

Conclusion

A person’s immigration status can define and determine their path in life. It is central to their ability to access employment, education and social services. Yet, the wide range of situations in which children and young people migrate to Ireland is not addressed by the Irish immigration system.

The immigration status of a child lacks clarity, consistency and transparency, which can result in practical difficulties for children. Children in the care of the State, who may not have parents on whose status they can rely, are not formally catered for under Irish immigration law or administrative arrangements.

Ireland’s migration-related legislation, policy and practice lack a child-sensitive lens, while the laws and policies relating to children in care do not take into account the specific needs of migrant children and young people.

We hope that our research will be a valuable resource to further the discussion on the needs of migrant children and young people. Ireland needs to introduce clear and equitable processes and policies regarding immigration status. These processes and policies must take into account the specific needs of children and young people, irrespective of their parents’ immigration status. Policies must be inclusive and flexible, and assist the most vulnerable. The recommendations for reform below, if acted upon, could improve the lives of migrant children and young people living in Ireland.
1.1 Historical context and rationale for the research

The Immigrant Council of Ireland is an independent, non-governmental human rights organisation and independent law centre. It was established in 2001 to offer support, advice and information to migrants and their families and to make immigration laws and policies fit for purpose through research, advocacy, strategic legal action and engagement with lawmakers. Ensuring access to justice is the cornerstone of all of the Immigrant Council’s work, which is underpinned by the principles that immigration is a permanent and positive reality and that individuals’ human rights must be respected, protected and fulfilled.

The place and rights of children in the context of migration have long been an issue of concern for the Immigrant Council. Much of the Immigrant Council’s legal advocacy and representation over the past 15 years has had an impact on children, either directly or indirectly. Early strategic litigation campaigns focused on the right to family life of Irish-citizen children whose parents were refused permission to reside in Ireland. The right to family reunification has been a central focus of the Immigrant Council’s work, attracting the highest percentage of calls from the public. High Court challenges made by the Immigrant Council’s law centre on behalf of clients were successful in bringing about policy change on issues such as the policy to refuse visas to children of settled students who had been left at home and the requirement that children

53 On 23 January 2003, the majority of the Supreme Court of Ireland upheld the right of the Minister for Justice and Equality to deport non-nationals from Ireland even if, in certain circumstances, they were parents of Irish children. This placed more than 11,000 families that had applied for leave to remain in an extremely vulnerable position. By late 2003, more than 700 deportation orders had been issued. In response to the unfair decision, human rights NGOs, including the Immigrant Council, campaigned to ensure that the rights of the Irish children and their migrant parents would be respected. The Immigrant Council engaged in strategic litigation and provided legal advice, particularly to those refused under IBC/05 (the Irish-born child administrative scheme for migrant residency 2005) and in family reunification cases. The Immigrant Council advised families to first obtain status and then challenge the condition that denied them any access to family reunification. Challenges made by the Immigrant Council referenced the right to family life under both the Irish constitution and the rights of EU nationals under EU law. Our client, Igeoma Igweze, was successful under such circumstances following submissions made by the Immigrant Council on her behalf.

54 See http://www.irishtimes.com/news/crime-and-law/chinese-couple-seek-irish-born-daughter-s-return-to-ireland-1.1373080. Following grant of leave to take the case by the High Court, the Minister for Justice and Equality made the decision to grant the child, who had been born in Ireland but returned to live with grandparents in China for what was thought would be a short time, a visa to enter Ireland. The general policy in respect of former students on the probationary scheme was subsequently changed to allow children to enter and reside in Ireland subject to financial criteria.
of students attend private, fee-paying primary and secondary schools.\textsuperscript{55} As well as providing information and legal representation to individuals, the Immigrant Council has acted as amicus curiae (friend of the court) in a case before the European Court of Human Rights (ECtHR) on the matter of children’s rights and the right to family life.\textsuperscript{56}

Since 2007, the Immigrant Council has increasingly been requested to provide information, legal advice and representation directly to children and young people. Many of the young people arrived in Ireland as children and became adults without steps being taken to secure their immigration status. While some young people made contact with services independently, many children and young people were referred for legal advice and representation by their social workers, aftercare workers, guardians ad litem (GALs), foster parents or other advocates. Sometimes independent legal representation was sought at the direction of a District Court judge.

There has been a notable increase in the number and breadth of queries relating to the immigration status of children and young people over the past eight years. Conversations with young people and their advocates revealed knowledge gaps around immigration duties and permissions, frustration with the lack of clarity around the immigration system and a struggle to find accurate information. They also drew attention to the different aspects of children’s and young people’s lives that were affected by their immigration status. Young people reported that they had first become aware of their immigration status when they could not access education, accommodation or employment, or when they realised they could not travel abroad.

In January 2016, the UN Committee on the Rights of the Child examined Ireland’s compliance with the UN Convention on the Rights of the Child (UNCRC). It

\textsuperscript{55} See http://www.irishtimes.com/news/us-mother-given-leave-to-challenge-private-school-order-1992481; http://www.irishtimes.com/news/us-student-with-child-in-school-to-get-visa-1993149. The Immigrant Council represented a US post-graduate student who was refused renewal of her permission to remain in Ireland unless her son entered private education. There was only one private primary school in the area and was unsuitable to the child’s needs. Following Judicial Review, the student’s permission to remain was renewed without the condition that she transfer her child to a private school. The case led to a change in policy by the Department of Justice and the removal of the requirement that children be enrolled in fee-paying schools.

\textsuperscript{56} Jeunesse v the Netherlands [2014] ECHR 1036.
recommended that Ireland adopt a legal framework to address the needs of migrant children.\(^{57}\) However, the particular needs of migrant children have received little attention. The research and policy analysis by the State and others in the area of child migration has focused on the particularly vulnerable group of separated children seeking asylum.\(^{58}\) The broad range of experiences and needs of migrant children who may have arrived in Ireland with their families or travelled to join them had not been documented. It was particularly striking that the only information in the Government’s report to the Committee on the Rights of the Child on migrant children was in respect of separated children.\(^{59}\) Without research and discussion about the particular needs of children as migrants, it is not possible to ensure that policy and legislation is formulated to take account of their specific needs.

The Immigrant Council decided to document the issues presenting to our services that are affecting children and young people and also to conduct further research on the children’s experiences of migration. We spoke to young adults who travelled to Ireland as children about their experiences of their journey, arrival, integration, interactions with the immigration system and, where relevant, their experiences of living in the care of the State. We also spoke to professionals who represent and assist children and young people about the challenges they face in supporting young migrants.

1.1.1 Evolution of child migration

Migration discourse traditionally focused on the adult male migrant, with children considered as secondary and dependent.\(^{60}\) Children did not feature as individual

\(^{57}\) UN Committee on the Rights of the Child, Committee on the Rights of the Child, Concluding Observations on the combined third and fourth periodic reports of Ireland, 1 March 2016, CRC/C/IRL/CO.


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subjects of immigration concern, but as appendages of and dependents on their parents, families or others. The consideration of children only as ancillary to their parents is at odds with the concept of the child as an autonomous rights-holder, which has developed considerably in international and EU law over the past 25 years.

There now exists a significant body of international law and guidance on the positive obligations of States to respect the rights of children, not only because they may be vulnerable or in need of special protection, but because they are individual rights-holders. Yet, it has been highlighted that: “instead of effectively implementing international undertakings reflected in domestic constitutional protections, States react ambivalently, torn between the mandate to protect and the pressure to exclude and marginalize”.\textsuperscript{61} It has been further identified that: “Child migration is as much about childhood enterprise, resilience and initiative as it is about child persecution and victimhood. However, the legal and political framework does not reflect this. Child migrants cannot usually bring their relatives to join them, nor can considerations affecting them generally prevent or slow family deportation. Children are seen as secondary rather than primary migration agents.”\textsuperscript{62}

In Ireland, despite much advancement in other areas of the law relating to children\textsuperscript{63} and a constitutional amendment to place the individual rights of children expressly in the Constitution, children remain ancillary to immigration decisions. For example, in 2015 the Irish Court of Appeal found that the principle of the best interests of the child need not be a primary consideration in deportation cases.\textsuperscript{64}

\textsuperscript{60} Bhabha, J, in Jyothi Kanics, Daniel Senovilla Hernandez, Kristina Touzenis, Migrating Alone: Unaccompanied and Separated Children’s Migration to Europe, p. 92
\textsuperscript{61} Bhabha, J, in Jyothi Kanics, Daniel Senovilla Hernandez, Kristina Touzenis, Migrating Alone: Unaccompanied and Separated Children’s Migration to Europe, p. 92
\textsuperscript{62} Bhabha, J, in Jyothi Kanics, Daniel Senovilla Hernandez, Kristina Touzenis, Migrating Alone: Unaccompanied and Separated Children’s Migration to Europe, p. 93.
\textsuperscript{63} E.g. The Children First Act 2015: to improve child protection measures; Children and Family Relationships Act 2015: to comprehensively reform family law to address the situation of children of diverse families; Children (Amendment) Act 2015: to repeal all parts of the current statute book that permit the detention of children in adult prison facilities and provide for related measures; Gender Recognition Act 2015: to provide that, from 16 years of age, a person’s preferred gender will be fully recognised by the State for all purposes; Civil Registration (Amendment) Act 2014: to provide for the compulsory registration of the father’s name on the birth record, except for some exceptional circumstances, and also to provide a mechanism for birth registration where no surname can be agreed. UN Committee on the Rights of the Child, Committee on the Rights of the Child, Concluding Observations on the combined third and fourth periodic reports of Ireland, 1 March 2016, CRC/C/IRL/CO.
1.1.2 Current global migration flows and migration to Europe

This research was completed against a backdrop of concern for the growing numbers of children affected by the international migration crisis. The Office of the United Nations High Commissioner for Refugees (UNHCR) estimated that 65.3 million individuals were forcibly displaced at the end of 2015, with developing regions hosting 86 per cent of the world’s refugees. Children were estimated to account for 51 per cent of the world’s refugees in 2015, up from 41 per cent in 2009. Conflicts in Syria, Afghanistan and Somalia account for more than half of all refugees worldwide.

In Europe, an alarming feature of the refugee crisis has been the increasing proportion of children among refugees and migrants. In 2015, 384,000 children sought asylum in the EU. The number of children among arrivals by sea increased from 16 per cent in June 2015 to 35 per cent in April 2016. Since the beginning of 2016, the number of women and children arriving by sea in south Europe has exceeded those of men for the first time.

In September 2015, three-year old Alan Kurdi drowned after the inflatable boat capsized in which he, his mother, brother and others were trying to reach Europe. Alan’s Canadian aunt had made an unsuccessful urgent application to sponsor her family members to bring them to Canada through regular means. The photograph of his lifeless body sparked international outrage and debate. Sadly, the reaction did

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64 Dos Santos & ors v Minister for Justice and Equality & ors [2015] IECA 210
65 http://www.unhcr.org/576408cd7
66 http://www.unhcr.org/576408cd7
67 http://www.unhcr.org/576408cd7
68 http://www.unhcr.org/576408cd7
not extend to safe, legal passage for migrants and refugees. Some 500 children died in sea crossings in 2015\textsuperscript{71}, while 600 children lost their lives travelling to Europe in the first nine months of 2016.\textsuperscript{72}

Although forced displacement has increased significantly, global migration has remained relatively consistent at 3 per cent of the world’s population, with numbers rising in line with population growth.\textsuperscript{73} In respect of migration to Europe, there has not been a sustained increase in overall migration from third countries over the past five years. The Organisation for Economic Cooperation and Development (OECD) estimates that, in 2012, the European Union (EU) experienced a 12 per cent decline in migration involving non-EU nationals.\textsuperscript{74} The Special Rapporteur on the human rights of migrants explained: “The overall decrease in flows to the European Union is reflective of the fact that the region has broadly deemed migration from third-country nationals to be undesirable and dramatically reduced regular migration opportunities.”\textsuperscript{75} He said this had led to a decrease in regular migration to the EU and an increase in irregular migration and asylum claims since 2013.\textsuperscript{76}

Article 13 of the Universal Declaration of Human Rights says that “everyone has the right to leave any country, including his own, and to return to his country”. While there is a right to leave one’s country of origin, there is no corresponding right to enter another. Immigration is considered a matter of national sovereignty. Mobility has

\textsuperscript{72} Save the Children press release https://www.savethechildren.net/article/600-children-have-died-mediterranean-year, 3 October 2016; See also: http://missingmigrants.iom.int/
\textsuperscript{73} http://dtmodk.iom.int/docs/WEEKLY%20Flows%20Compilation%20No17%20%20%20June%202016.pdf
\textsuperscript{74} OECD: Is migration really increasing?, Migration Policy Debates (May 2014).
\textsuperscript{76} Ibid.
also been explained as “a privilege that is unevenly distributed among human beings: citizens from developed countries may travel and settle down almost anywhere in the world, while their fellow human beings from less developed countries depend upon the uncertain issuance of visas and residence permits to migrate”.77

Europe’s increasingly impenetrable borders, and policies and practices aimed at preventing irregular migration to Europe have been dubbed “Fortress Europe.” It is increasingly difficult for migrants to secure permission to enter Europe lawfully and it is also increasingly difficult to enter with the purpose of seeking asylum without prior permission. The EU does not operate a system of humanitarian visas, which would enable people with visas to enter an EU country to seek asylum. Many people wishing to seek asylum in Europe never reach its shores to do so. It has been observed that “migration controls obscure refugeehood. The EU blocks access to protection for many migrants and also fails to recognise many of them.”78 The approach taken by the EU that deems irregular travel “illegal” has been criticised: “Duties of negative mutual recognition amplify the notion of illegality in the EU, by deeming one Member State’s determination of ‘illegality’ to be binding throughout the EU, precluding entry to the entire territory.”79

The impact of barriers to safe transit and to lawful access to territory on refugees’ and migrants’ right to life is the defining international immigration issue of our time. As much as the tragedy of deaths of asylum seekers and migrants seeking entry to Europe is a result of war and persecution, it is also a consequence of the absence

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of safe, legal migration paths to Europe. For independent child migrants, the legal avenues for children to travel without an adult are extremely limited. This means that migration by children alone will likely be done irregularly with the related risks.

1.1.3 Migration to Ireland

Ireland was one of the last EU countries to become a country of inward migration and has experienced significant demographic change in the past 25 years. While the 2002 census revealed that only 5.8 per cent of the population was not Irish or part Irish, this figure had grown to 10 per cent in 2006 and 12 per cent in 2011.  

While international migration is at the highest ever levels, Ireland has not become host to the current refugee population to the same extent as other EU countries. This may be due in part to Ireland’s geographical location combined with the impact of EU law on applying for asylum in the first country an asylum seeker enters, domestic legal barriers to entering Ireland and the slow pace of relocation and resettlement to Ireland. Ireland and the UK availed of an opt-out of Title V, Part Three of the Treaty on the Functioning of the European Union. Therefore, Ireland is not bound to participate in the EU’s emergency response. However, on 20 July 2015 the Department of Justice and Equality stated that a motion for Ireland to opt-in would be brought before the Oireachtas and it has since been agreed that Ireland would accept up to 4,000 persons overall under EU resettlement and relocation programmes.

The Central Statistics Office estimated the number of migrants in the year from April 2014 to April 2015 at 69,300. Of those, 12,800 were children under 15 years old; 14,700 were aged between 15 and 24 years. Beyond these figures, very little is known about migrant children in Ireland. Broadly, it can be stated that children, like adults, migrate for diverse and complex reasons: political, social, economic and environmental. For

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This figure excludes those who have naturalised as Irish citizens. When included, the 2012 figure stands at 17 per cent of the population.  
81 Minister Fitzgerald welcomes comprehensive package of measures on Mediterranean migration – Ireland to join other Member States in new solidarity measure to Greece and Italy, 20 July 2015 (http://www.inis.gov.ie/en/INIS/Pages/Minister%20Fitzgerald%20welcomes%20comprehensive%20package%20of%20measures%20on%20Mediterranean%20migration).
most, their move to a new country is precipitated by multiple factors. Many travel within mixed migratory flows; complex population movements including refugees, asylum seekers, economic migrants and other migrants.\(^\text{82}\)

### 1.1.4 Why do children migrate?

The most powerful force that drives people abroad is the hope of economic gain. A failing home State is a powerful incentive to leave and a network of friends in the country of destination lowering the barriers to migrating.\(^\text{83}\) Independent child migration can be, and often is, a positive decision taken by the child with the aim of improving life opportunities. Child migrants, like adults, rely on their social and financial resource networks when migrating.\(^\text{84}\) Some children travel to join family members, to seek improved employment or educational opportunities, or in search of a better quality of life. In some instances, their parents or siblings may be entitled to work and live in Ireland as citizens of the EU or they may have been granted an employment permit to work in Ireland.

Vulnerable civilians, including children, are increasingly targeted and affected by contemporary war. The displacement of people has increasingly become a strategic tactic used by all sides of internal conflicts.\(^\text{85}\) At least half of the people displaced by war around the world are children.\(^\text{86}\) People are displaced internally or across borders not only by war but as the result of violent conflicts, political unrest, calculated genocide, discrimination, the effects of climate change, food crises, chemical or nuclear disasters, or development projects.\(^\text{87}\) Children also move to escape gender-based discrimination, domestic violence, forced military conscription, torture and

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\(^\text{84}\) Kanics, Hernández and Touzenis, Migrating Alone: Unaccompanied and Separated Children’s Migration to Europe, xiv.

\(^\text{85}\) See http://www.tigweb.org/themes/refugees/index.html?method=define
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exploitation. Children are increasingly being trafficked or coerced to move for exploitation either in the sex trade or the unregulated economy.\(^{88}\)

It is clear that children will continue to move to Ireland, and make Ireland their home for many different reasons. This report seeks to prompt a discussion on and increase awareness of the particular experiences of children who are affected by migration and the steps that must be taken in law, policy and practice to respect, protect and fulfil the rights of those children. It is hoped that this report will act as a resource in developing a legal framework that is responsive to the needs and rights of children.

1.2 Research methodology

A mixed methods approach, incorporating elements of both quantitative and qualitative research was adopted for this study.

1.2.1 Primary research

To understand the broad range of children’s experiences of migration and the Irish immigration system, several sources of information and data were used:

- We held 19 semi-structured, one-to-one interviews with young adults who moved to Ireland as children. Each interview lasted for approximately one hour.
- We examined 13 individual case files from the Immigrant Council’s independent law centre. The data was used to form further case studies.
- We received feedback from 180 participants of six training and outreach sessions with social workers, guardians ad litem and other professionals working with migrant children which took place in Cork, Limerick, Galway and Dublin. The Dublin city centre session was open to all practitioners working with migrant children, while four further Dublin sessions took place with specific

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\(^{87}\) See definition of forced migration adopted by the International Association for the Study of Forced Migration (IASFM)

teams of social workers following requests from representatives of those teams.
• Some 46 questionnaires were completed by social workers and other professionals working with migrant children.
• We held four in-depth interviews with various professionals working with and representing migrant children, including GALs, solicitors and barristers.

1.2.2 Secondary/desk research

Secondary research methods were employed to review literature and international, EU, comparative and domestic law and policy relevant to the experiences of child migrants.

1.2.3 Profile of participants

Invitations to participate in this project were extended through social media, through the Immigrant Council’s networks and to former clients. The experiences of 32 people were documented. These young migrants came from a broad range of backgrounds in terms of their age, immigration status, nationality and gender. Of the young people featured in the case studies, 19 were female while 13 were male. Of those interviewed, 20 had spent time in the care of the State as children. One had been the subject of a supervision order.

The participants included young people with many different immigration permissions, as well as young people who had naturalised as Irish citizens. An overview of the various stamps is provided at Appendix 2 to assist in reading the case studies and following chapters.

Brief extracts of case profiles have been used throughout this paper to illustrate the experiences, as well as the views, of children and young people regarding their experience of migration to Ireland and dealing with immigration and citizenship matters in relevant chapters. The full case profiles are set out in chapter 2.
The young people who participated in this research came from a wide range of geographical backgrounds, with many countries of origin and nationalities represented. The countries of nationality of some of the young people have been omitted to protect their identity.

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<tr>
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<tr>
<td>Discretionary Stamp 4 holder</td>
<td>7</td>
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<tr>
<td>Stamp 4 - family member of an Irish citizen</td>
<td>2</td>
</tr>
<tr>
<td>Stamp 4 - parent of an Irish-citizen child</td>
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<tr>
<td>Stamp 4 - EU FAM</td>
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<tr>
<td>Stamp 4 - Family member of a refugee</td>
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<tr>
<td>Temporary Stamp 4 - victim of trafficking</td>
<td>2</td>
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<td>Refugee</td>
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<td>Subsidiary protection</td>
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<td>Work permit holder</td>
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Table 2: Nationality on arrival in Ireland

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<td>23</td>
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1.2.4 Ethical considerations

The purpose of the study was explained clearly to all participants. They all took part in the study on a voluntary basis, having given their informed consent prior to interview and with the assurance of anonymity and confidentiality. Pseudonyms are used in all of the case studies to protect the identity of the young people. All of the interviewees participated knowing that information from their case studies and quotes from their interviews would be published.
There was an emotional risk for participants as recalling past experiences, particularly for victims of trafficking (VoTs) or victims of abuse, can be traumatic. Participants were alerted in advance of giving their consent to participate that they may experience emotional upset in describing their experiences during the interviews. The Immigrant Council committed to put the participants in contact with relevant supports if needed. The interviewers also took measures to minimise emotional risk to the participants by informing participants to indicate if they would prefer not to answer certain questions or talk about certain experiences, by approaching subjects in a sensitive manner and moving on to speak about a different experience if a participant seemed uncomfortable or upset. Some of the participants became upset during the interview and were supported appropriately.

No children were interviewed as part of the research.
CHAPTER 2 : CASE STUDY OVERVIEWS

Brief extracts of case profiles have been used throughout this paper to illustrate the experiences, as well as the views, of children and young people in relevant chapters.

In this chapter, their situations and experiences are set out in fuller detail. They provide a more detailed overview of individual experiences of migration and some of the challenges that arise in dealing with immigration and citizenship applications. The case profiles reflect the experiences of individuals who participated in this study and do not necessarily reflect the experiences of all migrant children living in Ireland. On a daily basis, the Immigrant Council encounters a wide range of issues, not all of which are documented in this publication.

The Immigrant Council is indebted to the young people who shared their reflections on and memories of making Ireland their new home when they were children. Their experiences informed the direction of this research and guided the recommendations made. These case studies convey a sense of the broad range of issues that children face in migrating to Ireland, their experiences of navigating the Irish immigration system and citizenship process, and the barriers and frustrations they encountered.

The participants are referred to by pseudonym and quoted throughout this report. Where readers encounter an individual about whom they would like to learn more, please refer back to this chapter.

Case study 1 – Aoife

Aoife is a citizen of South Africa who travelled to Ireland with her mother and siblings when she was two years old. Her father is an Irish national. However, Aoife’s birth to an Irish parent outside the State was not registered with the Foreign Births Registry, despite her entitlement since birth to become an Irish citizen in that way. This meant
that Aoife continues to be subject to Irish immigration control and is considered a non-European Economic Area (EEA)\textsuperscript{89} national for all State purposes.

Aoife lived with her mother and siblings until she was taken into the care of the State at the age of 14. She was placed in foster care until she turned 18. Aoife did not register with the Garda National Immigration Bureau (GNIB) until she was 17 years old as she was not aware of the obligation on all persons from outside the EEA to register at 16 years. Her mother informed her about the obligation to register at that point. Immigration and citizenship matters were not part of Aoife’s care plan, but they were included in her aftercare plan. With the assistance of her aftercare worker, Aoife sought legal advice in relation to immigration and citizenship matters when she turned 18 and experienced difficulties in accessing further education. Aoife has submitted an application to obtain her original birth certificate and to renew her passport from her country of birth. She is awaiting their delivery so she can apply to the Foreign Births Registry to become an Irish citizen.

The lack of knowledge and delay in Aoife registering to become an Irish citizen has had a negative impact on her access to education, employment and social welfare payments. Her progress to further education has been delayed as she remains subject to international fees. She is not eligible for a grant due to having been issued with a Stamp 4 on discretionary grounds. Having turned 20 years old since being interviewed for this research, Aoife hopes that she will soon be in a position to submit an application to register her foreign birth and become an Irish citizen.

\textsuperscript{89} The European Economic Area is made up of the European Union Member States plus Iceland, Liechtenstein and Norway.
Case study 2 – Hope

Hope is a Nigerian national who arrived in Ireland when she was 16 years old. Hope had been orphaned, sold by her aunt and trafficked from her country of origin to Italy, where she was exploited in forced prostitution. When in Italy, Hope managed to hide small amounts of money, on the advice of another victim of prostitution, and saved up enough for a flight back to her country of origin. Hope returned to her aunt’s home, as she had nowhere else to go and no way to support herself. Hope’s aunt was not happy to see her and soon forced her into prostitution locally. Hope became pregnant as a result of her forced prostitution and her aunt threatened to procure an abortion against Hope’s wishes. Hope feared for her own life and that of her unborn child so fled to seek the shelter of a priest. The priest provided her with shelter for a number of months and then arranged a flight for her to a European city. When Hope arrived in Europe, an Irish woman at the airport told her that she should travel to Ireland with her, as she would be looked after there.

Hope escaped from her situation of exploitation and claimed asylum in Ireland. She was pregnant on arrival and gave birth shortly afterwards. Although she stated her age to be 16, her age was disputed.

Hope was returned to Italy when her baby was a few weeks old while her age assessment was ongoing. Following legal intervention, she was brought back to Ireland. Although initially placed in direct provision, it was subsequently accepted that she was under 18 years, and she and her baby were placed in foster care together. When hope was 19 years old, she and her baby were declared as refugees following a Refugee Appeals Tribunal hearing. It was recognised that Hope was a victim of trafficking and that she and her baby would be at risk of being re-trafficked if returned to her country of origin.

Although Hope cooperated with the Garda investigation into the situation of trafficking at all times, she was not formally identified as a victim of trafficking under the Administrative Immigration Arrangements while she was an asylum seeker.
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Case study 3 – John

John travelled from South Africa to Ireland with his mother and brother when he was two years old. His mother held a legal residence permission and John resided in Ireland on the basis of her permission. John was taken into the care of the State at the age of 13. He spent three years living with a foster family before moving to a residential centre. John then became homeless for two months before he turned 18. Staff from the residential centre assisted him in finding accommodation where he can now avail of aftercare supports.

John did not have any understanding about his immigration status until he was moving from school to an education centre at the age of 14 and was asked for his GNIB card. Before that, he just thought that he was allowed to live in Ireland and didn’t realise that there may be any issues with this. John was registered at the age of 16 and has kept his immigration permission up to date at all times.

John’s mother is a naturalised Irish citizen. His social work team realised the importance of naturalisation for John while he was still under 18 and sought legal advice and representation on his behalf. John made the relevant application, after extended efforts to locate original documents, and became a naturalised Irish citizen in early 2016.

John outlined the many supports he had. He had a care plan, was appointed a GAL, and had supportive social workers, aftercare workers and foster parents.

Case study 4 – George

George was 11 years old when he travelled alone to Ireland from his country of origin in Africa to join his mother and sibling who were already resident in Ireland. George was taken into the care of the State at the age of 12 or 13 and spent time living in two residential homes for young boys. George registered with the GNIB at 16. He was initially registered with a dependant Stamp 3. Later, following legal advice and representations, he was registered with a Stamp 4.
Because his mother always looked after immigration matters for him, George did not have much understanding of his immigration status until he was dismissed by an employer at the age of 18 because he did not have permission to work in Ireland. He thought that the fact that he had a stamp meant he could work, and he did not realise that his permission did not allow him to work.

George found everything to do with his immigration status very stressful and described it as the most stressful thing that’s happened to him. He said that he found it depressing, particularly when he lost a job that he really enjoyed because he did not have the correct permission. Following his change of status to Stamp 4, George pursued a successful career as an athlete.

Case study 5 – Salah

Salah is a non-EEA national who was 16 years old when he arrived in Ireland unaccompanied. Salah was fleeing terrorism in his country of origin. When Salah arrived in Ireland, his smuggler confiscated his passport and abandoned him on the street. Salah eventually met people on the street who spoke his native language and they brought him to the Office of the Refugee Appeals Commissioner (ORAC) to seek asylum.

Salah was initially placed in HSE residential accommodation for minors. After extensive informal interviews about his age, he was placed in foster care. When he turned 18 years and while studying for his Leaving Certificate exams, he was moved to an adult direct provision centre.

When Salah’s application for refugee status was unsuccessful, a private practice solicitor specialising in immigration law took on his case on a pro bono basis and acted for him in an application for subsidiary protection. This application was successful.
Amina is a Mauritian national who moved to Ireland with her younger sibling when she was 14. They joined her mother who was residing and studying in Ireland on international student conditions. She and her sibling resided in Ireland as dependants of their mother. Amina’s mother became undocumented when she could not fulfil the immigration policy requirement that international students place their children in fee-paying schools. When she could not present proof that both her children were attending fee-paying schools, Amina did not register with the GNIB. Amina’s mother was not made aware that the policy had been challenged and reversed. When Amina’s mother later received immigration advice and submissions were made to the Department of Justice on her behalf, she was granted permission to reside on a Stamp 4 basis.

Amina registered as an international student when she completed secondary school. She completed a university degree while working part-time to support herself financially.

The HR department of the employer with which Amina completed her university work experience provided information on applying for an extension of her student status while she applied for a job and for a work permit. She was subsequently offered a job there; her employer applied for a work permit and she is now registered with a Stamp 1.
Case study 7 – Alicia

Alicia is a Mauritian national who travelled to Ireland with her father and her younger sibling when she was 14 years old. Alicia’s father brought Alicia and her sibling to join their mother in Ireland before returning to their country of origin himself. Alicia lived with her mother and brother and later with their mother’s EU-citizen partner who was working in Ireland.

Alicia was not aware of the obligation to register with the GNIB until she was 17 years old and was applying for a PPS number. She thought that it was too late for her to register at that point, so did not approach the authorities.

As a teenager, Alicia gave birth to a baby with her non-EEA, undocumented partner and was constantly stressed about their undocumented status. She did not know how to regularise her immigration status. The fact that Alicia did not have a residence card evidencing her permission to reside in Ireland had an impact on her daily life. It meant that she could not access employment or social welfare and she struggled financially when her partner lost his job.

A housing support service referred Alicia for legal advice. Submissions were made to the Department of Justice in relation to her membership of the family of an EU national who was exercising his EU Treaty rights in Ireland. Alicia was granted permission to reside on that basis and now holds a Stamp 4 EU FAM.
Case study 8 – Boris

Boris was born in the USSR. Following its dissolution while he was a child, he was left stateless due to gaps in the new States’ laws on acquisition of citizenship. He intended to relocate to the United States but the false passport on which he was travelling was discovered at Shannon airport and he remained in Ireland.

Boris was born in what is now the Republic of Azerbaijan. However, Azerbaijan refused to recognise him as a national of that country because his father held Russian citizenship. When Boris was 15 or 16 years old, he travelled to Moscow to establish his Russian citizenship and to acquire identity documents. The Russian authorities would not recognise him as a Russian citizen because he had been born in another country. They also made racist remarks towards him. The failure of both countries to recognise Boris as a citizen rendered him stateless. He was not entitled to a passport of any country.

Boris fled from Russia and was smuggled overland to mainland Europe. When he arrived in Ireland in the early 2000s, he slept in a youth hostel until his money ran out. Then he slept rough in a park until he met some Georgian men who brought him to ORAC to seek asylum.

When Boris claimed asylum, he was placed in a hostel in Dublin for under-18-year-old boys and shared a room with another young asylum seeker. Boris attended English classes and later secondary school.

Boris reported difficulties during the asylum process. Although he was a minor, he did not receive legal advice before his ORAC interview and was not accompanied to it. He said that he did not feel that he had sufficient opportunity to be heard at his ORAC interview – his English was strong enough to know that the translator was not correctly translating what he was saying. He raised this issue with his interviewer.
and said that he would not sign the paperwork because the translation had not been done correctly. Boris reported that the interviewer replied that he didn’t care as it was he, the interviewer, who was going to have to sign the documents anyway. In the end, he did not finish the ORAC interview and walked out. The decision was made not to recognise him as a refugee.

He sought legal representation at that point. Boris felt that the legal representation provided was not effective. He was allowed a written appeal only and did not have the opportunity of an oral appeal before the Refugee Appeals Tribunal. The appeal was unsuccessful and he was subsequently issued with a deportation order.

Following the issuing of the deportation order, Boris remained living in a direct provision hostel for a number of years. He was unable to work or access education.

When Boris was 25, he sought legal advice and was represented by the Immigrant Council’s independent law centre. Representations were made to revoke the deportation order on the grounds that he was a stateless person and to grant him permission to reside in Ireland. Although not issued with a formal declaration of statelessness, following extensive correspondence and many years after he first arrived in Ireland, Boris was granted leave to remain on Stamp 4 conditions.

In the absence of a statelessness declaration, and unable to obtain a national passport or other national identity documentation, Boris experienced significant further difficulties in his application for Irish citizenship. Although his identity had been accepted by the GNIB five years previously, lengthy legal correspondence had to be entered into about his status and identity before his application was accepted for processing.

Twelve years after his arrival in Ireland, Boris was naturalised as an Irish citizen. He could then enjoy his first holiday outside Ireland since his arrival.
Case study 9 - Benjamin

Benjamin is a recently naturalised Irish citizen who travelled to Ireland from his West African country of birth with his mother and siblings when he was five years old. He travelled on his mother’s passport and never held his own passport from his country of birth. Benjamin first became aware of his immigration status at the age of 14 when he was taken into the care of the State under a full care order and his brother was appointed as his supported lodgings carer while he was doing his Junior Cert. He said that the HSE helped when he was registering with the GNIB to be issued with his first Stamp 4. However, when he sought to renew his Stamp 4, it was declined.

Benjamin’s lack of identity documents and uncertain immigration status posed difficulties for him in accessing third-level education as well as in his day-to-day interactions. When he was applying for courses to progress to further education, identity documentation was required from his country of origin, which he could not get. A letter from the HSE was accepted as identification to start first year of college but was not accepted thereafter. He was also unable to get a student grant due to his immigration status.

He did not have any identity documents to acquire a Garda Age Card to use as a form of ID. This meant that he could not enter pubs or discos to socialise with friends and often had to return home alone while friends enjoyed themselves. Benjamin also had difficulties opening a bank account due to his lack of identity documents, but he eventually found one bank that accepted a letter from the HSE as proof of his identity. He had similar issues with finding a job.

Benjamin and his brothers had a social worker who dealt mainly with Benjamin’s older brother and who helped his brother to secure legal representation. Efforts were made to obtain Benjamin’s birth certificate and establish his citizenship of his country
of birth, but these attempts were abandoned when obstacles were encountered. Therefore, Benjamin became undocumented. Following significant personal efforts to explain his situation, including travelling to the embassy in London, he was permitted to register on an exceptional basis at various times on condition that he make efforts to establish his identity.

Benjamin expressed frustration that he didn’t get to meet the people from the Irish Naturalisation and Immigration Service (INIS) and the Legal Aid Board who were dealing with his case and that he was only told what documentary evidence was required and not provided with guidance on how to obtain such documentation.

In his early 20s, Benjamin again sought legal representation to renew his status and to obtain a passport from his country of birth. An application for naturalisation as an Irish citizen was made on his behalf citing the extensive steps he had taken to establish his identity. Following these representations, Benjamin was naturalised as an Irish citizen in 2015.

Case study 10 - Emma

Emma is a Nigerian national who was trafficked from her country of origin to Ireland at the age of 15 for the purpose of domestic exploitation. Emma was told that she would be attending school in Ireland and that she would have a good life. However, she was kept in domestic exploitation for several years before she managed to escape. When she escaped from exploitation, aged 17, she was taken in by a woman of the same nationality who she had overheard speaking her native language on the street. This woman treated her well at first. She organised for her to attend school in Ireland for the first time. Later the situation deteriorated and Emma was mistreated.
Following the woman’s refusal to allow her daughter and Emma into the house, both girls slept rough for a couple of nights before being taken into the care of the State. They were placed in bed-and-breakfast accommodation and later in foster care. A member of An Garda Síochána told Emma that he would take steps to regularise her immigration status while she was in care but this did not happen.

Emma’s care file shows that questions were raised about whether the people Emma had been living with were in fact her parents. This triggered questions as to whom the notice of care proceedings should be served on. It did not result in any follow-up when Emma and the woman’s daughter subsequently ran away from care and returned to the woman’s home due to the daughter’s homesickness.

After their return, the woman told Emma that she was to seek asylum and initiated the process on her behalf. She instructed Emma to assert that she was her daughter. Emma did not understand the concept of asylum at all and, at her ORAC interview, the woman spoke on her behalf for the most part and provided a story that she had told Emma to agree with. Emma did not have an opportunity to discuss her situation privately with a legal representative or to build the trust that would have enabled her to explain the truth of her situation.

When Emma’s application was rejected, she was not made aware of the possibility of appeal. Emma’s fear of being deported to her country of origin resulted in her fleeing to the UK to a situation of further exploitation and forced prostitution. She was deceived into believing that she was entitled to British citizenship due to the length of time she had spent in the State and made an application through a third party who she believed was a Government official and in a position to assist her.

Despite the enormous challenges she faced, Emma managed to study, qualify as a healthcare professional and find employment in a hospital. While working, she was arrested by British police – the passport that she had believed she was lawfully in

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possession of had actually been illegally obtained. She was detained in prison in the UK for seven months. During that time, the UK authorities established that she had been a victim of trafficking to Ireland but found that adequate time had passed and she was no longer in need of State protection.

Emma was returned to Ireland under the Dublin Regulation. On arrival in Ireland, she was held in detention. While she had been in the UK, a deportation order had been issued against her in Ireland. Through contacts she had made in the UK, she managed to instruct legal representatives in Ireland, who secured her release from prison. She sought to be formally identified as a victim of trafficking in line with the Administrative Immigration Arrangements for Victims of Trafficking.

There was a delay of more than three years in her identification as a victim of trafficking. She remained vulnerable and without legal protection 16 years after first arriving in Ireland. During this time, Emma cooperated fully with the Garda investigation, including providing statements and travelling to try to identify locations where she had been exploited 10 years previously. She experienced significant distress during this time due to her inability to work or re-build her life and her residence in direct provision.

During this time, extensive submissions were made by Emma’s new legal team to secure her status in Ireland. When no decision was forthcoming after almost three years, High Court proceedings were initiated on grounds of delay. This led to the revocation of the deportation order, her formal identification as a victim of trafficking and the granting of permission to reside in Ireland.

Emma’s identification and resolution of her immigration status meant that she could pursue her dream to work as a nurse, experience the joy of getting up in the morning with a purpose and re-learn how to cook for herself.
Case study 11 – Harmony

Harmony is a non-EEA national who was 14 years old when she travelled to Ireland to look for her mother and to try to build a relationship with her. Her mother had moved to Ireland when Harmony was a young child.

Harmony was initially brought to the United Kingdom by traffickers under false pretences and was then exploited in prostitution. She managed to escape and travel to Ireland by boat.

Harmony lived with her mother and her Irish-citizen sibling in Dublin when she first arrived. However, her mother began to abuse and bully her so she ran away out of fear and slept rough until she was taken into the care of the State.

For six months, Harmony lived in a residential centre for teenage migrants until disputes regarding her age led to her being moved to an adult direct provision centre. Harmony said that she had a long interview about her age and the social workers had first said that they believed her but, after a second interview, they said they no longer believed her adding: “We’re done with you”. She said that they didn’t really accept her real age and, in the end to stop all the stress, she told them she was older than her actual age. Harmony found it very difficult to discuss her past at that time.

Harmony found life in the adult direct provision centre distressing. She felt the hostel did not cater for separated children and that she was treated like an adult. Harmony also said she experienced “hassle” from the men in the hostel. Additionally, she feared having to re-tell her past experiences of exploitation in an asylum interview or appeal.

Harmony sought to be formally identified as a victim of trafficking and get permission to reside in Ireland on that basis. She withdrew her application for asylum in order to
be formally identified as a victim of trafficking as she was informed that she could not be granted a Temporary Residence Permission while her asylum application was ongoing. Harmony received a lot of support from her investigating Garda, who had expertise in child protection cases and had received anti-trafficking training. She also benefitted from multiagency meetings in relation to her case between her legal representatives, members of An Garda Síochána, HSE support workers and NGO support workers. She was granted permission to reside.

Harmony stated that if she had access to more information and access to a solicitor soon after coming to Ireland it would have changed her life. She wouldn’t have experienced the issues that she did. She didn’t even know what trafficking was so had no awareness that she could be identified as a victim of trafficking. Harmony said that she was grateful to have the support of Ruhama, an NGO that supports women who are victims of commercial sexual exploitation.

**Case study 12 – Paul**

Paul is a non-EEA national who came to Ireland when he was nine years old to join his EU-citizen parent and step-parent who had already lived in Ireland for several years. Paul was taken into the care of the State when he was 10 years old due to concerns of abuse at the hands of his parent. He remained in the care of the State until he turned 18. Paul recounted having lived in 10 or 11 care placements and having to move schools regularly. He recalled attending 13 or 14 schools but wasn’t given any additional supports to help him deal with this.

Paul first became aware that he did not have a passport or a clear immigration status when he was aged 15 or 16 and living in foster care. His foster family wanted to bring him on holidays abroad but realised that he needed a passport.
Paul registered with the GNIB at the age of 16 as his social worker dealt with it and was very helpful. He was brought to register each year by either his social worker or his aftercare worker and he was aware that he would have to continue to register each year to keep his stamp up to date.

Paul said that his original permission did not allow him to work and that he was registered with a Stamp 4 when he was aged about 17 and in fifth year in school. Paul held a Stamp 4 for a few years but became undocumented when he was unable to renew his passport with his embassy and therefore, he did not think it would be possible to register. This forced Paul to withdraw from his third-level education course, as he no longer held a valid residency permission and could not afford to pay his fees.

Despite having grown up and lived in Ireland for more than 11 years, including eight years spent in the care of the State and two years in aftercare services, Paul became an undocumented young man with no financial means, living in destitution and in fear of deportation by the authorities in the only country that he knows as ‘home’.

Shortly before the research interview, Paul had accessed legal advice and support to address his immigration status.

**Case study 13 – Maria**

Maria is an Eastern European national who was trafficked to Ireland when she was 14 years old and exploited in prostitution for eight years.

Maria’s father had died and it was customary in her country of origin for girls to be married at a young age. Her mother asked Maria’s brother-in-law to arrange a suitable marriage for Maria so that she would be provided for. Maria was married to a man
from her country and thought she was travelling to live with him in Ireland where he worked. She realised on arrival in Ireland that he was actually her pimp. She was forced into prostitution for 12-16 hour days in brothels and was forced to sleep in an apartment with her pimp at night. The only service she was allowed to access while exploited in prostitution was a health service that she always had to attend with other women from the brothels. This meant she could not talk openly or confide in the nursing staff who worked in the clinic.

Maria knew that she was undocumented as she was regularly moved from one brothel to another because her trafficker feared she would be deported to her country of origin due to being undocumented.

Maria was arrested by Gardaí during brothel raids on several occasions, including while she was a child, but steps were not taken to establish her age or to protect her. Maria was afraid to speak out as she had been threatened by her pimp and feared the consequences. When Maria was arrested at the age of 17, she was advised by a member of An Garda Síochána to apply for asylum and she attended at ORAC to provide initial details. However, she was unable to attend for her interview with ORAC or disclose her real identity or situation as she was closely monitored by her trafficker. A negative decision was issued and subsequently a deportation order was issued against her. Maria eventually managed to escape from exploitation when her pimp suddenly left the country, leaving her alone in the apartment.

Once she had escaped from exploitation, Maria’s immigration status affected her daily life as she lived in constant fear that she would be deported. When she tried to acquire a PPS number, she found out that a deportation order had been issued against her. She could not access the labour market legally, could not access social welfare and, when she gave birth to a baby, she could not afford to bring her baby to
the GP although her child was very ill. She also could not afford to enrol her child in a crèche, which her child care worker said was important for her child’s socialisation and speech development. When she discovered there was a deportation order against her, she changed her address and moved in with a friend out of fear that she and her young child would be deported.

Maria was referred to a law centre for legal representation. Representations made on her behalf and on behalf of her child resulted in the revocation of the deportation order and her child was declared a refugee when she was almost two years old. Following further representations and 12 years after she arrived in Ireland, Maria was granted family reunification with her refugee child and was issued with Stamp 4 permission.

Case study 14 – Farah

Farah is a naturalised Irish citizen who travelled to Ireland from her non-EEA country of birth with her mother and sibling when she was 11 years old. Her mother was forced to flee her country of origin due to her political beliefs and activism, which was in opposition to the Government regime. On arriving in Ireland, Farah attended the ORAC with her mother and brother and made an application for asylum. They were accommodated in a reception centre in Dublin for a couple of weeks before being moved to another direct provision centre where they lived while their application for asylum was being processed.

Farah said that she understood from arriving in Ireland at the age of 11 that they were living in direct provision as they were waiting on a decision regarding their asylum application. She also knew that her mother had to go to Dublin for her “big interview” about their status. She knew people in direct provision whose applications had been rejected. Farah recalled being frightened of the possibility of rejection. She noticed the effect that living in direct provision was having on her mother and didn’t like seeing her suffer.
Farah’s family were recognised as refugees about nine months after arriving in Ireland. Farah and her family moved to a quiet and welcoming area where she and her brother attended local schools. Farah said she realised that she was privileged to go to a very supportive school where the teachers saw potential in the migrant students and supported them a lot to catch up academically with their peers. She said she was aware that other migrants in other areas didn’t have the same support. Farah’s teachers often let her know of opportunities that she could avail of, such as extra-curricular activities, and put her forward for a university scholarship. Farah went on to complete a degree at university and is now studying for a postgraduate degree. Farah’s mother applied for citizenship as soon as she had the required three years of residency as a refugee. It took many years for applications to be processed at that time and the Department of Justice required a parent to naturalise before their minor children could apply for naturalisation. Therefore, Farah could not apply for naturalisation until her mother had been granted citizenship. Her mother was granted citizenship very shortly after Farah turned 18, which meant that Farah had to apply to naturalise as an independent adult. This was a more detailed application form that required more supporting documentation. Farah was very upset about this, particularly as the adult applications took much longer to process than the children’s applications and she had only just turned 18.

Farah’s younger brother was naturalised and granted an Irish passport within a year of applying whereas her application took between three-and-a-half and four years due to the backlog and delays at that time. She also remarked that her application was in the last batch before the new, more efficient system for processing applications was introduced.

The delay in her application being processed restricted her ability to travel and meant that she could not participate in the Erasmus programme while in university. However, she stated that she realised that her issues were minor and “first-world problems” compared to issues experienced by other migrant young people.
Case study 15 – Kemi

Kemi is a Nigerian national who was brought to Ireland under false pretences when she was 15 years old. Kemi’s parents had passed away when she was 12 or 13 so she decided to leave school and go out to work. She worked in a restaurant helping to prepare food and clean dishes. A male customer said she was very hard-working and that he would like to take her to work in his restaurant abroad. He said she would have a better life and would earn more money. Kemi agreed to this proposal.

Kemi lived with the man who arranged her travel to Ireland for her first three months. She left that house as the reality of the “work” expected of her differed significantly from what she had been informed previously. Kemi explained that she was not “ready” to do the work that the man wanted her to do, which was prostitution.

With the help of a neighbour, Kemi sought asylum and was placed in a residential hostel. She was then placed with foster parents for two years until she turned 18. When she turned 18 and had sat her Leaving Certificate, she was moved back to the direct provision hostel.

Kemi said that she didn’t know anything about the need to have immigration permission to stay in Ireland legally until she went to the asylum office. The next day, she was taken to a residential house and, the day after that, someone came and explained things to her but she couldn’t understand. Her social worker told her that she had to do an interview and to tell her whole story in order to seek asylum. Kemi’s social worker brought her to see a lawyer when she was making her application for asylum. Kemi said she was not able to explain her story properly or in enough detail as she did not feel comfortable telling the solicitor her whole story. She said she had a different lawyer for her appeal to the Refugee Appeals Tribunal but she never met him. She was not recognised as a refugee.

At the time of interview, Kemi had no immigration status. She was subsequently granted permission to reside as the parent of an Irish-citizen child.
Case study 16 – Vincent

Vincent is a Syrian national who arrived in Ireland at the age of 17 to join his father who had a work permit. Vincent, his mother and siblings were all granted Stamp 3 residence conditions as dependents of Vincent’s father. Vincent’s father informed him that he had to register with the GNIB during the first month that he was in Ireland. He went to the GNIB to register but his passport was due to expire within a short period of time. He sought a renewal from the embassy of his country of origin in Spain. Due to war and the instability of the political situation in his country of origin, the renewal of passports was suspended and there were long delays. His passport was eventually returned with a two-year extension in place of a new passport. His other family members were granted five-year passport extensions – Vincent’s extension was shorter because he was of age to complete compulsory military service.

When Vincent returned to the GNIB to register with his extended passport, he was requested to first write to the INIS to explain why there had been a delay in renewing his permission.

At the time of interview, Vincent had not received a response from the INIS and, therefore, had no proof that he was lawfully present in the State.

Case study 17 – Valentine

Valentine is a national of the Democratic Republic of Congo who travelled to Ireland at the age of 11 to join her parents and siblings.

Valentine registered at the GNIB when she turned 16 years – her father told her she had to register and helped her with it. She was registered with a Stamp 2 on
international student conditions when she turned 16 although she was attending secondary school and was the child of Stamp 4 holders with leave to remain.

Valentine was taken into the care of the State at the age of 17 and lived with a foster family until she turned 18. She said her foster family was very supportive of her. When she turned 18, she was moved into a residential aftercare centre where she was supported in aftercare until she turned 20. Valentine said she had a care plan and an aftercare plan. Her aftercare plan included a goal about achieving Irish citizenship. This goal was set by herself and her aftercare worker. At the age of 23, Valentine is still being supported by her aftercare worker to apply for Irish citizenship. After attending external training on resolving immigration status for children who were in care which was delivered by the Immigrant Council as part of this project, Valentine’s aftercare worker referred her for legal representation in relation to naturalisation.

Valentine has had a Stamp 4 since she turned 18 and becoming an Irish citizen would mean a lot to her. It would give her access to more educational opportunities. She has already completed a level 6 course and is working in Ireland but would like to go to university to further her education. She would also like to be Irish as all of her family, including her parents and her siblings, are Irish citizens.

**Case study 18 – Stefan**

Stefan travelled to Ireland from his country of origin in Eastern Europe when he was 17 years old to live with his family as the dependent child of a work permit holder. Stefan’s immigration status matters were looked after by his mother and the HR department in his mother’s employment, which provided them with a support network and advice. Stefan presented to the GNIB for renewal of his permission whenever his mother told him to and had no concerns regarding his immigration
status. Once Stefan had sufficient reckonable residence, he applied for naturalisation and was naturalised as an Irish citizen when he was 22.

Stefan had almost no English when he arrived in Ireland and, although he had passed his school completion certificate examinations with distinction in his country of origin, his parents enrolled him in a two-year Leaving Certificate programme in a secondary school in Ireland. They would have been unable to afford to send him to university at that point due to the high non-EU fees that they would have had to pay. Stefan was successful in his application to the DCU Access Programme, which meant that he did not have to pay non-EU tuition fees. He was also awarded a scholarship and benefited from a bursary that paid for his living costs. Without this, Stefan and his family would not have been able to afford for him to attend university in Ireland.

Stefan went on to graduate with both an undergraduate and a postgraduate degree and is now working in Ireland as well as studying towards a professional qualification.

Case study 19 – Vlad

Vlad is an EU citizen and arrived in Ireland at the age of 13 to live with his mother who was exercising her EU treaty right to free movement by working in Ireland. Vlad had a chaotic adolescence. He was taken into State care on numerous occasions, experienced homelessness and developed an alcohol addiction, which led to him committing minor offences. He turned his life around and was expecting the birth of his Irish-citizen child when the State sought to remove him from Ireland on the basis of his previous bad behaviour.

At that point, Vlad’s aftercare worker referred him for legal representation. Extensive submissions were made outlining that the proper procedures had not been followed, that he no longer posed a threat to the State and that the decision had not taken into account his private and family life, the length of time that had passed or his improved behaviour. The application to revoke the removal order was successful. Vlad now lives in Ireland with his partner and Irish child.
Case study 20 – Amanda

Amanda is a national of the Democratic Republic of Congo. When she was six years old, she travelled to Ireland through numerous countries, with people she had never met before, to live with a man she had never met before but who she had been assured was her father. Amanda recalls that it was at least a year after she arrived before she began attending school.

Amanda first came to the attention of the HSE about six months after arriving in Ireland because she believed that the people with whom she was living (her alleged parent and step-parent) were not her real parents and family. A social worker made a report to the INIS that she believed Amanda was trafficked and that the people with whom she was living were not her real parents/family.

Amanda was taken into care at the age of 13 after she made allegations of domestic and sexual abuse against her alleged parent and step-parent. She confided in a teacher about this abuse and the school notified the HSE. She was taken into the care of the State and lived in a residential hostel for five months. She was returned to the care of her alleged parents twice as social workers did not believe that she needed to be in care. She was then allocated a foster placement that was intended to last until she was 21.

When she was 14 and a half, Amanda left her foster placement and went to live with a significantly older boyfriend. She lived with him for the three years and was financially dependent on him. When this relationship broke down, she moved in with a friend in Dublin. She maintained contact with her previous foster mother during this time.

Amanda did not register with the GNIB at the age of 16 years as she was unaware of the obligation to do so. She presented at the GNIB with her former foster parent
when she was 17 requesting that she be issued with her Irish citizenship. Instead, she was given a letter by hand outlining the Minister’s intention to issue a deportation order in respect of her. At this point, her previous foster parent sought legal representation on her behalf. This was the first time that Amanda had been offered any assistance or legal advice on her immigration status.

Amanda was undocumented until she was almost 20 years old, despite having lived in Ireland since she was six. This meant that she was unable to access social welfare payments or further education for a number of years even though she had no other financial support and relied on friends for food and shelter.

Following submission of legal representations, when she was 20 years old, Amanda was granted permission to reside in the State as an exceptional measure for a temporary period of one year. Residency was granted to her despite the fact that she lacked any identification from her country of origin. A representative of the Department of Justice stated to Amanda’s solicitor that they had granted Amanda residency not because they believed her identity but because they realised that they “are stuck with her” given the length of time that she had been resident in the State and the amount of time that she had spent in the care of the State.

Amanda was granted a renewal of her temporary residence permission, on a Stamp 4 basis, for three years from 2011 and a further renewal of three years from 2014.

**Case study 21 – David**

David was 14 when he and his sibling arrived in Ireland under family reunification to join his parent, a refugee. His other parent had been killed in the ongoing war in Angola, their country of origin. As he had not lived with his parent in a long time, he
said they were like strangers to one another. David was subjected to abuse from his parent, which caused him a lot of stress, fear and worry, and affected him during his Junior Certificate. David eventually confided in a school teacher who alerted the HSE. David and his older sibling were forced by their parent to leave their family home and were taken into the care of the State.

David had registered with the GNIB at the age of 16 but he was not aware of the obligation to renew his GNIB card a year later. He only became aware of this when he realised that his GNIB card had expired.

Although he was still a child, David had been working part-time to support himself and his sibling. He was unable to continue doing so when his GNIB card expired.

He sought legal advice at the instigation of his teacher. While waiting several months for the Department of Justice to respond to correspondence from his solicitor requesting a renewal of his Stamp 4, David felt very insecure as he lacked any identity document without a valid GNIB card. Following legal representations to the Department of Justice, David’s Stamp 4 was renewed for 12 months shortly before he turned 18.

David managed to renew his Stamp 4 again for the following years and naturalised as an Irish citizen in 2012.

David went on to third-level education, graduated with a degree and is now working in Ireland.
Case study 22 – Alexander

Alexander is a Ukrainian national who came to Ireland when he was 15 years old to live with his mother and step-father. His EU-citizen step-father was exercising his EU treaty rights in the State so Alexander and his mother had a derived right of residence on that basis. Alexander lived with his mother and step-father in Ireland until he turned 18. Then his parents left the State and moved to another EU country.

Alexander attended secondary school in Ireland for three years and sat his Leaving Certificate exams. He then took up a place on a course of further education. He was also working to support himself financially. He was working to such an extent that his studies suffered and he had to withdraw from his course. He enrolled in another full-time further education course two years later, which he completed. He then secured a place in a further add-on course. His plan was to complete that course, secure an entry-level position in his chosen field and study a more advanced course part-time to enhance his knowledge and skill set.

Alexander made an application to retain his residence permission in Ireland following the departure of his parents on the grounds that he was still studying in Ireland on a full-time basis. This application was refused. He then sought legal representation to request a review. Submissions were made on the right of retention of residency of the children of a departed EU citizen while the children are enrolled in full-time education. The review was successful and Alexander’s permission to reside was renewed.
Case study 23 – Faith

Faith came to Ireland unaccompanied from Nigeria to join her mother and her Irish-citizen sibling when she was eight years old. Faith’s mother had been granted leave to remain on the basis of her parentage of an Irish-citizen child who had been born in Ireland prior to 1 January 2005. Faith was taken into the care of the State for a number of months on two occasions prior to reaching the age of 12. A full care order was granted in respect of Faith when she was 12 years old.

Faith was referred for legal representation by her social worker when she was 17 in order to make an application for naturalisation. Although Faith’s mother had been residing in Ireland on a Stamp 4 basis for 10 years, she had not naturalised. This meant that Faith could not make an application for naturalisation as the daughter of a naturalised Irish citizen.

An application for naturalisation was made on the basis of Faith’s blood link to her Irish-citizen sibling and her period of residency in the care of the State. Faith’s application was granted following submissions that Faith should not be deprived of citizenship just because her parent had not chosen to naturalise. Although a full care order had been issued in respect of Faith, Faith’s mother was still required by the INIS to sign the form 10 application.
Case study 24 – Susan

Susan travelled to Ireland from Nigeria when she was eight years old to join her mother and her Irish-citizen brother. Susan’s mother was granted leave to remain as the parent of an Irish-citizen child. Susan and her brother attended school in Ireland and lived with their mother until their mother passed away suddenly while they were both still children. Susan and her brother were taken into the care of the State as they had no relatives in Ireland who could care for them. Susan’s father was granted a visa to travel to Ireland to enable the Child and Family Agency (Tusla) to consider whether he could take up the care of his children.

At the time of her mother’s death, Susan had been resident in Ireland for eight years and her mother had 11 years of reckonable residence in Ireland. An application for citizenship was made by Susan’s social worker indicating that she was her guardian. However, the application was returned to her solicitor with a request that it be signed by Susan’s father – Tusla was not considered to be her guardian, even in circumstances where her mother had died and her father was not in Ireland. After her father’s arrival, he made an application for naturalisation in respect of Susan on the basis of her blood link to her Irish-citizen sibling and her length of reckonable residence in the State. This application was ultimately successful.
Case study 25 – Diana

Diana is a Liberian national who travelled to Ireland when she was 13 under a pending application for reunification with her father, a refugee. However, she was abandoned by her parent at the age of 16. Her father’s whereabouts were unknown and her mother was deceased so she was placed into the care of Tusla.

Diana sought to register with the GNIB as she was attending a third-level education course. The educational institution sought a copy of her certificate of registration with the GNIB. However, Diana had no access to a passport as her father had not returned it to her before his disappearance. Diana was referred by social workers for legal representation as it was set out in four points of her care plan that social workers would assist her with sourcing support to assist in regularising her legal status. Shortly before she turned 19 and following interventions over two years by a law centre, Diana was granted leave to remain for one year.

Case study 26 – Ruth

Ruth is a Nigerian national who moved to Ireland with one of her parents and her sibling when she was nine years old. Ruth was legally resident in Ireland on the basis of being the minor child of a Stamp 4 residency permission holder. When she was 16, Ruth was taken into the care of the State and lived in two different residential centres until she turned 18 years. She then moved to temporary housing for a number of months, supported by various charities, before becoming homeless.

Until Ruth was almost 18 and approaching her Leaving Certificate, she was never advised on or offered access to legal advice, nor was she made aware of her immigration status and the obligation for all third-country nationals to register with...
the GNIB at the age of 16 years. She was then assisted by support workers in her residential centre to make an application to the INIS.

When she was 18, Ruth was granted temporary permission to remain on international student conditions (Stamp 2) for six months, which was later extended for one year.

Legal representation was secured and submissions were made to the INIS. They argued that a Stamp 2 was not the appropriate permission to have been issued to Ruth given the information that was available to the INIS regarding Ruth and her family members’ entry to the State, Ruth’s length of residence and her personal circumstances. It was pointed out that the failure to address Ruth’s immigration status while she was in State care resulted in her finding herself as a young adult with no secure immigration status, destitute and at risk in the country in which she grew up.

Following these representations by the Immigrant Council and shortly before Ruth turned 20, she was granted leave to remain on Stamp 4 conditions.
Case study 27 – Chris

Chris is a non-EEA national who moved to Ireland with his parent and siblings when he was 13 years old. Chris’ mother was granted residency in Ireland on the basis of parentage of an Irish-citizen child, Chris’ half sibling, who was born in Ireland prior to 1 January 2005.

After Chris had reached the age of 18, his mother became unable to look after his younger siblings. His Irish-born sibling was placed in the care of the State under a full care order. His other two siblings were also taken into the care of the State under a full care order and Chris was approved as a supported lodgings carer until they attained the age of majority.

Chris has now resided in Ireland for 20 years. He completed his second-level education in Ireland and completed vocational training in an area in which he is now employed as a skilled and qualified tradesperson. Chris is resident in Ireland on Stamp 4 conditions, is married to an Irish citizen and is the parent of an Irish-citizen child.

Chris has applied for naturalisation as he has sufficient reckonable residence in the State to be eligible. However, his application for naturalisation has been delayed as he does not hold a passport from his country of origin. Chris holds a birth certificate and a certificate of nationality from his country of origin. He has submitted certified copies of these along with certified translations to the INIS to prove his identity and his nationality. Chris also acquired an Irish travel document some years ago (which has since expired) and travelled abroad to an embassy of his country of origin. He had pre-booked an appointment and attended with all of the necessary documentation required for a passport application. However, he was told at his appointment that, as he did not have a previous passport and as the embassy officials do not know him, they would not issue him with a passport.
Despite representations having been made to the INIS on multiple occasions as to the extensive efforts made by Chris to obtain a passport, the INIS has refused to process his application for naturalisation until he acquires a passport from his country of origin.

His younger sibling also made the same level of efforts to obtain a passport. He was told at an embassy abroad that he would have to travel to his country of origin and live there for a significant period before he would be issued with a passport. The Immigrant Council made representations in this regard to the INIS on behalf of Chris’ younger sibling and the INIS processed his application for naturalisation and granted him citizenship. However, the INIS is still refusing to process Chris’ application although he has made the same level of efforts to obtain a passport from his country of origin.

After leaving his country of origin 20 years ago, Chris has no contact or links with the country and could not afford to travel there to reside for long enough to be issued with a passport. Chris has a young Irish-citizen child with his Irish-citizen wife and cares for his child when he is not at work. He could not leave his family for an extended period without causing them unnecessary difficulties and hardship.

As Chris is married to an Irish citizen, is the parent of an Irish-citizen child and the sibling of both an Irish citizen by birth and a naturalised Irish citizen, he is related by marriage and by blood to numerous Irish citizens and very much desires to become an Irish citizen himself. Chris wishes to avoid any issues with renewing his residency caused by his lack of a passport. He wants to enjoy his private and family life in Ireland without undue stresses or limitations, such as the inability to travel outside of the State.
CHAPTER 2 : CASE STUDY OVERVIEWS

Case study 28 – Lucia

Lucia is a Mauritian national who travelled to Ireland with her parent when she was 12 years old. Lucia resided in Ireland under her parent’s permission to remain on Stamp 4 conditions. When she turned 16, Lucia attended her local immigration office to register her presence in the State. However, her local immigration officer registered her with Stamp 2A permission.

Lucia’s parent approached the local immigration office regarding this but was told to contact the INIS to rectify the error. Lucia’s parent contacted the Immigrant Council, which made representations on her behalf to the INIS that this is not the appropriate stamp for children of Stamp 4 holders. This permission is understood to be intended for international students who do not have an entitlement to take up employment while resident in the State. Lucia has since been issued with Stamp 3 permission, as a dependent of her mother. Lucia wishes to be issued with Stamp 4 permission in order to allow her to gain work experience but requests to issue her with a Stamp 4 permission have been declined.

Case study 29 – Razeen

Razeen is a Turkish national who travelled to Ireland with her mother and siblings at the age of 15. Her sibling, Elisha, was nine when she arrived in Ireland. Razeen’s mother was admitted to Ireland as a visitor, despite her marriage to an Irish national. One year after they arrived in Ireland, Razeen’s mother was granted permission to remain as the spouse of an Irish citizen. Razeen and her siblings resided legally in Ireland as dependants of their mother and Irish national step-father.
Razeen's family became known to the HSE due to concerns that Razeen and one of her siblings had been abused by their step-father following reports made to a Dublin Hospital while seeking treatment. This abuse was confirmed by Razeen's mother and their step-father expressed his remorse at these incidents. The HSE began to liaise and work with the family to address the child welfare and protection concerns. On the advice of the HSE, Razeen’s step-father moved out of the family home to address the issues of safety for Razeen and her siblings. However, he lived in very close proximity to the family home, spent time with Razeen’s mother, engaged in family activities and supported Razeen’s mother. Razeen’s mother hoped their relationship would improve and continued to rely on her husband for emotional support.

The GNIB somehow became aware that Razeen’s mother and step-father were no longer living together. When Razeen’s mother attended the GNIB to renew her permission, she was advised that the GNIB would not renew her permission as she was separated from her husband. She was directed to write to the INIS and seek ongoing permission to reside in Ireland. She sought the Immigrant Council’s assistance in making these representations.

Following representations by the Immigrant Council, Razeen’s mother was granted permission to remain but, as her certificate was renewed six-and-a-half weeks after the expiry of her previous permission, there was a resulting six-and-a-half-week gap in her permissions. In light of further submissions that Razeen’s mother should not be penalised for this gap due to the circumstances, Razeen’s mother was naturalised as an Irish citizen.

Razeen only registered with the GNIB when she 18. She had been unaware of the obligation to register her presence in the State at the age of 16 years. She only became aware of this obligation when she turned 20 and attended the Immigrant Council for advice about applying for citizenship. As Razeen only registered at the age of 18, she only had two years of reckonable residence at that point. She was advised that she would need to wait another three years before applying for naturalisation.
Case study 30 – Jérôme

Jérôme is a non-EEA national who travelled to Ireland with his mother and two older siblings when he was four years old. Jérôme’s mother had permission to reside in Ireland on the basis of her parentage of an Irish-citizen child and Jérôme resided in Ireland under his mother’s permission. Jérôme’s mother passed away when he was 13 and he was taken into the care of the State under a full care order.

Jérôme did not register with the GNIB when he turned 16 as there were issues around his immigration status and that of his siblings. It was a number of years before they received accurate information and advice.

Jérôme was granted leave to remain on Stamp 4 conditions when he was 18. He now has more than five years’ reckonable residence in the State and his most recent permission was issued for a three-year period.

However, Jérôme has no identity documents so he is applying for an Irish travel document so he can travel abroad to an embassy of his country of origin to acquire his first passport. To get an Irish travel document, Jérôme needs an original letter, addressed to him, from the nearest embassy of his country of origin. The letter must state that the embassy cannot issue him a passport or laisser-passer without biometrics and that it does not provide mobile clinics to take fingerprints in Ireland. Jérôme has not received any return correspondence from the nearest embassy, which is delaying the processing of his application for an Irish travel document.
In the meantime, Jérôme is still without any form of identification, which made it difficult for him to obtain employment in Ireland and has prevented him from getting a driving licence. Despite his lack of an identity document, Jérôme persevered and managed to secure employment with an understanding employer.

Jérôme sat his Leaving Certificate and accepted a place to study towards a degree in the sciences. He was awarded a higher education grant for the first two years of his degree. During the third year, he was informed by Student Universal Support Ireland (SUSI) that he had been awarded the grant in error and would not be awarded a grant for the third year or the remainder of his degree. Jérôme went through the appeals process with SUSI but was not successful. He was forced to withdraw from his degree programme midway through third year as he could not afford to pay the tuition fees.

Jérôme would very much like to complete his degree if he could secure a grant to do so. Therefore, he requires an Irish travel document to allow him to travel to the nearest embassy of his country of origin to try to procure a passport. This in turn would allow his application for naturalisation as an Irish citizen to be processed. If Jérôme was a naturalised Irish citizen, he would be eligible for a higher education grant under the same conditions as Irish and EU students. This would enable him to return to education and complete his degree.

CHAPTER 2 : CASE STUDY OVERVIEWS
Case study 31 – Gabrielle

Gabrielle is an Angolan national who arrived in Ireland when she was 16. She registered with the GNIB on arrival in Ireland and has registered each year since then. Shortly before Gabrielle completed her Leaving Certificate, she and her sibling were forced to leave the family home by their parent and were not allowed to return. Gabrielle and her sibling were temporarily taken into the care of the State and were then supported in rental accommodation. Gabrielle supported her young sibling for a number of years until her sibling reached the age of 18.

When Gabrielle attended to register at the age of 21, she already had five years of reckonable residence. Her GNIB residence card was renewed for a further year but she was informed that she would need to try to secure a passport from her country of origin or provide evidence that the embassy was refusing to issue her with one. Gabrielle applied for and was issued with a travel document on the basis of being the family member of a refugee who had travelled to Ireland under family reunification. Gabrielle travelled to an embassy of her country of origin in another EU State. She was informed that the embassy could not issue her with a passport and that she would have to travel to her country of origin to acquire one.

When Gabrielle applied for naturalisation on the basis of a sworn affidavit of birth in place of her birth certificate, she was informed by the INIS two years later that she would have to provide evidence from the authorities responsible for the issuing of birth certificates in her country of origin stating why a birth certificate was not obtainable. However, her sibling’s application for naturalisation had recently been approved even though it was also made on the basis of a sworn affidavit.

Following representations by the Immigrant Council and almost three years after she originally submitted it, Gabrielle’s application for naturalisation was granted the following year.
Case study 32 – Sophie

Sophie travelled to Ireland from an African nation at the age of 17 to visit her mother who had been living in Ireland for eight years. Sophie and her younger sibling had been separated from their mother for that time and had been living with their grandmother in their country of origin. When Sophie and her younger sibling arrived in Ireland with their grandmother, Sophie’s mother realised that her own mother (Sophie’s grandmother) was in a much poorer health and much frailer than she had realised, having not seen her in many years. Sophie’s mother felt that it would not be fair to allow Sophie and her younger sibling to return to live with their grandmother in their country of origin given her health and, particularly, as their grandmother had been spending some time in hospital.

Sophie’s mother had looked into applying for family reunification with her daughters while they were still in their country of origin but had been informed by the INIS that she would not be eligible. Therefore, Sophie’s mother was worried about informing the immigration authorities about her desire for them to remain in Ireland and to seek permission for them to do so.

She approached various solicitors but received conflicting information so she contacted the Immigrant Council. Following advice from the Immigrant Council, Sophie’s mother presented at the GNIB with Sophie and her younger sibling, and Sophie was issued with leave to remain on Stamp 3 conditions on the basis of her mother’s permission to remain in the State. Sophie’s mother had not been aware that once Sophie’s younger sibling, who was under 16 years of age, was present in the State, she would not need permission to remain as she gained de facto permission from her mother’s status. Sophie said that she was lucky to have had her mother to look after her immigration status matters as she wouldn’t have known what to do and added that she would have been “lost” without her.
Although her mother was able to resolve her immigration status issue without any difficulties, Sophie had difficulty trying to find a school place in Ireland. They tried at least six different schools but all of them said that she was too old to be given a place.

Sophie’s mother managed to secure a place for Sophie on a Youthreach course. However, as Sophie only has a Stamp 3, she is not permitted to receive the associated allowance. Her mother does not mind about that; she just wants to secure an education for Sophie. She has experienced a lack of guidance about whether Sophie could participate in the Youthreach programme provided that she didn’t claim the related allowance. The Youthreach managers were unable to assist her so she has had to make her own enquiries.

Sophie stated that there should be clearer information on what she’s allowed to do and what she’s not allowed to do with a Stamp 3. She said that, when someone is in an unclear situation, “you feel like you’re trapped, like a prisoner, as you don’t know when you can and you can’t (do something)”. She added that there should be clear provisions, with no grey areas, for migrant children and young people.
This chapter provides an overview of the relevant legal framework governing the rights of and immigration obligations imposed on migrant children and young people in Ireland. Irish immigration law is effectively a hybrid of international law, EU law and domestic Constitutional, statutory and administrative law.

In the following sections, Ireland’s obligations under international and EU law will be discussed as well as current domestic legislation. Where relevant, it will be considered whether Irish law is in compliance with international obligations. To put such analysis into context, the status of various sources of law must first be considered.

3.1 International human rights law

While States have the sovereign power to control their borders and formulate migration policies, they also have a duty to respect the human rights of migrants when enacting and implementing immigration law and policy.

International human rights law, ratified by Ireland, binds Ireland in the international sphere. Article 15.2.1 of the Irish Constitution provides that “the sole and exclusive power of making laws for the State is vested in the Oireachtas” and Article 29.6 provides that “no international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas”.

This means that Ireland is a dualist State - international law must be transposed into Irish law by legislation for it to have a direct effect in Irish law. Individuals cannot seek to enforce the obligations set out in international human rights law in Irish courts if they have not been incorporated into Irish law. The European Convention on Human Rights Act 2003.

\[90\] The Law Reform Commission is examining the methodology and models of implementing international obligations and the monitoring of and accountability for State obligations. It is due to publish a discussion paper in 2016, http://www.lawreform.ie/welcome/6-international-law.383.html.


\[93\] O’Domhnaill v Merrick [1984] IR 151.

\[94\] Required under Article 44 CRC.
on Human Rights is the only international human rights instrument that Ireland has incorporated into Irish law.\textsuperscript{92} However, international law has strong persuasive effect and Irish courts interpret domestic law in light of the State’s international obligations.\textsuperscript{93}

Additionally, international human rights law treaty bodies monitor States’ compliance with the treaties at regular sessions and hold governments to account. They require regular progress reports, question a State’s performance at oral examinations and issue concluding observations.\textsuperscript{94} This can act as a significant catalyst for change and improve how States respect, protect and fulfil the rights of individuals within their jurisdictions. The treaty monitoring bodies also issue authoritative interpretations of the treaties in general comments, which provide further details on States’ duties under the treaties.

### 3.1.1 International framework for protection of children’s rights

International human rights law aims to protect the rights of all human beings, including children.\textsuperscript{94} Children also have additional, specific rights that are set out in various instruments including, most comprehensively, the UNCRC.\textsuperscript{95} Ireland has ratified the CRC, along with all States in the world but one - the US. Ireland has not incorporated the CRC into Irish law, but has included some of its provisions, to a limited extent, in the Constitution and in legislation.

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\textsuperscript{95} UN Convention on the Rights of the Child (UNCRC). For more information on the rights of the child, see [http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx)
States’ implementation of the CRC is monitored by the UN Committee on the Rights of the Child, a group of 18 independent experts, which also issues general comments explaining the contents of rights. Children and their representatives can bring complaints regarding violations of their rights under the CRC and its protocols to the UN Committee on the Rights of the Child. The child must have exhausted domestic remedies first. Ireland’s compliance with the Convention of the Rights of the Child (CRC) was examined by the UN Committee on the Rights of the Child in January 2016.

The rights enshrined in the CRC constitute the minimum standards that States must ensure for every child within their jurisdiction. States must take all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the CRC. States must be guided, in all actions affecting children, by the core principles of the CRC: the best interests of the child; the right to life, survival and development; non-discrimination; and respect for the views of the child (participation). Optional protocols to the CRC prohibit the sale of children, child prostitution and child pornography, and the involvement of children in armed conflict.

3.1.2 Best interests

The CRC gives the child the right to have their best interests assessed and taken into account as a primary consideration in all actions or decisions that concern them,

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95 Committee on the Rights of the Child, http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx
96 Introduced by third optional protocol.
97 Committee on the Rights of the Child, concluding observations on the combined third and fourth periodic reports of Ireland, 1 March 2016, CRC/C/IRL/CO.
98 Article 4 CRC.
99 Article 3 CRC and general comment No 14.
100 Article 6 CRC.
101 Article 2 CRC.
102 Article 12 CRC and general comment No 5.
103 See http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx
104 See http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx
both in the public and private sphere.\textsuperscript{105} It is a substantive right; a fundamental, interpretative legal principle; and a rule of procedure.\textsuperscript{106}

The Committee on the Rights of the Child has recommended that States should make clear in their legislation, policy and practice that the principle of the child’s best interests takes priority over migration and policy or other administrative considerations.\textsuperscript{107} It further recommends that States should conduct individual assessments and evaluations of the best interests of the child at all stages of, and decisions on, any migration process affecting children, and with the involvement of child protection professionals, the judiciary and the children themselves.\textsuperscript{108}

### 3.1.3 Views of the child

The CRC assures that every child capable of forming their own views has the right to express those views freely in all matters affecting them. The views of the child are given due weight in accordance with their age and maturity.\textsuperscript{109} Article 12 states that the child has the right to be heard – either directly, or through a representative or an appropriate body – in any judicial or administrative proceedings affecting them in a manner consistent with the procedural rules of national law.

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\textsuperscript{105} Article 3, para 1 CRC.

\textsuperscript{106} CRC, general comment No 14 (2013) on the right of the child to have their best interests taken as a primary consideration (art. 3, para. 1), para 6.

\textsuperscript{107} Committee on the Rights of the Child, day of general discussion on the rights of “all children in the context of international migration”, 2012, para 72.

\textsuperscript{108} Committee on the Rights of the Child, day of general discussion on the rights of “all children in the context of international migration”, 2012, para 72.

\textsuperscript{109} Article 12 CRC and general comment No 5.

\textsuperscript{110} Article 2 CRC; Similarly, Article 24 International Covenant on Civil and Political Rights (ICCPR) provides that “every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.” The Committee on the Elimination of Racial Discrimination urged States to pay greater attention to the “issue of multiple discrimination faced by non-citizens, in particular concerning the children and spouses of non-citizen workers” in its general recommendations on non-citizens. (ICERD, general recommendation 30, discrimination against non-citizens, 23 February-12 March 2004, CERD/C/64/Misc.11/rev 3, para 8; ICERD, general recommendation 11 on non-citizens, 13 March 1993).

\textsuperscript{111} Committee on the Rights of the Child, background paper on the rights of all children in the context of international migration, 2012 day of general discussion, August 2012.
3.1.4 Non-discrimination

The international legal framework for the protection of the child enshrines universal rights that apply irrespective of a child’s nationality or migration status or that of their parents or family members. States undertake to “respect and ensure the rights set forth in the [CRC] 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, ethnic or social origin, property, disability, birth or other status”.

The principle of non-discrimination must be fully applied and adhered to in any policy, decision or action related to migrant children throughout the migration process, irrespective of the child’s migration status. Furthermore, States must take affirmative action to protect disadvantaged and vulnerable children.

3.2 European Convention on Human Rights

The European Convention on Human Rights (ECHR) protects human rights and fundamental freedoms in Europe. All 47 Member States of the Council of Europe are party to the ECHR. The European Court of Human Rights (ECtHR), based in Strasbourg, is the international court that rules on individual or State applications alleging violations of the civil and political rights set out in the ECHR. The judgments of the courts are binding on the countries concerned.
CHAPTER 3: SOURCES OF LAW/LEGAL BACKGROUND

The ECHR was incorporated into Irish law, at a sub-Constitutional level, in 2003. Irish courts must interpret the rights incorporated into the legislation in light of the Irish Constitution and organs of the State must act in compliance with the ECHR. The Convention is a living instrument and evolves in line with jurisprudence from the ECtHR. Once an individual has exhausted domestic remedies, they may go to the ECtHR if they believe their rights were violated under the Convention.

Article 8 on the right to respect for private and family life and Article 4 on the prohibition of slavery are of particular relevance to migrant children and have been subject to much scrutiny by the European court in Strasbourg. Other particularly relevant rights include Article 13 on the right to an effective remedy and Article 14 on the prohibition of discrimination. Immigration status is considered a status on the grounds of which discrimination is not permitted.112

Although the principle of the best interests of the child is not contained within the text of the ECHR, it has increasingly become a feature of ECtHR jurisprudence.113 The Grand Chamber held that “there is currently a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount”.114 In immigration cases, the court weighs the best interests of the child against the State’s interest in immigration control when considering entry and expulsion cases.

In Uner v The Netherlands, the ECtHR added the best interests and wellbeing of children to the criteria that a State must consider when assessing whether deportation is permitted.115 Factors considered include the child’s country ties, age and effective family bond.116 In some cases, the child’s best interests may prevent the removal of a parent;117 although in other

112 Bah v the United Kingdom 56328/07 [2011] ECHR 1448, para 45. 80
114 Neulinger and Shuruk v Switzerland, Application No 41615/07, Judgment (GC) of 6 July 2015, para 135.
cases “migration control will trump the rights of the child”,118 particularly where the parent’s residence has always been irregular and there are no exceptional circumstances.119

3.3 EU law

EU law on children’s rights is based in treaties, conventions, secondary legislation and case law introduced by the Council of Europe (CoE) and the EU.

The Charter of Fundamental Rights, adopted in 2000, provides, for the first time, detailed references to children’s rights at EU constitutional level. The Lisbon Treaty,120 which came into force in 2009, identified the “protection of the rights of the child” as a general stated objective of the EU.121 The changes brought about by the Treaty enhanced the EU’s remit to improve children’s rights. The Council of the EU adopted “EU guidelines for the promotion and protection of the rights of the child”.122 The EU legislates only in areas where it has competence to do so. The area of migration and asylum is one of those areas.

The Court of Justice of the European Union, based in Luxembourg, ensures compliance with EU law. It rules on the interpretation and application of the treaties establishing the EU. The Treaty on the Functioning of the European Union (TFEU) sets out the scope of the EU’s authority to legislate and the principles of law in those areas where EU law operates. The Treaty establishes EU citizenship and states that citizenship of the EU is additional to and does not replace national citizenship. It adds: “Citizens of the Union shall enjoy the rights and be subject to the duties provided

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119 Ibid.


121 Article 3(3) Treaty of the European Union.


123 Article 20 Treaty of the European Union.
for in the Treaties.” These rights include the right to move and reside freely within Member States, subject to certain limitations.

3.3.1 EU Charter of Fundamental Rights

The EU Charter of Fundamental Rights strengthens the protection of fundamental rights by making those rights more visible and more explicit for citizens. It applies in any scenario that engages EU law, including decisions on migration and asylum law. The Charter stipulates that children “may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity”. It further states: “In all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration.”

The Charter also provides for the right to an effective remedy before a tribunal, the right to legal advice and representation, and to legal aid for those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

The Court of Justice of the EU has interpreted a regulation on processing the asylum claim of an unaccompanied minor in line with the Charter so that the best interests of the child must be a primary consideration in all such decisions.

3.4 Constitutional provisions

Many of the rights enshrined in the Irish Constitution apply to all children in the jurisdiction regardless of their nationality. These include family rights, the right to fair procedures in the administration of law and the rights in relation to education,

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124 Article 21(1) Treaty of the European Union.
125 It was proclaimed in 2000 and became legally binding on EU institutions and on national governments with the entry into force of the Treaty of Lisbon on 1 December 2009.
126 Article 24 EU Charter of Fundamental Rights.
127 Article 47 EU Charter of Fundamental Rights.
128 Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.
129 C-648/11 The Queen on the application of MA, BT, DA v Secretary of State for the Home Department (4th Chamber, 6 June 2013).
religion and property. The right to citizenship of a limited category of people is set out in Article 9 of the Constitution. Some of the rights protected in the Constitution are described using the language of citizenship, but have not always been limited to citizens, such as the protection of the right to life.\footnote{Finn v Attorney General [1983] IR 154 and Irish Human Rights Commission, Observations on the proposed referendum on citizenship and on the 27th Amendment to the Constitution Bill 2004, May 2004, p 8 www.ihrec.ie/download/doc/obs_on_proposed_referendum_citizenship.doc}

The curtailment of the rights of children who are not Irish citizens can be justified where necessary to attain a legitimate Government objective, such as the Government’s responsibility to maintain immigration control. Competing interests must be balanced in a fair and proportionate matter.\footnote{E.g. S and Another v Minister for Justice and Equality [2010] IEHC 31.}

The Irish Constitution was amended in 2015, following a referendum in 2012, to expressly include a provision on the rights of the child.\footnote{Article 42A came into force on 28 April 2015.} The Constitution now provides that “the State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights”. This express statement of the rights of the child is relevant to all children, including migrant children, and may be developed significantly in the future to vindicate the rights of migrant children.

Subsequent provisions in Article 42A are more limited and do not reach the levels of protection prescribed by the CRC or the EU Charter of Fundamental Rights. Instead of applying to “all actions concerning children”, the application of best interests as the “paramount consideration” and the requirement that children’s voices are heard are limited.
to a narrow set of proceedings; child protection applications by the State and proceedings concerning the adoption, guardianship or custody of, or access to, any child.\textsuperscript{133}

In the case of Dos Santos, the Court of Appeal considered the extent to which the Constitutional amendment altered the balance of rights in a situation of proposed deportation.\textsuperscript{134} Justice McDermott accepted that the best interests of the child must be given due and proper regard and emphasis as part of the Minister’s overall analysis in deportation cases.\textsuperscript{135} However, he rejected the assertion that Article 42A required “greater consideration” be given to “the welfare of an applicant child” in deportation cases. He stated that the Immigration Act requires the welfare of each child be considered by the Minister when making a deportation decision “as a matter of fair procedures”.

\textbf{3.4.1 Legislation}

Ireland’s domestic immigration law is set out in various primary and secondary legislative acts, which are interpreted and expanded on by the courts through case law. All legislation and decisions must be in compliance with the Irish Constitution. While Irish law relating to asylum seekers, refugees and people in need of subsidiary protection is set out in the International Protection Act 2015,\textsuperscript{136} general immigration law remains largely on an administrative footing with much reliance placed on Ministerial discretion. Immigration decisions on issues including visas, residence permissions, type of permission granted, leave to land and naturalisation are based on Ministerial discretion and there is no independent appeals mechanism. This means that Ireland’s immigration law lacks transparency and clarity.


\textsuperscript{135} In C.O.O. (Nigeria) v Minister for Justice and Equality [2015] IEHC 139, Judge Eagar held obiter that under Article 42A, the analysis of the rights of a child in the deportation context “would change remarkably” and the Minister “will have to give far greater consideration to the welfare of an applicant child”.

\textsuperscript{136} Certain limited provisions were commenced in January 2016 (S.I. No. 26/2016 - International Protection Act 2015 (Commencement) Order 2016) and in March 2016 (S.I. No. 133/2016 - International Protection Act 2015 (Commencement) (No. 2) Order 2016). Remaining provisions are to be commenced in late 2016 or early 2017.
CHAPTER 3: SOURCES OF LAW/LEGAL BACKGROUND

Immigration to Ireland is regulated by the following legislative provisions, as well as numerous statutory instruments:\(^{137}\):

- Aliens Act, 1935
- Aliens Order, 1946
- Immigration Act, 1999
- Illegal Immigrants (Trafficking) Act, 2000
- Immigration Act, 2003
- Immigration Act, 2004
- Employment Permits Acts 2003 to 2014
- European Communities (Free Movement of Persons) Regulations, 2015
- International Protection Act, 2015

Despite the apparent volume of international obligations, constitutional framework and statute law, there is no comprehensive immigration law or guidance regarding key issues that affect migrant children. Much of the immigration-related decision-making process is based on Ministerial discretion. For example, applications for residence and registration of children with the authorities are made on an administrative basis and granted at the discretion of the Minister. There is no publicly stated guidance regarding the application process itself, the relevant policy considerations underpinning the decision-making process or the types of permissions to be granted in different circumstances. There is no guidance on the specific situation of children in the care of the State. The impact of the absence of comprehensive law or guidance is explored in the following chapters.

\(^{137}\) See http://www.inis.gov.ie/en/INIS/Pages/legislation for full list.
CHAPTER 4: NEED FOR CHILD-SENSITIVE LEGAL FRAMEWORK FOR MIGRATION

The case studies documented in this report reflect the situations of children who succeeded in arriving in Ireland and were granted leave to land. It was not possible to capture the experiences of children who embarked on a journey to Europe but did not reach their destination or were refused permission to land at its borders. The stories of some of those children have been told by the media\textsuperscript{38} and cannot be forgotten in any discussion on the rights of the child.

The Immigrant Council services spoke to children who said they had arrived by ferry to a port in Ireland from informal refugee camps in France to claim asylum. They were refused permission to land and were returned by ferry to France. At the other end of such journeys, the Immigrant Council has also heard from relatives of a 14-year-old boy living in Kabul who is being targeted by smugglers with promises of a rich life in Europe and how they could take him there.

Ireland has a duty and the ability to protect children in both scenarios by maximising legal avenues to enter Ireland, considering the best interests of the child in applications for family reunification from individuals in the State and dealing with the applications expeditiously, and meeting commitments to relocate and resettle children to Ireland, both with their families and those who are unaccompanied.

4.1 Access to regular and safe migration channels and secure residence status

The right to survival and development is one of the core principles of the CRC. The absence of safe, legal migration paths to Europe has resulted in the deaths

of thousands of migrants and asylum seekers, including more than 600 children who died trying to cross the Mediterranean in the first nine months of 2016.\textsuperscript{139} The Committee on the Rights of the Child has said that, “wherever possible, States should make available regular and non-discriminatory migration channels, as well as provide permanent and accessible mechanisms for children and their families to access long-term regular migration status or residence permits based on grounds such as family unit, labour relations, and social integration. These regularisation programmes should aim at facilitating migrants’ social integration and protecting children’s rights, including their right to family life.”\textsuperscript{140}

Human Rights Watch reports that there can be no doubt that many smugglers and all traffickers abuse migrants and asylum seekers along migration routes into the EU. It recommends the “provision of more safe and legal channels into the EU”. It adds: “Ways for migrants, asylum seekers and refugees to reach EU territory without having to risk their lives or resort to criminal networks could reduce the use of dangerous migration avenues.”\textsuperscript{141}

For the rights of children to be protected, legal migration routes must be put in place, resettlement programmes for refugees implemented and relocation mechanisms\textsuperscript{142} put into operation. There must be systems in place to grant families entry visas to enable them to travel safely as a unit as well as family reunification opportunities.

UN High Commissioner for Refugees Filippo Grandi has observed: “As many of the children and adults who have died were trying to join relatives in Europe, organising

\textsuperscript{139} Save the Children press release https://www.savethechildren.net/article/600-children-have-died-mediterranean-year, 3 October 2016.

\textsuperscript{140} CRC, day of general discussion, para 91.


\textsuperscript{142} Resettlement is the transfer of refugees from an asylum country to another State that has agreed to admit them and ultimately grant them permanent settlement. For further details, see http://www.unhcr.org/resettlement.html.

Relocation is the transfer of asylum seekers who are in clear need of international protection from one EU Member State to another European State. Their asylum application will only be examined once the relocation has taken place. For further details, see https://www.easo.europa.eu/; http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/2_eu_solidarity_a_refugee_relocation_system_en.pdf.
ways for people to travel legally and safely, through resettlement and family reunion programmes for example, should be an absolute priority if we want to reduce the death toll”.\textsuperscript{143} In his political guidelines, President of the European Commission Jean-Claude Juncker stated: “A robust fight against irregular migration, traffickers and smugglers, and securing Europe’s external borders must be paired with a strong common asylum policy as well as a new European policy on legal migration”.\textsuperscript{144}

The European Agenda on Migration, adopted in May 2015, notes: “A clear and well-implemented framework for legal pathways to entrance in the EU (both through an efficient asylum and visa system) will reduce push factors towards irregular stay and entry, contributing to enhanced security of European borders as well as safety of migratory flows”.\textsuperscript{145}

The Human Rights Council has recommended that destination States deal with applications to “enter or leave a State for the purpose of family reunification in a positive, humane and expeditious manner”.\textsuperscript{146}

It is recognised that the Irish Government has taken some steps in response to the migration crisis. These include the continued commitment of the Irish Naval Service to rescuing migrants in the Mediterranean\textsuperscript{147} and Ireland’s participation in EU resettlement and relocation programmes.\textsuperscript{148} The commitment to accept 4,000 people in need of international protection into the State by the end of 2017\textsuperscript{149} is welcome. However, the slow pace of arrivals is disappointing.\textsuperscript{150} Ireland also has an important


\textsuperscript{144} President Juncker’s political guidelines: A New Start for Europe, \url{http://ec.europa.eu/priorities/docs/pg_en.pdf}

\textsuperscript{145} Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions: A European Agenda on Migration.


\textsuperscript{147} Over the course of 2015 and 2016 to October, the Irish Naval Service rescued almost 13,500 migrants in the Mediterranean, Dáil statement by An Taoiseach, Enda Kenny, 19 October 2016, \url{https://www.kildarestreet.com/debates/?id=2016-10-19a.191}; An additional €16 million was allocated to allow the Irish Naval Service to continue their role overseas.

\textsuperscript{148} Department of Justice and Equality, Press Releases: Ireland to accept up to 4,000 persons under Relocation and Resettlement programmes - Government approves ‘Irish Refugee Protection Programme’, 10 September 2015, \url{http://www.justice.ie/en/JELR/Pages/PR15000463}.
role to play at the European and international level in advocacy and negotiations to ensure that all States acknowledge and respect their “shared responsibility to manage large movements of refugees and migrants in a humane, sensitive, compassionate and people-centred manner.” The potential of this role was evident in the negotiation of the New York Declaration for Refugees and Migrants in September 2016 in which agreement was reached on commitments to save lives, protect rights and share responsibility on a global scale. Ireland is well-placed to lead discourse and action on migration to ensure that those fleeing persecution gain safe access to territory in Europe.

Further to these commitments, the Department of Justice and Equality must ensure that Irish immigration law enables access to Ireland through a transparent visa process with reasonable requirements and fair family reunification rules.

149 https://www.kildarestreet.com/wrans/?id=2016-10-11a.115
150 As of November 2016, 500 people had arrived in Ireland through resettlement and 109 had arrived through relocation. The Government is on course to meet its target of 520 by the end of 2016. Progress with relocation has been slower but 109 people have so far been relocated to Ireland and the Government expect that by the end of 2016, Ireland will have accepted up to 400 people through relocation. Department of Justice, Speech by An Tánaiste Ms Frances Fitzgerald TD on Calais – Refugees and Unaccompanied Minors, 2 November 2016, http://www.inis.gov.ie/en/INIS/Pages/speech-tanaiste-calais-refugees-and-unaccompanied-minors.
151 UN General Assembly, New York Declaration for Refugees and Migrants, 13 September 2016,
5.1 Immigration system

Children are directly affected by the absence of a comprehensive legal framework on immigration law in Irish primary law. The lack of legislation results in a lack of clarity about children’s rights and duties, and creates confusion for children, their parents and other advocates. The reliance on Ministerial discretion results in different outcomes for children in similar circumstances. This means the Irish system is not fair or transparent.

Children remain largely invisible in Ireland’s immigration system. Considered silent dependents of their parents until the age of 16, children’s individual rights are often neglected. Children younger than 16 are not granted independent residence permissions or stamps, and cannot access any confirmation that they have permission to reside in the State. The absence of a child-rights approach has meant that the specific, individual rights and needs of children are not given adequate consideration in Irish immigration legislation or policy. Immigration law and policy is not child-rights proofed or child-sensitive. This results in systems that are not tailored to children and an absence of appropriate immigration permissions and processes for children and young people.

The lack of clarity and information around immigration issues results in some children missing prescribed timeframes within which to register their residence in Ireland and consequently becoming undocumented. Others are provided with inappropriate stamps. Both result in negative outcomes for children, particularly as they transition into adulthood. The Irish immigration system does not provide either for an independent appeals mechanism of negative decisions or for clear, accessible pathways to regularisation when a person becomes undocumented.

This chapter outlines relevant international and EU law that requires a legal framework for decision-making relating to children. It also explores the short- and long-term implications for children of neglecting to address their immigration status.
5.1.1 International law – children as individual rights-holders

International law requires that “all children, including children accompanied by parents or other legal guardians, must be treated as individual rights-holders, their child-specific needs considered equally and individually, and their views appropriately heard”.\textsuperscript{153} The Committee on the Rights of the Child explains: “States should conduct individual assessments and evaluations of the best interests of the child at all stages of and decisions on any migration process affecting children, and with the involvement of child protection professionals, the judiciary as well as children themselves. In particular, primary consideration should be given to the best interests of the child in any proceeding resulting in the child’s or their parents’ detention, return or deportation.”\textsuperscript{154}

International law further requires States to ensure due process and access to effective remedies.\textsuperscript{155} States should ensure that their legislation, policies, measures and practices guarantee due process in all migration procedures and judicial proceedings affecting the rights of children in the context of migration and/or those of their parents.\textsuperscript{156} The Committee on the Rights of the Child recommends the availability of an independent appeals mechanism: “They [children] must have access to administrative and judicial remedies against decisions on their own situation or the ones on their parents to guarantee that all decisions are taken in their best interests.”\textsuperscript{157}

\begin{flushright}
\textsuperscript{153} Committee on the Rights of the Child, day of general discussion on the rights of “all children in the context of international migration”, 2012, Para 74.
\textsuperscript{154} Ibid, Para 72.
\textsuperscript{155} Article 2 ICCPR, Article 13 ECHR, Article 47 EU Charter on Fundamental Rights: “Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.”
\textsuperscript{156} Committee on the Rights of the Child, Day of General Discussion on the rights of “all children in the context of international migration”, 2012, para 75.
\textsuperscript{157} Ibid, para 74.
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The former Special Rapporteur on the human rights of migrants, Jorge Bustamante, recommended that States mainstream a child-rights approach to migration into national plans, programmes and policies. He recommended that States “devote special attention to the protection of undocumented, unaccompanied and separated children, as well as to the protection of children seeking asylum and children victims of transnational organized crime, including trafficking in persons, smuggling, sale of children, child pornography and child prostitution”. He also recommended “the development of strategies to pay special attention to migrant children in order to guarantee their access, on an equal basis and regardless of legal status, to the same rights as those of children nationals of the country concerned.”

The European Convention on Human Rights requires that everyone whose Convention rights and freedoms are violated have access to an effective remedy before a national authority. The European Court of Human Rights has held that this means that administrative procedures for obtaining a residence permit must be available in practice as well as in law where a person’s family rights are engaged.

Where a child is in the care of the State, there is a particular, enhanced duty to grant that child permission to reside with full access to rights. In relation to separated or unaccompanied children, the Committee on the Rights of the Child sets out that where it is decided that a child will remain in the country of destination, local integration must be “based on a secure legal status (including residence status) and be governed by the Convention rights that are fully applicable to all children who remain in the country”. The Committee explained that States “should provide adequate follow-up, support and transition measures for children when they reach 18


\[159\] Article 13.

\[160\] In G.R. v the Netherlands[2012] ECHR 22251/07, the court found a violation of Article 13 because the administrative charge for obtaining a residence permit was disproportionately high relative to the applicant’s family income, meaning there was not an accessible procedure available in practice although it was available in law.

\[161\] UN Committee on the Rights of the Child, General Comment No 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, (V)(a)(31)(A), Para 89.
years of age, particularly those leaving a care context, including by ensuring access to long-term regular migration status and reasonable opportunities for completing education and integrating into the labour market”.162

The Committee stipulates that children should be referred to the asylum procedure/complementary protection where there are indications that they may have a well-founded fear of persecution, even where they cannot articulate a concrete fear.163 Where there are no such indications, children “must be protected pursuant to other relevant child protection mechanisms, such as those provided under youth welfare legislation”.164 Children, who are neither granted refugee status nor benefit from complementary forms of protection, will still enjoy protection under all norms of the Convention as long as they remain de facto within the States’ territories and/or subject to its jurisdiction.165

5.1.2 Ireland – access to due process

In Ireland, the rights of migrant children to due process are limited. Immigration-related decisions, outside international protection, are based on Ministerial discretion. There is provision for an internal appeal in some areas, but there is no independent appeals mechanism. While children and their families may challenge decisions by means of judicial review in the High Court, that action is limited and does not review the merits of a case or questions of fact. The High Court does not have the power to alter or replace the administrative decision.

Access to court is further limited by the short time in which legal proceedings must be initiated as well as by the high financial risk involved given that an unsuccessful applicant may have to pay the legal costs of the State. Please insert: Children cannot institute legal proceedings independently in Ireland, and may only sue through a next friend.166

162 UN Committee on the Rights of the Child, Day of General Discussion on the rights of “all children in the context of international migration”, 2012, Para. 69.
163 UN CRC General Comment No 6, Para 66.
164 Ibid, Para 67.
165 Ibid, para 78.
Successive governments committed to consolidate and restate Irish immigration and asylum law in an integrated statutory framework. The 2011-2016 Programme for Government undertook to “… introduce comprehensive reforms of the immigration, residency and asylum systems, which will include a statutory appeals system and set out rights and obligations in a transparent way.”\footnote{167} The Immigration, Residence and Protection Bills 2006, 2008, 2010 were published with the purpose of providing a single code of law on entry into, and presence in the State, of foreign nationals. The 2010 Bill was hoped to provide a “modern and coherent legislative framework” that would “make the management and administration of the asylum and immigration system more efficient, effective and economic”.\footnote{168} The national policy framework on children and young people anticipated that the enactment of the Bill would “address in a comprehensive way the interaction of migrant children with the immigration system”.\footnote{169}

However, none of the draft legislation was enacted. Instead, in 2015 the Government singled out aspects of the 2010 Bill relating to international protection, including the introduction of a single applications procedure.\footnote{170} The sections of the previous Bills relating to general immigration law were not enacted.\footnote{171} This means that there continues to be a lack of clear, consolidated legislation around general immigration law. The failure to consider the particular situations and needs of accompanied migrant

\footnote{169}{Better Outcomes Brighter Futures – The national policy framework for children and young people 2014-2020.}
\footnote{171}{Some Miscellaneous provisions in the International Protection Act and provisions relating to permission to remain, prohibition of refoulement and deportation Orders are of relevance outside of the International Protection regime. These are set out in Part 7, Part 12 and Part 13 of the International Protection Act. The introduction of “a comprehensive Immigration and Residency Reform Bill, aimed at modernising Ireland’s visa and residency systems” is included in the 2016 Programme for Government but is not yet in the Government legislative programme.}
The absence of a clear legal framework has been the subject of international criticism. In January 2016, the Committee on the Rights of the Child observed that this results in there being “no clear and accessible formal procedures for conferring immigration status on persons in irregular migration situations”.

The Committee urged Ireland to “expeditiously adopt a comprehensive legal framework that is in accordance with international human rights standards to address the needs of migrant children in the State party” and to “ensure that the said legal framework includes clear and accessible formal procedures for conferring immigration status on children and their families who are in irregular migration situations”.

The adoption of a legal framework for immigration with appropriate, tailored immigration permissions for children when they turn 16, clear paths to regularisation of status and an independent appeals mechanism would go some way to meeting the State’s obligations under international law. The identification of children’s rights and needs in that process would also alleviate many of the difficulties currently faced by child migrants in Ireland.

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174 Ibid, para 68 (a).
5.1.3 Inconsistency in stamps provided to young people

The absence of a clear legal framework and the lack of clarity on the immigration status of children results in inconsistency in the permissions granted to children in similar situations when they turn 16 years old.

Immigration decisions go to the heart of a child’s wellbeing. However, they are undertaken on an administrative basis by people who may not have received training on child welfare and rights. The INIS does not provide guidance to its staff or to GNIB immigration officers on the appropriate stamp to issue to children resident in the State. The Immigrant Council was informed that “...the stamp issued would vary according to the type of immigration permission for which the applicant’s parent or legal guardian has applied on their behalf. As such, no generic policy advice limited specifically to children who are 16 years of age has issued.”

The lack of any policy guidance has resulted in stamps being issued to young people in an inconsistent manner as well as inappropriate stamps being granted. For example, young people have been inappropriately granted Stamp 2 for international students when their primary purpose in the State is as dependents of their lawfully resident non-student parents, rather than for study.

Child welfare practitioners and lawyers consulted for this research discussed how different stamps were granted in respect of applications for children in almost identical circumstances. One barrister explained: “One of the features of this area is that there is absolutely no consistency in policy.” This inconsistency is of concern because different rights and duties attach to the different stamps.

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175 Letter to the Immigrant Council from the Director General of the INIS, 6 October 2016, in response to query.
The inconsistency in policy is apparent from the experiences of the young people interviewed.

Aoife was registered with a Stamp 4, the same stamp as her mother, at the age of 17. Vincent, whose father had a business permission as a self-employed person, was registered with a Stamp 3. Similarly, George, whose mother initially held Stamp 1 permission, was registered with a Stamp 3. Valentine was registered with Stamp 2 for international students even though she was the child of Stamp 4 holders with leave to remain and was attending secondary school.

Ruth, whose parents were both Stamp 4 holders, was granted temporary permission to remain on Stamp 2 residence conditions when she turned 18. Representations were made to the INIS seeking a Stamp 4 on the basis of her family’s residence in Ireland, her length of residence and personal circumstances.

Similarly, in 2016, Lucia was registered with Stamp 2A residence permission when she attended a regional immigration office. Her parent’s permission to reside is on the basis of Stamp 4 residence conditions. Following representations seeking a Stamp 4, Lucia was permitted to reside on Stamp 3 conditions.
Stamp 3 is the stamp usually issued to dependent members of a migrant’s household. Unlike international students whose Stamp 2 permission allows for 20 hours per week part-time employment during term time and 40 hours per week during their holidays, Stamp 3 does not allow any employment. This hampers young people’s ability to gain part-time work that could improve their CV and employment prospects when their studies are completed. The young people consulted found this restriction on their access to employment limiting and unsatisfactory.

Paul said that he was frustrated that he could not get part-time work: “I couldn’t get a job or anything like that, so I couldn’t really do what most people were doing at my age – get a job at 16, working and stuff like that – so for my CV I don’t have any former abilities that I’ve done. All that I could do was volunteering, coaching. I took work wherever I could find it.”

George reported that he didn’t really have much understanding of his immigration status. He started a job in retail at the age of 18, which he really enjoyed. He worked there for a few months when his employer asked to see his “work cert”. He thought his Stamp 3 was enough to work. It was only then he realised that it did not permit work and he lost his job. “I thought everything was all good because I had my GNIB card... I didn’t have a clue about that so I lost that job because of that and that kind of devastated me”. He said that his permission was later changed to Stamp 4, but that it took him a long time to re-enter employment as he had been scared to look for work for a long time after he had lost his job.

Similarly, Lucia was not able to work for the summer to gain work experience in dental nursing, which she was hoping to study after her Leaving Certificate.
Immigration permission granted to children should allow them to gain work experience and earn pocket money for age-appropriate lengths of time\(^{176}\) on an equal basis with their Irish citizen peers.

### 5.1.4 Children under the age of 16

Irish immigration law does not treat children as individual rights-holders. There is no system of registration or granting of specific immigration permission to children and young people on an individual basis under the age of 16.\(^{177}\) Instead a child’s permission is assumed to be the same as their parents’. There are no published guidelines regarding immigration status for children. The obligation for non-EEA nationals to register is set out in section 9 of the Immigration Act 2004, which exempts children under the age of 16, but this information is not clear or accessible on the INIS website.

The failure to consider the individual circumstances of children means that migrant children are rendered invisible. The impact on children is not taken into account when decisions are being made about the status of their parents. The lack of specific status for children can lead to complications and disadvantageous treatment of young people. The absence of individual immigration permission before the age of 16 creates particular difficulties for children who are taken into the care of the State, including in establishing their right to reside and reckonable residence.

The 2013 INIS Family Reunification Policy document noted the limitation of the current system in respect of children. It suggested that there would be reform at policy level while awaiting enactment of legislation: “The 2004 Immigration Act does not provide for the registration of children aged under 16. The Immigration Residence

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\(^{176}\) In line with Protection of Young Persons (Employment) Act 1996.

\(^{177}\) Non-EEA nationals residing in Ireland for three months or longer must register with their local immigration officer and they are then issued with a registration card. The Immigration Act 2004 controls entry into the State, the duration and conditions of stay in the State, and obligations of non-Irish nationals in Ireland. The Act introduced a requirement that non-Irish nationals register when they have been in Ireland for three months or longer. It also obliges non-Irish nationals to “produce on demand” a valid passport or registration certificate. The duty to register or produce documentation does not apply to young people under the age of 16 years or to non-Irish nationals born in Ireland.
and Protection Bill intends to abolish this limitation. However, in the interim, it is now proposed as part of policy on family reunification to provide for specific immigration permission for such children on an administrative basis. This will allow the children to establish their personal residence history at an earlier date.”\textsuperscript{178} However, no such child-specific permission policy was adopted.

Section 35(b) Employment Permits (Amendment) Act 2014 provides for the deletion of the exception to the duty of registration in respect of those under 16 years. When this provision is enacted, parents/guardians will have a duty to ensure that their children are registered in their own right. However, this provision has not been commenced.

**Reported implications**

Some young people interviewed for this research reported that the absence of individual immigration permission for children under 16 was poorly understood by the public and by officials of Department agencies outside the Department of Justice. They said the lack of clarity or guidelines on this matter and the absence of an accessible facility to issue ‘status letters’ could lead to confusion. With increased general awareness of immigration, requests for evidence of children’s immigration status appear to be increasing.

\textsuperscript{178} INIS Family Reunification policy document (paragraph 31, page 9)

John was asked to present his GNIB card when moving from a school to an education centre at about 14 years of age. He was not required by law to have a GNIB card.

The Immigrant Council is aware of a situation in early 2016, when a parent was asked by the Department of Social Protection to provide “a current visa” in respect of a 10-year-old child who had joined her family through refugee family reunification “as our records show that his visa expired”. However, the expiry date on visas only refers to the date by which the child must have entered the State on that visa. The visa does not confer any entitlement to stay or reside in the State so the visa expiry date is not relevant to the child’s permission to reside in the State.

The child’s mother had submitted details of her own permission to reside and the child’s permission to enter Ireland and his granting of family reunification by the Department of Justice. However, that was not accepted as adequate proof of permission. In the absence of clear guidelines from the INIS website, the child’s mother had to obtain and submit clarifying correspondence from the Residence Division of the INIS that the child did not have or require proof of his permission to reside. This process significantly delayed the family’s access to social protection.

It would greatly reduce any misunderstanding regarding whether children are required to have a legal permission to be in the State, if the INIS issued a standard letter to parents and guardians clarifying that a child under the age of 16 is not required to hold a legal residency permission, that a child’s status is taken to be that of their parents and that, as such, children are legally resident in the State. The INIS
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should also insert a section on its website to which agencies such as the Department of Social Protection could be directed for clarification as to whether children are required to hold a residency permission.

5.1.5 Children in care

Specific difficulties arise for children in the care of the State. Children’s permission is considered to derive from a parent with whom they may have limited or no contact, who may not wish to share information about their immigration status or who has left Ireland. Although it follows logically that a child in the care of the State must have permission to reside in Ireland, there is no clarity in law or policy that such a child has legal permission to be in the State or what form that permission would take.

One lawyer consulted for this research expressed the view that “...a child who is in the care of the State cannot be illegally in the State because there’s a fundamental conflict with that situation”. It appears that, in practice, many children in the care of the State are granted Stamp 4 “in exceptional circumstances” at the discretion of the Minister for Justice and Equality. The fact that the stamp is granted “in exceptional circumstances” gives rise to unnecessary practical challenges for young people and means that they cannot fully realise their rights. This is documented in chapter 9.

5.2 Barriers to regularising immigration status

5.2.1 Practical difficulties in registration

Practical challenges can sometimes prevent people from registering for the first time or keeping their immigration status up to date, which results in them being undocumented in the State.
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**Financial barrier**

When young people turn 18, they are no longer exempt from the registration fee of €300. This is a significant hurdle for many young people to remain documented.

Difficulties in renewing his passport, combined with the financial barrier, prevented Paul from re-registering with the GNIB at the age of 18. Although his aftercare worker assisted in getting him the funding of the €300 registration fee, he didn’t have the money for his passport application fee so he still could not register.

“One of the main things was because I didn’t have the money, the other was because of the lack of information between me and the [nationality] embassy, so I couldn’t get my passport, I couldn’t get my passport so I couldn’t get my GNIB, so went around and around”.

Aoife, who was in aftercare, explained that she had to use all her life savings to pay the registration fee. She hoped that Tusla would assist her by reimbursing her with it, but was not sure of this.
Social and aftercare workers also spoke of difficulties in acquiring the registration fees for young people in aftercare as well as difficulties in getting the funds to acquire a passport from the young people’s countries of origin, which is needed to register with GNIB. A registration fee waiver system for young people in aftercare would alleviate the stress and uncertainty met by young care-leavers and could prevent them from becoming undocumented. Alternatively, it would be helpful if Tusla clarified that such costs would be covered in aftercare packages.

The lack of clarity and inconsistency in the granting of residence permissions to children causes practical challenges in the day-to-day lives of young people, as will be described throughout this report. While awaiting the new legislative framework, the provision of publicly available guidelines to the GNIB and INIS on registering children and young people with appropriate permissions could assist in providing the necessary transparency and clarity on the position of children.

5.3 Assistance with immigration matters while in care

5.3.1 Young people’s experiences

Where children are in the care of the State, timely assistance in securing their immigration status or applying for naturalisation is essential to their ability to access services.

In the Immigrant Council’s consultations with young people, many provided examples of good practice in the provision of assistance and support around their immigration status, registration and applications for citizenship. However, some young people expressed frustration that they had received inadequate or no assistance in relation to immigration matters while they were in care.
John’s GAL and social workers acted quickly to ensure that his application for naturalisation was made before he turned 18 and was out of care. John said there was a team of about 10 social workers and key workers in the residential centre in which he lived and they were all aware of his immigration status. His social workers organised legal representation for him and accompanied him to consultations.

Valentine’s social worker always made efforts to ensure she found out the necessary information relating to her immigration status. Valentine recalled that either her social worker or aftercare worker accompanied her to the GNIB each year to register. Her aftercare worker also made representations to the embassy of Valentine’s country of origin to acquire a new passport and identity card. Valentine’s care plan and aftercare plan contained several references to resolving her immigration status.

On the other hand, Aoife stated that her social worker was aware that she did not have a passport but did not assist her in obtaining one. Aoife did not register with the GNIB when she turned 16 as she was not aware of the legal obligation to do so. She was not informed by her social worker about this obligation and the effects it would have on her legal status in the State.

Aoife said: “I think it was just purely my social worker’s fault. He just didn’t keep up on it and I would not be in this situation if it wasn’t for him... Yeah he wasn’t really involved anyway... And he was supposed to be helping me with my passport and then it just all got dumped on to my aftercare worker.”
Social workers in Dublin and Cork reported the existence of internal guidance within Tusla, which was provided at training sessions and in response to queries, that the immigration status of young people should not be addressed until they reach 18. It was suggested that this practice was aimed at avoiding a negative decision being made by the Department of Justice in respect of a child. They stated that this advice was being relied upon to the detriment of children and young people. It results in young people turning 18 without steps being taken to secure their immigration status, leaving them in many situations to navigate the system without the support and assistance of social workers or other advocates. One outreach session participant said: “We can’t not make an application for a child simply because it may be distressing, as the children are still very anxious about their status and it not being resolved so they are distressed anyway and may become more so if nothing is done to regularise their status”.

5.3.2 Implications of failure to address children’s immigration status

The evidence in favour of addressing a child’s immigration status at the earliest possible opportunity is overwhelming. The negative results of inaction were highlighted by all those consulted for this report and are outlined below.

A solicitor interviewed for this research stated: “Lacking a status undermines any sense of security and sense of place for a child”.

A barrister also spoke about the effects on young people of not taking early intervention on their immigration status: “Young people become anxious when they are approaching 18 because of uncertainty about the future: education, accommodation, money, uncertainty about immigration status, how long the process will take, integration, access to education. This causes mental health difficulties due to long-term exposure to stress.”
Support

A social worker at the Immigrant Council’s Cork session pointed out that the support networks children have while they are in care are crucial in engaging with immigration procedures: “You’re their ‘everything’. You’re their support, their mother, their advocate... who would do that if they’re adults?”

The need for early intervention was also identified by a children’s solicitor interviewed in the course of this research: “Unless status is resolved, when they’re 18 they’ll have a battle.”

A barrister who practices both child law and immigration law, emphasised that, when an application for formal permission to live in Ireland is not made before a child turns 18, “they may go into the general immigration process without the assistance and the weight of the Child and Family Agency behind them and in support, and it may leave the child very vulnerable in trying to navigate this incredibly complex and difficult system”.179

Becoming undocumented

The absence of clarity around the law, barriers to accessing information and a lack of legal representation resulted in many of the young people interviewed becoming undocumented. Of the 19 young people interviewed, 12 had become undocumented at some point after reaching the age of 16 but had subsequently succeeded in securing their status. Two of the young people were undocumented at the time of their interviews. Of those who had been undocumented, nine had been in the care of the Irish State.
The profound emotional and psychological impact that uncertain immigration status can have on young people has been well-documented internationally. UK research showed that "'Undocumentedness' invades personal and emotional space, which often leads to a shadow existence, a lack of self-worth, a lack of trust in others and often the internalisation of fear for migrants and families". A US study on families with unauthorised immigration status showed that, for many children and families, "fear, uncertainty and isolation were common in their lives and had a direct impact on their day-to-day functioning".

The Platform for International Cooperation of Undocumented Migrants (PICUM) highlights that the criminalisation of irregular migration and its enforcement “mean that everyday activities such as travelling by car and crossing the street can be wrought with anxiety and fear, as they could lead to arrest, detention and deportation if stopped for any reason by the police, causing further distress and alienation for undocumented adolescents and youth”.

Such fear and anxiety has a direct impact on young people’s participation in society. As highlighted by PICUM: “In addition to direct restrictions on opportunities for undocumented adolescents and youth, fear and social exclusion further limit their ability to engage and contribute to their societies.”

Stress

The significant level of stress caused by uncertain immigration status was evident among the young people interviewed for this research.

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182 OHCHR, PICUM, UNLa and UNICEF, Human Rights of Undocumented Adolescents and Youth, July 2013, p 22.
183 PICUM, Ibid, p 23.
When Paul first learned at the age of 15 or 16 that he had no immigration status, he got really worried and became paranoid that, if he did anything, he would be sent back to [his country of origin]. He said that he withdrew into himself and stopped “hanging out” with his friends as he kept thinking of the risk of getting into trouble for doing something and being deported. He was stressed about his residence status to such an extent that his social worker arranged for him to see a psychiatrist.

Paul later registered with the GNIB but became undocumented again when practical and financial difficulties prevented him from renewing his passport and renewing his immigration status. He explained:

“Nowadays I don’t leave my house. Normally I’d go out every day but now I don’t leave because I’m afraid that if I go somewhere and I get stopped by a Garda I’ll be asked for proof of identification. I don’t have anything. I’ll be taken off somewhere, wherever people get taken off, I don’t know.”

Maria also described living in constant fear of deportation. Her trafficker moved her from one brothel to another to avoid deportation, and this fear of deportation continued after she escaped.

Emma suffered hair loss due to stress while waiting for her immigration status to be resolved. She experienced panic and upset from the fear of deportation every time she was required to sign on at the GNIB.

Alicia described being stressed all the time about her immigration status and not knowing what to do. She knew life would be hard without a visa as she wouldn’t be able to work or travel.
Impact of undocumented status on career development

The Immigrant Council’s interviews indicate that unresolved immigration status has an impact on the young people’s capacity to engage in education at the level they desire. It can stagnate their career ambitions and prospects, and diminish their dreams for the future. Outreach session participants also observed the impact of delays in addressing immigration status. One social worker explained: “The young people end up in limbo then as they can’t access work or education and their life is on hold.”

Boris indicated that, when he arrived in Ireland as an unaccompanied migrant, he completed his second-level education and envisaged studying at university to become an orthodontist. He was enthusiastic and committed to study at that time. However, as a stateless young person in the asylum process, he was not permitted to study or work. He had a lot of spare time so he trained in the gym regularly. However, he was bored over those years when he could have been developing professionally. By the time he was granted permission to reside and could access education and employment, he felt that he was too old and was no longer motivated to pursue his original dream. He felt he should be out working rather than studying full time. He said: “I do not care to do this. I have plans. I don’t want now to go to study full time; I want to go to work now.” Instead, Boris completed a PLC course and another technician course. He has had some part-time jobs but has not been able to find a full-time job. He was searching for employment at the time he was interviewed.

Boris indicated that, as he got older, he became a little depressed as he thought about the future, that he could not get an education and that he didn’t have family in Ireland to help him with little things.
Paul said he wanted to study and work part-time and become a lawyer. “I was always told growing up in school, every single teacher I ever met always told me that I loved arguing so much so I might as well become a lawyer.”

While his aftercare plan noted his desire to become a lawyer, he was not provided with information on the steps he would need to take to achieve that. When he was unable to renew his immigration permission, he enrolled on a motor vehicle maintenance course, using the €300 he had intended to use to pay for his renewal. He enjoyed the course but he could not afford the fees for the second year, so dropped out.

Similarly, Vincent had planned to study medicine but was ultimately unable to do so because he could not get a school place in Ireland at the age of 17. This was disappointing for him as he had studied for 11 years before having to flee his home country and was left without a certificate to show for his studies.

Maria said that she could not access the labour market legally and could not access social welfare. This meant that when her child was born and was sick, she could not afford to bring her child to the GP. She also could not afford to enrol her child properly and permanently in a crèche, which her child care worker said was important for her child’s socialisation and speech development.
Many of the young people interviewed, as well as the social workers and aftercare workers, reported that young people who were or had been in care were prevented from progressing to further education because they could not afford the fees and were not entitled to a grant due to their immigration status. Others pursued courses at a lower level than their achievement level because they could not afford the higher fees. For example, Valentine and Kemi pursued PLC courses when they would have preferred to pursue university degrees. This is explored further in Chapter 9.

The impact of immigration status on young people’s life opportunities has been reflected in research carried out in other jurisdictions. In the US, young people’s “day-to-day struggles, stress and the ever-present ceiling on opportunities... forced them to acknowledge the distance between their prior aspirations and present realities”\(^ {183}\). A UK study showed that “being undocumented limits aspirations and many migrants talked about being trapped, unfulfilled and unable to make plans...” There is an ever-present sense of feeling trapped in a situation where marginality cannot be resolved and a future cannot be constructed. Thus, making plans for the future – a crucial part of the optimism of youth – is constantly appraised against the possibility of being arrested and deported.\(^ {184}\)


\(^{184}\) Bioch, A, (City University London), Sigona, N and Zetter, R (Refugee Studies Centre, University of Oxford), No right to dream: The social and economic lives of young undocumented migrants in Britain, p 9, City University London and University of Oxford Refugee Studies Centre, Paul Hamlyn Foundation, 2009.
Unaddressed immigration status giving rise to protection and safety concerns

Emma’s case demonstrates the “worst case” possibilities when a young person's immigration status is uncertain and they do not get timely access to specialised legal advice. It highlights the need to address a child’s immigration status as early as possible when they are in the care of the State.

Emma was trafficked to Ireland as a child. A woman with whom she subsequently lived applied for asylum on her behalf. Emma did not have an opportunity to explain the truth of her situation, as that woman was present at her interview. Her application was refused and she did not know about her right to appeal. Fearing that she would be deported, she accepted advice and assistance to move to the UK. Instead of the education and employment she expected, Emma was exploited in prostitution.

Emma managed to qualify in a health profession. She was later returned to Ireland under the Dublin Regulation. Although she applied to be identified as a victim of trafficking and to be provided with residence permission on that basis, it took three years and a court application before a positive decision was made. She had no permission to reside while she waited for a decision and was confined to direct provision.

During that time, the greatest heartbreak for Emma was that she could not work in the area she was passionate about and in which she was qualified and experienced. She described how her life was put on hold. She “just wanted to get up early in the morning and put on her work clothes and go to work”. She felt she lost the crucial years for building her career. She said, during those years, she also missed out on meeting someone and starting a family because she could not allow herself to fall in love because of the uncertainty of her immigration status.

Similarly, Ruth’s immigration status was not addressed while she was a child in State care. Subsequently, as a young adult, she found herself with no secure immigration status, destitute and at risk in the country in which she grew up.
5.3.3 Comparative practice: granting children independent residence status

Independent residence permission

In many countries, children and young people can be granted residence status in their own right as independent rights-holders if they fulfil certain criteria.

In Germany, the law\textsuperscript{185} allows for the granting of individual residence permits to children where their parents hold residence permits\textsuperscript{186} or to prevent special hardship.\textsuperscript{187} The Act provides for the extension of children’s right of residence as long as a parent possessing the right of care and custody holds a residence permit. When the child comes of age, the residence permit granted becomes an independent right of residence.\textsuperscript{188}

German law allows independent residency permission to be granted to “well-integrated young people and adolescents” between the ages of 15 and 21 under certain conditions, none of which relate to the immigration status of their parents. The conditions include six years’ residence in the State, successful school attendance over six years or achieving a vocational or school-leaving qualification in Germany, and favourable prospects for integration.\textsuperscript{189}

In Canada, children may hold an immigration permission in their own right. Children whose parents do not have status in the State may submit a humanitarian and compassionate (H&C) application to become a permanent resident. Applications are assessed on a case-by-case basis.\textsuperscript{190} Relevant factors include how settled the person

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\textsuperscript{186} Section 32, (1) The minor, unmarried child of a foreigner shall be granted a residence permit if the parents or the parent possessing the sole right of care and custody hold a residence permit, an EU Blue Card, a settlement permit or an EU long-term residence permit.

\textsuperscript{187} Section 32 (4).

\textsuperscript{188} Section 34.

\textsuperscript{189} Section 25a (1) Residence Act 2008.
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is in Canada, general family ties to Canada, the best interests of any children involved and what could happen to the applicant if the request is not granted.

Independent residency status specific to children in care

Nine of the countries reviewed make specific residency provisions for migrant children in care, while seven countries make provisions for the naturalisation of children that specifically refer to children in care. Such provisions recognise that children who do not have family support require their needs to be specifically addressed so they can access residence permission and naturalisation on an equal basis with their peers.

Norway and the US have public policies or guidelines that outline the actions that social workers and other child welfare practitioners should take to determine and resolve the immigration status of migrant children in care.

Such policies and guidelines can greatly assist in reducing vulnerability and uncertainty for migrant children and young people. They ensure that the status of migrant children and young people is resolved at an early age while they are still in the care system. This avoids the situation where young people age out of the care system in a precarious situation because their immigration status was not resolved while in care.

In Spain, children who are protected by the Civil Service or under court order by any other entity are considered to be regularly and lawfully resident in Spain. The law provides that where it is impossible to return a child to his or her family and country

191 Legislation in Finland, Portugal, Sweden, the Netherlands, Spain, Norway, the Czech Republic, Latvia and the United States makes specific provision for a residency permission for migrant children in care.
192 Spain, France, Switzerland, the UK, Australia, Greece and Slovakia.
193 Article 35 (7) of the Spanish Organic Law 2/2009
of origin, that child will be issued with a residence permit at the request of the agency exercising guardianship. The residence permit is considered retroactive to when the minor was first entrusted into the care of child protection services. It specifies that the absence of a residence permission until that point shall not prevent the recognition and enjoyment of all rights accruing to the child from the child's status as a minor.

In Norway, a child in the care of the State will normally be given a residence permit if the child welfare authorities have issued a permanent care order. The permit can be given for a limited time if the care order is issued temporarily. Permits are given on the grounds of strong humanitarian considerations or a particular connection with Norway.

In the Czech Republic, the law provides an independent right of permanent residence to children who have been placed in the care of the State. Children entrusted to foster care by a decision of the competent authority are entitled to reside permanently in the Czech Republic “if at least one natural person, to whom the foreign national has been entrusted, is in possession of the permanent residence permit in the Czech Republic or if the institution in which the foreign national has been placed is based in the Czech Republic.”

Under the law of the US, Special Immigrant Juvenile (SIJ) status is an immigration classification that allows for the granting of temporary residence permission and applications for lawful permanent resident status to immigrants who are in the care of the State and “whose reunification with one or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment or a similar basis found under State law.” To be eligible for SIJ status, a child must be unmarried, under 21 years of age at the

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195 Ibid.
196 Ibid.
197 Czech Republic Act on residence of foreign nationals (No 326/1999 Coll).
time of registering with US Citizenship and Immigration Services, physically present in the US, and have a qualifying juvenile, family or orphan’s court order.\textsuperscript{199} With SIJ, a child can apply for a ‘green card’ to give them permanent residency in the US. They can also file for a waiver of certain circumstances, such as the inability to financially support oneself and being unlawfully present in the US.\textsuperscript{200} Children who receive a green card through the SIJ programme can live and work permanently in the US.

**Summary**

The granting of different immigration permissions to children does not appear to be based in policy or to consider the practical implications for young people or the State. A legal framework for immigration should be combined with published guidelines clarifying that children under 16 do not need an immigration stamp evidencing their permission to reside. Steps should always be taken to secure a child’s immigration status before they reach 16 so that they can be granted permission to reside immediately and avoid becoming undocumented. Being undocumented limits life opportunities and causes anxiety. Children in care, in particular, require assistance from social workers to secure their status. Many countries recognise children’s rights as individuals and grant children appropriate permissions independently of their parents’ permissions. Many countries also grant specific permissions to children in State care, recognising their special position and need for individual consideration.


5.4 Children and family reunification

Family reunification refers to the process by which families reunite after one family member has migrated or where families migrate together. The right to family life is a fundamental aspect of international human rights law and Irish constitutional law. Family reunification is frequently necessary to make family life possible. Legal immigration routes that allow family units to be maintained when heads of households migrate, and which do not place undue time delays or unnecessary financial barriers before family reunion is permitted, are essential for children’s right to family life to be fulfilled.

Increasingly, immigration law dictates that parents migrate first, leaving their children behind in the country of origin until they establish themselves legally, economically and socially. This is because temporary migration systems, such as that run by European countries, usually expect the migrant to be single and childfree, with few initial family rights for the migrant.\(^201\) This fails to recognise that people often migrate when they are in the family forming stages of their lives.\(^202\) Immigration policy and law creates the need for, and prolongs, family separation. Conversely, children increasingly migrate independently, often in the hope that their family will join them later.\(^203\)

Research has shown that being separated from a parent due to migration can have negative effects on the psychological wellbeing of children who remain in the origin country.\(^204\)

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Harmony was angry and frustrated when her mother moved to Europe and left her behind in Nigeria. It must be questioned whether the exploitation she suffered could have been avoided if Irish immigration law had allowed her mother to travel with her children or for speedy family reunification after her arrival.

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In the host country, restrictive measures on the admission and residence of family members impede integration.\textsuperscript{205} Over the past 15 years, changes in family reunification policies have narrowed the right to family reunification for third-country nationals and own nationals with third-country national family members. Admission rules, although formulated neutrally, lead to the most vulnerable groups having the most difficulty reuniting with their family: older, illiterate or low educated family members, nationals from certain countries and female sponsors.\textsuperscript{206} Their children have no less a need for the presence and supportive protection of their parents. Additionally, the central role that children can play in integration, perhaps as language and cultural brokers, should not be overlooked, increasing their wellbeing, promoting their personal development and ultimately improving their social integration.

5.4.1 International and EU law on the right to family life and family reunification

The CRC provides that “applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by State Parties in a positive, humane and expeditious manner”.\textsuperscript{207} The UN Committee on the Rights of the Child has stressed: “States should ensure that their migration policies, legislation and measures respect the right of the child to family life and that no child

\textsuperscript{203} For discussion of independent child migration, see Bhabha, J, in Kanics, J, Senovilla Hernandez, D and Touzenis, K, Migrating Alone: Unaccompanied and Separated Children’s Migration to Europe.


\textsuperscript{207} Article 10.
is separated from his/her parents by State action or inaction unless in accordance with his/her best interests. Such measures should, inter alia, include positive, humanitarian and expeditious attention to family reunification applications; options for regularisation of migration status wherever possible; and, family reunification policies, at all stages of migration, for enabling children left behind to join their parents (or parents to join their children) in transit and/or destination countries.”

The right to family life and to family reunification has been explored at some length by both the European Court of Human Rights and the Court of Justice of the European Union. The Free Movement of Persons in the EU establishes the rights of EU nationals and their family members, including their children, to reside in Member States of the EU other than their own, subject to certain conditions. EU citizen children also enjoy the right to be joined or accompanied by their non-EEA national parents who are their care-givers. As EU citizens, children have a fundamental right to reside in the EU, which is separate to the Free Movement Directive. This means that States are prohibited from removing the custodial parents of minor children from the children’s State of citizenship where such removal would result in those children being unable to enjoy their right to reside in the European Union.

The rights of other migrants to family reunification tend to vary depending on the immigration status of the sponsor and the skills and income level of the sponsor.

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208 Committee on the Rights of the Child, day of general discussion, 2012, para 83.
209 Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. This is implemented in Ireland by the European Communities (Free Movement of Persons) Regulations 2015.
210 Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department, Case C-200/02 (19th October 2004); Mary Carpenter v Secretary of State for the Home Department, Case C-60/00, (11th July 2002); London Borough of Harrow v Nimco Hassan Ibrahim and Secretary of State for the Home Department, Case C-310/08 (23rd February 2010); Maria Teixeira v London Borough of Lambeth and Secretary of State for the Home Department, Case C-480/08, (23rd February 2010).
211 Enshrined in Art 20(2)(a) TFEU.
212 Gerardo Ruiz Zambrano v Office national de l’emploi (ONEm), Case C-34/09, (8 March 2011)
Right to private and family life

The right to private and family life under the ECHR is not an absolute right. It is subject to State interference that is “in accordance with the law and is necessary in a democratic society”. The right to family life does not require States to respect a migrant’s choice of country of residence and does not guarantee a right to enter or reside in a particular country.\(^{213}\) “A State is entitled, as a matter of well-established international law and subject to its treaty obligations, to control the entry of aliens to its territory and their residence there.”\(^{214}\) Nonetheless, the State must find a fair balance between the individual’s rights and the rights of the State to control its borders. States must justify any interference with an individual’s right to family life.

Whether the refusal of a residence permission or visa, or the removal or deportation of parents and their children contravenes the ECHR depends on the circumstances of the individuals involved and considerations of public interest. Relevant considerations include the immigration status and duration of residence of family members,\(^{215}\) the need for family unity,\(^{216}\) the age of the children, their situation in the countries concerned, the extent to which the children are dependent on their parents,\(^{217}\) the obstacles to the family reuniting in another country and whether there are exceptional circumstances, such as a child’s need for special care.\(^{218}\) To comply with

\(^{213}\) See Uner v The Netherlands (2006) ECHR 873; ECtHR, Gül v Switzerland, Application No 23218/94 (19 February 1996); ECtHR, Hode and Abdi v the United Kingdom, Application No 22341/09 (6 February 2013) and ECtHR Tuquabo-tekle v the Netherlands, Application No 60665/00 (1 March 2006).


\(^{215}\) In Osman v Denmark, a violation of Article 8 was found when a 17-year-old Somali national was refused permission to be reunited with her family in Denmark. She had lived in Denmark with her family from the age of seven until she was 15; In Jeunesse v The Netherlands, a woman was refused permission to reside in the Netherlands. She was married to a national of the Netherlands, with whom she had three children, and had been living in the Netherlands for more than 16 years.

\(^{216}\) See, for example: Nunez v Norway (2011) ECHR 1047 (28 June 2011).

\(^{217}\) Jeunesse v the Netherlands (2014) ECHR 1036.

\(^{218}\) For example, in Kaplan v Norway App 32504/11 (ECHR, 24 July 2014) exceptional circumstances were found where the youngest child had autism and needed special care. In Sen v the Netherlands (21 December 2001), the court found that the Netherlands had failed to respect the applicants’ family rights by refusing to grant their daughter a residence permission. Relevant factors included the child’s young age and the fact that the parents had settled in the Netherlands.
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Article 8, procedures for examining applications for family reunification must be adequately flexible to consider the specific circumstances of applicants.\(^{219}\)

The principle of the best interests of the child is increasingly a feature of the jurisprudence of the ECtHR.\(^{220}\) The Court has held that the procedure for examining applications for family reunification must take into account the best interests of the child, and be effective and prompt so as to respect the procedural requirements of Article 8.\(^{221}\) The Grand Chamber of the ECtHR has stated: “Where children are involved, their best interests must be taken into account.”\(^{222}\)

“Whilst alone they cannot be decisive, such interests certainly must be afforded significant weight. Accordingly, national decision-making bodies should, in principle, advert to and assess evidence in respect of the practicality, feasibility and proportionality of any removal of a non-national parent in order to give effective protection and sufficient weight to the best interests of the children directly affected by it.”\(^{223}\)

\(^{219}\) See: Mugenzi v France (Application No 52701/09), Tanda-Muzinga v France (Application No 2260/10) and Senigo Longue and others v France (Application No 19113/09).

\(^{220}\) See Neulinger and Shuruk v Switzerland, para 135, and X v Latvia, para 96

\(^{221}\) Mugenzi v France (Application No 51701/09), 10 July 2014; Tanda-Muzinga v France (Application No 2260/10) and Senigo Longue and others v France (Application No 19113/09).

\(^{222}\) See Tuquabo-Tekle and others v the Netherlands, No 60665/00, § 44 (1 December 2005); mutatis mutandis, Popov v France, Nos 39472/07 and 39474/07, §§ 139-140 (19 January 2012); Neulinger and Shuruk v Switzerland (2010) ECHR 1053 § 135; and X v Latvia [GC], No 27853/09 ECHR 2013, § 96.

5.4.2 Family reunification in Ireland

Irish nationals and non-EEA nationals resident in Ireland do not have a statutory right to family reunification. The statutory right to family reunification is confined to refugees, persons granted subsidiary protection, EU/EEA nationals and scientific researchers working in Ireland. Outside of those categories, family reunification is guided by the policy document on family reunification. Ireland is the only EU Member State that does not have specific legislative provisions conferring an entitlement on any family members of Irish nationals or non-EEA nationals resident in Ireland to enter or reside in the State. Ireland did not opt into the EU Directive on the Right to Family Reunification. The Minister for Justice and Equality retains extensive discretion in granting permission for family members of Irish citizens and people resident in Ireland. The discretionary nature of decisions, the long processing times and the absence of an independent appeals mechanism for family reunification decisions prolong family separation, and results in uncertainty for families. With the continued absence of a system based in legislation, questions remain whether Ireland’s system of family reunification is sufficiently efficient and prompt to meet the standards set by the ECtHR.

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224 The right of refugees and those qualifying for subsidiary protection to family reunification is set out in section 18 of the Refugee Act 1996 or Regulation 25 or 26 of the European Union (Subsidiary Protection) Regulations 2013. Sections 56 and 57 International Protection Act 2015, when commenced, will provide for “permission to enter and reside for member of family of qualified person”. This will set down the legal eligibility of a child to act as a sponsor for the purpose of seeking family reunification with their parents and with any dependent children of their parents. It will also give legal recognition to the requirement to take into account the best interests of the child as a primary consideration. However, the Act narrows the family members in respect of whom qualified applicants will be eligible to apply for family reunification, removing provisions for dependent family members, which are included in the Refugee Act 1996.


226 Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research.


Children’s Rights Alliance, Are We There Yet?, para 211 and 212. http://www.childrensrights.ie/sites/default/files/submissions_reports/files/AreWeThereYet.pdf
Family reunification policy document

The family reunification policy document, published in December 2013, sought to provide “a comprehensive statement of Irish national immigration policy in the area of family reunification” for Irish and non-EEA nationals. At 71-pages long and with many inconsistencies, the guidelines have not brought the necessary clarity and transparency to Irish citizens and migrants who are separated from their family members.

The policy document puts in place time requirements of up to five years, which limit and delay eligibility for family reunification. Family separations caused by a delay in eligibility for sponsorship do not respect the child’s right to family life or take the best interests of the child into account. Some categories of migrants will never become eligible to sponsor family members.

A further barrier to children joining their parents working in Ireland is the high level of income requirements. Research carried out by the Immigrant Council in 2013

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229 Green card holders, investors, entrepreneurs and business permission holders are eligible to sponsor family members immediately and without having accrued prior earnings. Non-green card employment permit holders and Stamp 4 holders can sponsor members of their nuclear family after one year. They must have a net income that is above the family income supplement. They only become eligible to apply for members of their non-nuclear family members after five years.

230 To sponsor a family member, Irish citizens must have a cumulative gross income of €40,000 over the three years before application and must not have been totally or predominantly reliant on State benefits for a two-year period. In the case of a non-EEA sponsor in Category A, family reunification may take place prior to any earnings being accrued and the immigration status granted to the sponsor is such as to assume certain levels of income (e.g. green card holder or researcher) either immediately or in the future, or on the basis that the sponsor falls into a category whose migration to Ireland is promoted as part of Government policy. However, a sponsor must continue to meet the terms of the permission to maintain their own and the family’s entitlement to reside here and evidence of this must be provided by the sponsor at the time of the renewal of permission. Category B sponsors must have a gross income in each of the previous two years in excess of that applied by the Department of Social Protection in assessing eligibility for Family Income Supplement (FIS) and the expectation must be that this level of income will be maintained. The FIS does not apply in cases of couples where there are no children. Therefore, a minimum level of gross income in such cases would be €30,000. Declared and verified savings by the applicant or sponsor may be taken into account in assessing cases that fall short of the income thresholds set out above. See INIS Policy Document on Non-EEA Family Reunification, p 47-48.
found that income requirements in Ireland were excessive. They ranked as the second highest in a group of EU Member States surveyed, with some applicants’ earnings required to be €1,000 above the median equivalent net income.231

These restrictive family reunification rules impose unnecessary family separations. Financial requirements are unachievable for many people with disabilities, older people and single parents. The work restrictions placed on spouses of legal migrants additionally create an undue dependency and increased vulnerability for both spouses and children.

It appears that the absence of a legislative framework setting out a prompt, efficient process with a clear requirement that decisions be made following consideration of a child’s best interests, may be in breach of ECHR law on family reunification.

Support following family reunification

Where family reunification occurs after a prolonged period of family separation, the State needs to support the family in re-establishing their family life. The importance of family support following reunification has been highlighted by many commentators.

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In 2012, the Children’s Rights Alliance noted the lack of follow-up on children after family reunification. It said this was a “key concern” and warned that it can “place separated migrant children at risk of trafficking and exploitation”.232 As early as 2007, Professor Ursula Kilkelly cautioned that a lack of follow-up “places these children at serious risk of multiple breaches of their rights”.233

Of the young people interviewed and whose cases were reviewed, 14 moved to join their parents after they had already settled in Ireland. The young people described how their separation, in some cases for a number of years, made reuniting in a new cultural context very challenging.

David moved to Ireland to reunite with his father when he was 14 years old. He had not seen his father in many years so they “were like strangers to one another”. He was taken into the care of the State when he was 16.

When Valentine joined her family at age 11, they had been apart for so long that she did not have a common language with her brothers and sisters. The length of time apart meant that her relationship with her parents was extremely strained. She was taken into the care of the State when she was 17.

Paul moved to Ireland to join his father and step-mother when he was nine years old. He had only met his father once or twice before joining him in Ireland. Following a disclosure to his teacher, he was taken into the care of the State when he was 10. Paul expressed regret at having made the disclosure. He seemed to suggest that some of the protection issues could have been overcome if he had remained at home where he could have benefited from “fatherly advice”.

Harmony explained that the main reason she left her country of origin was “to look for her mother in Ireland and start a relationship with her”. The fact that she embarked on this journey as a teenager outside a formal family reunification process resulted in her being trafficked and exploited. Her vulnerability meant that she was trafficked in Ireland post-reunification.
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Summary

Expansion of the categories of migrants entitled to immediate family reunification could reduce the numbers of enforced family separations due to immigration status, which have a negative impact on children’s lives. A transparent, rights-based statutory legal framework for family reunification in respect of Irish nationals and non-EEA residences would provide greater certainty for families. The standardisation of Tusla practice so that all separated children receive follow-up family support following family reunification could also reduce the numbers of children subsequently taken into the care of the State.

224 Justice Hogan in the High Court in relation to the late night de facto arrest and detention of a family, including a seven-year-old boy following the issuing of a deportation order in the case of Omar v Governor of Cloverhill Prison.
5.5 Deportation orders and consideration of the best interests of the child

The issue of when it is permissible to remove or deport a non-Irish national parent from Ireland where the effect would be that their children would also have to leave the State has given rise to a complex body of jurisprudence. Differentiation has emerged between the rights of citizen children, children with some form of immigration status and those whose immigration status is precarious.

That said, Judge Hogan in the High Court, speaking about the steps taken to deport a family that included a seven-year-old boy, remarked: “It is simply distressing beyond words to think that a State committed to safeguarding the best interests of children would ever contemplate subjecting a young boy of seven years and six months to such an ordeal, even if he was not an Irish citizen and even if he had no right to be in the State.”

While the Minister for Justice and Equality has broad discretion to deport, the State’s power is not absolute and must be exercised in line with fair procedures, the principle of non-refoulement and in a manner that is compatible with “the 1999 Act itself, and, more broadly, the Constitution, the European Convention on Human Rights, as explained by the ECtHR, and the principle of proportionality, all of which must be applied to the circumstances of the case.” As Judge McMenamin explained: “What is involved in making decisions of this type is not a policy decision, but rather involves the exercise of a margin of appreciation relating to the facts of individual cases.”

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234 Judge McMenamin, PO v Minister for Justice and Equality [2015] IESC 64.
237 See also Dimbo and Ors V The Minister for Justice and Equality [2008] IESC 26; Oguekwe and Others.
238 See contrasting decisions of KRA and BMA v Minister for Justice and Equality [2016] IEHC 289; Appeal granted on 24 June 2016; AO v Minister for Justice and Equality (No.2) [2012] IEHC 79, EA and PA v Minister for Justice and Equality and Chigaru and others v Minister for Justice and Equality [2015] IECA 167. In the separate cases of AO (No 2) and EA and PA v Minister for Justice and Equality, Judge Hogan granted injunctions to prevent the deportation of a father where his deportation would have deprived the child of his constitutional right to the company and care of his parents. In Chigaru and others v Minister for Justice and Equality, the Court of Appeal granted an injunction restraining the deportation of the applicant parents. “The children have a constitutional right derived from Article 41, Article 42 and Article 42A.1 of the Constitution to the care and company of their parents”.
239 (No 1) [2015] IEHC 139 (Unreported, High Court, 4 March, 2015).
240 COO (Nigeria) v MJELR (No 1) [2015] IEHC 139 (Unreported, High Court, 4 March, 2015), para 35. See: https://cases.legal/en/act-uk2-78066.html
“Where a citizen child, or a ‘settled migrant’ (a person who has been a lawful immigrant for a significant period of time) child, is involved, a rigorous balancing of the specific circumstances of the individual child and their family and private life in Ireland is required, which cannot be easily displaced by the general demands of the immigration system.”

Children without an entitlement to be in the State are in a much more vulnerable position.

The Constitution has been amended to strengthen the rights of children. The extent to which the Constitutional amendment has heightened the State’s duty to consider the best interests of the child in situations of proposed deportation has been considered by the Courts since the amendment was signed into law in April 2015, to varying effect. In COO (Nigeria) v Minister for Justice and Equality, Judge Eagar commented that, under Article 42A, the analysis of the rights of a child in the deportation context “would change remarkably” and the Minister “will have to give far greater consideration to the welfare of an applicant child”.

However, subsequently, in the Dos Santos case, the Court of Appeal saw the omission of deportation decisions from the scope of Article 42A.4.1 as strengthening the position that the best interests of the child need not be a “primary consideration” in such cases. Therefore, the Court rejected the argument that the Immigration Act should be read in light of the best interest principle in the CRC.

Judge McDermott accepted that the best interests of the child must be given due and proper regard and emphasis as part of the Minister’s overall analysis, and that the welfare of the child was required to be considered “as a matter of fair procedures”. It has been suggested that “Given the strength of the fair procedures guarantee in immigration cases and its uncontested application to non-citizens, this could mean that the rights of the child in the deportation context are, in practice, well-protected under the Irish domestic framework.”

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241 Dos Santos & ors v Minister for Justice and Equality & ors [2015] IECA 210. The case of Dos Santos concerned a Brazilian father whose work permit had expired and in respect of whom, and his five Brazilian national children, a deportation order was made.

242 Section 47.

243 As confirmed by the Supreme Court in Article 26 and ss 5 and 10 of the Illegal Immigrants (Trafficking) Bill, 1999 [2002] 2 IR 360, at 385 per Keane CJ; and Mallak v Minister for Justice and Equality [2012] IESC 59.

5.6 Child victims of trafficking

Three of the young people interviewed as part of this research – Emma, Hope and Harmony – were trafficked from Africa to Europe as children. Maria was trafficked from Eastern Europe as a child. Their experiences highlight many of the deficiencies of Ireland’s mechanisms for the protection of vulnerable children, the protection of victims of trafficking and the formal identification system for victims of trafficking.

Following her transfer to Ireland from the United Kingdom, Emma was refused leave to land and was detained in Dóchas prison. She had no knowledge of her rights or access to legal representation. She managed to access legal representation only through previous contacts in the UK. Following legal intervention, she was released so that she could make appropriate applications, including to be identified as a victim of trafficking. Emma provided statements and cooperated with the Garda investigation, but there was a three-year delay in formally identifying her as a victim of trafficking, during which time she was not permitted to work. She was formally identified only after initiating High Court Judicial Review proceedings on grounds of delay.

Hope experienced many obstacles since her arrival in Ireland aged 16 and the subsequent birth of her son. She was transferred to Italy, where she had been exploited, while her age assessment was ongoing. Hope’s application for asylum was refused at ORAC stage but was successful on appeal to the Refugee Appeals Tribunal. She was not formally recognised as a victim of trafficking or provided with a residence permission while she was in the asylum process.

Maria was subjected to rape and forced prostitution over a period of six years from the age of 14 until the age of 20. Although she came into contact with various authorities during her period of exploitation, she was not provided with an opportunity to disclose her situation.

Harmony experienced barriers to housing and exercising her right to seek international protection as will be described below.
Although each of them, while still children, came into contact with individuals and authorities – including Gardaí, social workers and teachers – who could have helped them out of exploitation, many opportunities were missed. As children, they did not have access to advocates or specialist legal advice or representation.

Each of the four experienced enormous barriers in accessing their rights and had to initiate legal proceedings to do so. None received compensation for their suffering. The contrast between the financial struggles experienced by those who have exited exploitation and the profits made by traffickers is stark.

5.6.1 International law

International law on combating human trafficking

International law on combating human trafficking is an important source of State obligations to prevent the crime of human trafficking, act to bring perpetrators to justice and protect the rights of victims. The extent of trafficking is difficult to determine, but the International Labour Organisation (ILO) has estimated that there are 5.5 million child victims of trafficking globally, accounting for 26 per cent of all forced labour/trafficking victims. Child trafficking involves taking children out of their protective environment and preying on their vulnerability for the purpose of exploitation.

Internal and transnational trafficking is “closely interlinked with the demand for cheap, malleable and docile labour in sectors and among employers where the working

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245 In line with a Dublin II Order

246 Key international instruments that Ireland has ratified include the UN Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol) and the Council of Europe Convention on Action against Trafficking in Human Beings. Ireland has signed but not ratified the optional protocol to the CRC on the sale of children, child prostitution and child pornography. As a member of the EU, Ireland is bound by Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.
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conditions and the treatment grossly violates the human rights of the children”. Former President of Ireland and UN High Commissioner for Human Rights, Mary Robinson, has described trafficking as “a cause of human rights violations because it violates fundamental human rights such as the right to life, the right to dignity and security, the right to just and favourable conditions of work, the right to health, the right to equality and the right to be recognised as a person before the law. It is a consequence because it is rooted in poverty, inequality and discrimination.”

Child trafficking is “the recruitment, transportation, transfer, harbouring or receipt of a child for the purposes of exploitation”. This definition differs from that pertaining to adults in that it deems the consent of the children irrelevant to their exploitation, establishing the crime of trafficking as an indisputable fact whenever the exploitation of a child is present. Exploitation includes, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation; forced labour or services – including begging, slavery or practices similar to slavery – servitude, the exploitation of criminal activities or the removal of organs.

Each of the international legal instruments recognises the importance of the rights of victims. To ensure that an individual receives the protections to which they are entitled under international law, they must first be identified as a victim. Therefore, formal identification procedures are key to the protection of child victims of trafficking.

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249 Ibid.
250 UN 2000, Article 3 (c).
251 Directive 2011, Article 2.3.
EU Anti-Human Trafficking Directive

Directive 2011/36/EU specifically recognises that trafficking is often gender specific and that children are at greater risk of being trafficked than adults. It states that children’s best interests must be considered of paramount concern in the development of actions to combat trafficking. It states that a child-rights approach must be taken in prevention initiatives.

The Directive insists that if there is uncertainty about the age of a person subject to trafficking, and “there are reasons to believe it is less than 18 years, that person should be presumed to be a child and receive immediate assistance, support and protection”. Assistance and support measures for child victims should focus on their physical and psycho-social recovery, and on a durable solution for the child. Access to education would help children to be reintegrated into society. Given that child victims of trafficking are particularly vulnerable, additional protective measures should be available to protect them during interviews that form part of criminal investigations and proceedings.251

The Directive requires additional support for unaccompanied child victims of trafficking. “From the moment an unaccompanied child victim of trafficking in human beings is identified and until a durable solution is found, Member States should apply reception measures appropriate to the needs of the child and should ensure that relevant procedural safeguards apply. The necessary measures should be taken to ensure that, where appropriate, a guardian and/or a representative are appointed in order to safeguard the minor’s best interests. A decision on the future of each unaccompanied child victim should be taken within the shortest possible period of time with a view to finding durable solutions based on an individual assessment of the best interests of the child, which should be a primary consideration. A durable solution could be return and reintegration into the country of origin or the country of return, integration into the host society, granting of international protection status or granting of other status in accordance with national law of the Member States.”252

Council of Europe Convention

The Council of Europe Convention insists on a child-sensitive approach in the development, implementation and assessment of all the policies and programmes it requires. It sets out the types of assistance to be provided to victims “in their physical, psychological and social recovery”. This includes, at a minimum, appropriate and secure accommodation, psychological and material assistance, and counselling and information. The Convention further states: “Each Party shall adopt the rules under which victims lawfully resident within its territory shall be authorised to have access to the labour market, to vocational training and education.” It provides for the issuing of recovery and reflection periods and renewable residence permits for victims of trafficking; compensation and legal redress; and the protection of victims. The Convention is monitored by the Group of Experts on Action against Trafficking in Human Beings (GRETA) committee, which assesses States’ compliance.

Anti-Trafficking provisions under the European Convention on Human Rights

Slavery, including trafficking in human beings, is prohibited by Article 4 of the ECHR.253 States have an obligation to operate an effective administrative framework to prevent trafficking in general and an obligation to take protective measures where particular individuals have been identified as being at risk.254 States must put in place adequate criminal law provisions to prevent and effectively punish the perpetrators of slavery, servitude, or forced or compulsory labour.255

5.6.2 Irish law and policy relevant to victims of trafficking

The Criminal Law (Human Trafficking) Act 2008, the Criminal Law (Human Trafficking) (Amendment) Act 2013 and the Child Trafficking and Pornography Act 1998 form the State’s legal response to the crime of trafficking. The proposed

253 Rantsev v Russia and Cyprus.
254 Rantsev v Russia and Cyprus.
Criminal Law (Sexual Offences) Bill 2015, if passed into legislation, would target the exploitation of children and child grooming, the purchase of sex from a victim of trafficking and the purchase of sexual services from a person in prostitution. It would amount to a significant advancement in tackling trafficking for sexual exploitation. To date, Ireland’s provisions to protect victims of human trafficking are contained in a policy document, The Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking. These arrangements are limited in scope and do not have a statutory basis. The status of a ‘suspected victim of trafficking’ is conferred only on undocumented, non-EEA citizens, where a Garda officer not below the rank of a Superintendent has established reasonable grounds to believe that the individual is a suspected victim of trafficking.

The situation of victims of trafficking originating in Ireland or in other EU Member States remains unaddressed. Therefore, the majority of suspected victims of trafficking are unable to access the reflection and recovery period and the full protection and assistance measures under the National Referral Mechanism.

The arrangements provide for the issuing of recovery and reflection periods (Stamp 3), temporary residence permissions (Stamp 4) and longer-term permissions to foreign nationals who are identified as persons suspected of being a victim of human trafficking who do not have permission to be in the State. A person is granted a recovery and reflection period to allow them time to recover from the alleged trafficking and to escape the influence of the alleged perpetrators of trafficking.\footnote{Section 5.} The period may last for up to 60 days for adults or for longer than 60 days where the victim is a child. “In considering the duration of such a period, the Minister will have regard to whether the child is in the care of the Health Service Executive or in the care of a parent or legal guardian who is taking responsibility for him or her and the status of his or her parent or legal guardian in the State.”\footnote{Section 11.}

\footnote{Section 12-18.}
\footnote{Para 73.}
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The same considerations apply to children as apply to adults in relation to the granting of temporary residence permissions, despite the obligation under EU and international law to take a child-sensitive approach that considers the child’s best interests. A six-month temporary residence permission will be granted by the Minister when a trafficked person wishes to assist with a Garda investigation in relation to the alleged trafficking, their presence is needed for the investigation or prosecution and the person has severed all contact with the alleged perpetrators.\(^{258}\)

In 2013, the GRETA committee recommended that the Irish authorities take further steps to ensure that national action to combat trafficking in human beings is comprehensive and, in particular, to “pay increased attention to prevention and protection measures addressing the particular vulnerability of children to trafficking and ensuring that the best interests of the child are fully taken into account”.\(^{259}\)

The Organisation for Security and Cooperation in Ireland (OSCE) recommended that Ireland “take further action to ensure the primacy of a child-sensitive and child-rights-based approach to all aspects of anti-trafficking policies and action by providing child victims of trafficking, when necessary, with a guardian and/or legal representative at all stages of assistance, (re)integration and/or return to ensure protection of their human rights and the child’s best interests”.\(^{260}\)

A person aged 18 or over can apply to change their status when they have held a temporary residence permission for three years or when the investigation is complete.\(^{261}\) This means that children trafficked under the age of 15 are required to wait for a longer period before becoming eligible for a change of status.

**Identification of victims of trafficking**

The current system of identifying victims of trafficking has many shortfalls, which are relevant to both adult and child victims. The absence of a formal identification...
procedure, separate from the granting of residence permissions, has a negative impact on the effectiveness of the process and the wellbeing of the victims. It does not comply with the international obligation to proactively identify suspected victims of trafficking, irrespective of their immigration status. It is also regrettable that identification is only carried out by Gardaí, rather than by a multidisciplinary group that includes specialist NGOs. There is no obligation to provide written reasons for a decision not to identify an individual, no timeframe within which decisions must be made and no opportunity to appeal a negative decision. These factors can lead to delays or failures to identify victims of trafficking, and can lead to secondary trauma. Victims of trafficking also lack effective avenues to compensation.

**Specific protections in identification procedure for child victims**

GRETA recommended that “the Irish authorities should set up a specific identification mechanism which takes into account the special circumstances and needs of child victims of trafficking, involves child specialists and ensures that the best interests of the child are the primary consideration”. Special identification guidelines for child victims in line with the provisions of Directive 2011/36/EU have not been developed. There is no commitment to consider the child’s best interests in the current Administrative Immigration Arrangements, despite it being expressly provided for in the 2009 version.

It is of concern that the Arrangements do not provide for long-term solutions for child victims of trafficking. This is out of step with the EU Directive, which states: “A decision on the future of each unaccompanied child victim should be taken within the shortest possible period of time with a view to finding durable solutions based in an individual assessment of the best interest of the child, which should be a primary consideration.”

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261 Group of Experts on Action against Trafficking in Human Beings, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland, 26 September 2013, Greta (2013) 15, Para 166.
262 23.
A further concern lies in the lack of clarity around whether child victims who are Irish or EU nationals are formally identified as victims of trafficking, with a view to ensuring their legal guardianship and legal representation in relation to any investigations/prosecutions that might be conducted of the crime committed against them.

**Asylum-seeking victims of trafficking**

A serious limitation in the Administrative Immigration Arrangements is that, in practice, they are limited to non-EEA undocumented migrants who have not applied for asylum. Asylum-seeking victims of trafficking cannot be formally identified under the arrangements or granted permission to reside on that basis unless they withdraw from the asylum process, giving up their right to international protection. This is out of step with EU and international law and the practice in other countries.

Hope was considered by Gardaí to be a victim of trafficking and cooperated with the international police investigation into her trafficking. However, she could not be formally identified or granted a temporary residence permission on that basis while she and her son were in the asylum process and awaiting their hearing before the Refugee Appeals Tribunal. This meant that her rehabilitation was delayed. She was not permitted to work and was confined to limited courses of study. It also delayed her access to child benefit for her son.

The absence of confirmation that she was considered a victim of trafficking also affected her in other ways. For example, a confirmation of her victim status would have helped Hope in her asylum claim. Hope’s solicitor requested confirmation from the investigating Garda that an investigation into her trafficking was ongoing and that she was cooperating with it. However, she was informed that the Refugee Appeals Tribunal would have to contact the Detective Superintendent in the Garda National Protective Services Bureau requesting this confirmation, which would be an unlikely and unreasonable step for a tribunal member to take.
The fact that Hope had made an application for asylum in Italy before travelling to Ireland resulted in her, a teenage new mother, and her new-born baby, being transferred back to Italy under the Dublin Regulation. This happened in irregular circumstances, without advance notice that she was being removed from Ireland. Hope and her baby were returned to Ireland after the intervention of an independent law centre with which she had arranged an appointment for a few days after her transfer.

It should be acknowledged that Hope benefited from the expertise and understanding of the Refugee Appeals Tribunal member who accepted Hope’s written statement and avoided as much as possible questions that would unnecessarily re-traumatise her.

On the other hand, Harmony decided that she could not undergo any more interviews about her life history and experiences. She wanted to be granted permission to reside immediately so that she could move on with her life. She was advised about the implications of withdrawing her asylum claim, but ultimately decided that this was her preferred option. She withdrew her application for asylum and was granted a temporary residence permission.

263 Council of Europe Article 13 and the corresponding Article 6(3) of the UN Protocol.
264 In contravention of Article 3 Council of Europe Convention.
Precluding asylum-seeking victims of trafficking from the benefit of identification fails to respect their rights as victims, fails to fulfil the State’s obligations to identify victims and afford them a period of recovery and reflection, and is discriminatory. Asylum-seeking victims of trafficking have less access to safe and appropriate accommodation, education, training, work and the possibility of acquiring longer-term status in the State. While victims identified under the Administrative Arrangements can benefit from a change of status to a longer-term permission after three years, this is not open to asylum-seeking victims of trafficking, diminishing their opportunity for a durable residence solution.

Historic victims of trafficking

A further group outside the current protection mechanisms are ‘historic’ victims of trafficking, who were trafficked before the introduction of the Criminal Law (Anti-Trafficking) Act in 2008.

The refusal to identify Emma over a three-year period was attributed to the fact that she was a ‘historic’ victim of trafficking. Her exploitation took place in the early 2000s, before the introduction of specific domestic anti-trafficking legislation. This position is untenable.
EU and international law requires that a victim is identified as such and has access to the necessary assistance, regardless of the time that has passed since the exploitation took place. Obligations to protect individuals do not elapse with the passing of time. Further, Ireland had many international and EU law obligations to protect victims prior to the introduction of the 2008 Act.\(^{266}\)

In 2013, the UK High Court of Justice found that the Secretary of State for the Home Department’s position – that victims of trafficking for whom “sufficient distance in time since the period of exploitation” had passed were “no longer considered to be a victim of trafficking in need of protection under the Convention” – was based on a misinterpretation of EU law. The UK changed its position and now recognises ‘historic’ victims of trafficking.

### 5.6.3 Positive obligations to protect children

Emma’s situation highlights the importance of authorities taking affirmative steps to protect children who may be at risk of trafficking. Although social workers and Gardaí were alerted to the fact that Emma was living with people who were not her parents, this did not trigger an enquiry into the relationship.
Section 14 of the International Protection Act 2015, when commenced, will not take adequate measures in respect of potential cases of child victims of trafficking. It provides for notification to Tusla where a person “has not attained the age of 18 years and is not accompanied by an adult who is taking responsibility for the care and protection of the person.” There is no clarity around how the determination is made as to whether a person is taking such responsibility and the definition is not in line with UNCRC and UNHCR definitions of separated and unaccompanied children. This fails to ensure the early identification and protection of child victims of trafficking. Furthermore, the provision does not allow for self-identification of a child as an unaccompanied minor.

Duty to provide secure accommodation

Accommodation arrangements for child victims of trafficking have been dramatically improved since 2010. The separated-children hostels were dismantled due to high rates of disappearances and foster care arrangements were put in place instead. However, where age disputes arise, victims are placed in direct provision. This contravenes the principles enshrined in international law regarding the best interests of the child and age assessment.

While placing children in foster care is a positive step, it is not clear whether those children receive any additional protection or whether their foster carers receive enhanced training to help them support young people who have been trafficked.
The young women interviewed as part of this research expressed concern about their access to secure accommodation. Hope and Harmony were initially placed in direct provision, which is mixed-gender accommodation, the locations of which are widely known and which are reported to be targeted by men in the wider community seeking prostitution. Harmony described experiencing harassment from men in the hostel. Hope felt much safer after she moved to foster care.

When Harmony turned 18, she lived for some time with a charitable organisation that provides accommodation for single mothers and babies. However, she experienced difficulties when she sought State support for longer-term accommodation. She applied to her local authority for accommodation but was told that her “stamp was too short” and was asked “Are you sure you’re going to stay here?” She, and her support-worker from the HSE Trafficked Unit, had to explain the basis of her permission. She was very upset that she had to explain her status, and the fact that she was trafficked, in an open-plan office. A letter from An Garda Síochána eventually impressed on the County Council that they had a responsibility to assist her with finding housing.

5.7 Secure immigration status for unaccompanied and separated children

5.7.1 Age assessment issues as a barrier to secure immigration status

The rights of children as enshrined by the Irish Constitution, EU law and international human rights law protect individuals under the age of 18 years. It is important, therefore, to determine who fits in this category and is in need of additional protections. Assessing an individual as a child triggers a number of procedural and legal guarantees in relevant EU legislation and in human rights law. Age assessment refers to the procedures authorities use to establish the age or age range of an individual to establish
whether they are a child or an adult. This is done when the person’s age is not known. The issue frequently arises where individuals arrive without documentary evidence of their age and cannot obtain original birth certificates or where the authenticity of documents is questioned. Identity documents might have been lost or confiscated before or during travel, or a person’s birth might not have been registered. An age assessment is to ensure children are protected, provided with appropriate care and accommodation, and that their rights as children (such as the right to education) are fulfilled. It seeks to prevent adults from being placed among children and taking advantage of additional provisions to which they are not entitled. States have child protection obligations in respect of other children in their care and are concerned that adults are not placed with children in foster care placements or residential centres for children.

The young people interviewed, who were engaged with age determination procedures, found the method in which their age was questioned and the outcome of the assessments had a significant impact on their lives.

Hope was transferred to direct provision for adults. She gave birth a few weeks later. When her baby was seven weeks old, Hope was transferred early one morning, without notice, to the country to which she had been trafficked as she had made an asylum application there. Legal interventions were made and she was brought back to Ireland 10 days later. Following requests from the Anti-Human Trafficking team, ORAC requested a further age assessment. At that point, the Tusla social work team found that she ‘could indeed be a minor’, and she and her baby were placed together in foster care. She had spent one year in direct provision, without the additional supports she needed as a vulnerable child with a baby.

Hope stated: “They said ‘I don’t believe you’re a child.’” She explained: “When they said I was lying, actually they wanted my birth cert. But I can’t get my birth cert so they said ‘Ok, we’ll take you to see a doctor’ to test me and I was like ‘Ok, no problem’. But anyway I was happy finally they believed my age and what I was
telling them.” She added: “It would have been easier if they had believed my age the first day I told them my story. Unfortunately, they didn’t believe me then, so it made my life more difficult. But then they believed me, it was ok.”

Salah described how the ORAC officials who interviewed him asked a lot of questions about his age – such as whether he had children and a wife – but accepted his story in the end. He said that social workers asked him questions about his age repeatedly and said things like “you’re a liar” and “we don’t believe all that”. He felt that this was intimidating behaviour and he felt insulted. He said the manner in which they were questioning him and their attitudes made him feel depressed and he cried a few times, particularly when they made statements like “I don't believe that”.

Salah recommended that “the authorities should trust what the young people are saying instead of asking more questions and accusing them of lying”.

Hope was trafficked to Europe when she was 15 years. Her trafficker used a false passport that gave her an age of 30. When she presented to the Office of the Refugee Applications Commissioner, they referred her to the HSE Team for Separated Children Seeking Asylum as it appeared to them that she was under the age of 18. She did not have any form of identification. The HSE social worker met with her that day and the following day. Based on those interviews, the social worker formed the opinion that she was over 18, but profoundly vulnerable.
5.7.2 International law on age assessment procedures

Age assessment examinations are not based on common standards within EU Member States. The European Asylum Support Office (EASO) explains: “There is currently no method which can identify the exact age of an individual and there are concerns about the invasiveness and accuracy of the methods in use.”

There are many provisions of relevance to age assessment in international and EU law, and in European policy documents. Under international law, Article 8 of the CRC obliges States to respect the child’s right to identity. This implies an obligation to assist a child in asserting their identity, which may involve confirming the child’s age. However, age assessment procedures should be a last resort. The Committee on the Rights of the Child states that assessments must be conducted in a scientific, safe, child-sensitive, gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child and giving due respect to human dignity. It also recommends that “States should ensure that age assessment and determination procedures, interview practices and legal procedures are conducted in a prompt, child-friendly, multidisciplinary, culturally sensitive manner by officials with sufficient expertise in children’s rights”.

The Council of Europe Resolution on unaccompanied children in Europe stipulates that “age assessment should only be carried out if there are reasonable doubts about

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268 EASO, Age Assessment Practice in Europe, December 2013.
269 E.g. UNCRC; General Comment No 6 on the treatment of unaccompanied and separated children outside their country of origin, 2005; General Comment No 10 Children’s Rights in Juvenile Justice, 2007; General Comment No 14 on the right of the child to have his or her best interests taken as a primary consideration, Article 3, para 1, 2013; Articles 6, 13 and 14 ECHR; Article 10 Convention on Action against Trafficking in Human Beings, available at http://www.conventions.coe.int/Treaty/EN/Treaties/Html/197.htm; European Convention on the Exercise of Children’s Rights (which Ireland has signed but not ratified).
270 Article 3(3) Treaty on European Union; Article 24 Charter of Fundamental Rights of the European Union; Dublin III Regulation; Directive on combating and preventing trafficking in human beings.
272 Para 76.
a person being under age. The assessment should be based on the presumption of minority, involve a multidisciplinary evaluation by an independent authority over a period of time and not be based exclusively on medical assessment.”  

The European Parliament set out that the age assessment method should “consist of a multidimensional and multidisciplinary assessment, be conducted in a scientific, safe, child-sensitive, gender-sensitive and fair manner, with particular attention to girls, and be performed by independent, qualified practitioners and experts… age assessment must be conducted with due respect for the child’s rights and physical integrity, and for human dignity, and that minors should always be given the benefit of the doubt… medical examinations should only be conducted when other age assessment methods have been exhausted and that it should be possible to appeal against the results of this assessment”.  

The Anti-Trafficking Directive stipulates that, where the age of a person subject to trafficking is uncertain and there are reasons to believe they are under 18 years, that person should be presumed to be a child and receive immediate assistance, support and protection.

Guidance has been provided on the issue of age assessment by, among others, EASO, UNHCR, the Separated Children in Europe Programme (SCEP) and the Fundamental Rights Agency. EASO produced a comprehensive report that

274 European Parliament resolution of 12 September 2013 on the situation of unaccompanied minors in the EU (2012/2263 (INI)).
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provides practical support regarding age assessment to EU Member States. It outlines that, irrespective of the method of age assessment, Member States have “a duty to ensure that their processes: (a) comply with children’s rights; (b) produce positive impact; (c) are replicable; (d) are efficient and effective; (e) are sustainable”.  

SCEP argues: “Age assessment procedures should only be undertaken as a measure of last resort, not as standard or routine practice, where there are grounds for serious doubt and where other approaches, such as interviews and attempts to gather documentary evidence, have failed to establish the individual’s age. If an age assessment is thought to be necessary, informed consent must be gained and the procedure should be multidisciplinary and undertaken by independent professionals with appropriate expertise and familiarity with the child’s ethnic and cultural background. They must balance physical, developmental, psychological, environmental and cultural factors. It is important to note that age assessment is not an exact science and a considerable margin of uncertainty will always remain inherent in any procedure. When making an age assessment, individuals whose age is being assessed should be given the benefit of the doubt. Examinations must never be forced or culturally inappropriate. The least invasive option must always be followed and the individual’s dignity must be respected at all times.

“Particular care must be taken to ensure assessments are gender appropriate and that an independent guardian has oversight of the procedure and should be present if requested to attend by the individual concerned.”

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5.7.3 National law on age assessment

In Ireland, Section 8 (5) of the Refugee Act 1996 is relevant to age assessment as it provides for immigration officers to conduct visual age assessments of young people arriving at Irish borders. It states: “Where it appears to an immigration officer that a child under the age of 18 years who has arrived at the frontiers of the State is not in the custody of any person, the immigration officer shall, as soon as practicable, so inform the health board in whose functional area the place of arrival is situate and thereupon the provisions of the Child Care Act, 1991, shall apply in relation to the child.”

Minimal procedural requirements for age assessment were set out by Finlay Geoghegan J in Moke v The Refugee Applications Commissioner. She said applicants must be told the purpose of the interview in simple terms. Where relevant, applicants should be given reasons why interviewers consider the claimed age to be false or do not believe their documents to be authentic, and be given an opportunity to deal with those issues. Adverse decisions should be confirmed in writing to the applicant and should set out how an applicant could access a reassessment.

282 Unreported, High Court, Finlay Geoghegan J, 6 October 2005.
Ireland’s laws, policies and practices relating to age assessment were considered by SCEP as part of its assessment in 16 countries. It summarised critical issues in the process as follows:

- Lack of legal framework for age assessment
- Lack of standardised procedures for age assessment
- Lack of child-friendly measures
- Pending age assessment results, the child is often placed with adults
- No procedures exist for the child to appeal the results of the age assessment but authorities can get the results reassessed if they doubt the decision
- Lack of consistent and appropriate training for officials conducting age assessment.

The International Protection Act 2015, when commenced, will replace the Refugee Act and sets out detailed provisions on regulating age assessment. Section 24 will provide for an examination of an unaccompanied person when the Minister, or an international protection officer, has reasonable cause and considers it necessary to determine whether an applicant for international protection is under 18 years. The best interests of the child shall be a primary consideration in the application of this section. Section 25 will provide for examinations to determine age in the context of detention.

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CHAPTER 5: IMMIGRATION LAW ISSUES FOR CHILDREN IN IRELAND

The Act introduces a medical model but international and EU law require such a model to be used as a last resort. Civil society organisations recommended that the provision should instead provide for a social age assessment, which includes psychosocial development and available documentation, undertaken by an independent interdisciplinary body consisting of people not involved with the child’s care or protection needs.287

Until the International Protection Act comes into force, the provisions for age assessment remain unclear. A District Court judge recently stated, in a case concerning an interim care order for a boy found alone at Dublin Airport (which was reported by the Child Care Law Reporting Project in phase two of its 2016 reporting), that there was yet to be a template established for determining age but that he usually used a medical combined with the opinion of experienced social workers in the separated children’s team. “We haven’t yet come up with a template in terms of age. Bone testing is two years either way – without a proper developmental history the person gets less accurate. A medical opinion is what I’ve done in the past, along with experienced social workers from the separated team.”288

It is regrettable that the opportunity of the International Protection Act was not used to bring Irish law on age assessment in line with international best practice on age assessment.

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285 International Protection Act 2015, p 7 and sections 24-25.
286 International Protection Act 2015, section 24(1).
Recommendations for the Department of Justice

**Recommendation:** Adopt a comprehensive, child-sensitive, human rights compliant, transparent legal framework for immigration that includes:

- The “best interests of the child” principle as a guiding principle in all immigration matters including applications for visas and residence permissions;
- Statutory, rights-based procedures for family reunification in respect of Irish nationals and non-EEA nationals, with expanded categories of migrants eligible for immediate family reunification;
- Clear and accessible formal procedures for conferring immigration status on children and their families, including those who are in irregular migration situations;
- An independent appeals mechanism to review negative decisions in applications;
- Appropriate, tailored immigration permissions for children who are required to register;
- A statelessness procedure – access to a formal statelessness determination procedure for people who cannot establish citizenship of any nation.

**Recommendation:** In respect of children in the care of the State, the legislation should:

- Grant children who are subject to Care Orders permission to reside that enables access to employment (from when they are of legal age to work) and access to social welfare, housing and financial support for education on the same basis as Irish citizens.
**Recommendation:** Provide accurate, accessible information on the immigration status of children under 16 years of age, the duty to register when a child turns 16, and on the rights of young people in Ireland.

**Recommendation to the INIS:** Provide a letter to all parents or guardians of non-EEA national children stating that children under the age of 16 are not currently required to hold independent residency permission and that they are legally resident in the State. This position should also be set out on the INIS website.

**Recommendation:** Provide publicly available guidelines to the GNIB and the INIS on registering children and young people in different scenarios with appropriate permissions.

**Recommendation:** Provide guidelines on the registration of individuals without a passport, in situations where they are delayed or prevented from obtaining or renewing a national passport, to avoid situations of individuals becoming undocumented in such circumstances.

**Recommendation:** The GNIB should put in place a registration fee waiver system for young people aged 18+ who are in aftercare services and for other young people aged 18+ in exceptional circumstances.

**Recommendations regarding asylum-seeking children**

**Recommendation:** Amend the International Protection Act 2015 to:

- Include the definition of separated and unaccompanied children as outlined by the UNHCR, UNCRC and SCEP;

- Provide for a social age assessment procedure that includes psychosocial development and available documentation, and is undertaken by an independent interdisciplinary body consisting of people who are not involved with the child’s care or protection needs.
Research already exists on the issues facing asylum-seeking children in Ireland. These recommendations are not intended as duplication but rather to focus on issues, that haven’t already been raised in other research and, which have been discussed in this report.

**Recommendations regarding victims of trafficking**

**Recommendation:** In relation to victims of trafficking, the legal framework should:

- Place the formal identification of victims of trafficking on a statutory footing, with specific provisions and a protective process for the identification of child victims of trafficking;
- Provide that asylum-seeking victims of trafficking can be formally identified and granted relevant permissions to reside while awaiting a determination of their application for international protection;
- Provide for the rights of victims of trafficking, as set out in the directive;
- Clarify that ‘historic’ victims of trafficking can be formally identified as victims of trafficking, provided with assistance and issued with appropriate residence permissions.

**Multi-disciplinary Recommendation**

Recommendation: Adopt a joint protocol between Tusla, An Garda Síochána and the Department of Justice in relation to the accommodation, care and protection of victims, or suspected victims, of child trafficking.

**Recommendations for Tusla**

**Recommendation:** Provide training to social workers and aftercare workers to support children and young people in immigration matters. This training could be carried out by specialist organisations such as the Immigrant Council.

**Recommendation:** Provide all social workers and other practitioners working with migrant children and young people with practical information on resolving immigration matters for young people in care. This information should be
updated regularly to reflect any changes in law and policy. Information regarding supports or contact points for further information should also be provided.

**Recommendation:** Provide for the funding of fees to acquire birth certificates and national passports, where required, in both care packages and aftercare packages, and for GNIB registration fees in aftercare packages.

**Recommendation:** Standardise practice so that all separated children receive follow-up family support following family reunification.

**Recommendation:** Provide training to all social workers on indicators of trafficking, the importance of early legal intervention for victims of trafficking and the steps to take to support victims of trafficking. This training can be provided in conjunction with organisations with expertise in this area, such as the Immigrant Council of Ireland.
6.1 Provision of clear information on immigration-related duties and obligations in a child-friendly and culturally-sensitive manner

6.1.1 Right to information under international and EU law

A child’s access to information about rights, duties and remedies is an essential aspect of realising all of their rights. The right to information has a strong basis in EU and international law. It is based in the right of access to justice and due process as well as in children’s participation rights. Information should be age-appropriate, adapted to the needs of children, and presented in a manner and language that children understand. Access to translation and interpretation services is an essential aspect of the right to information.

The participation of children in decisions that affect them is one of the cornerstones of the Convention on the Rights of the Child. According to Article 12 of the Convention on the Rights of the Child:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.
The UN Committee, in interpreting this right, said: “Particular attention needs to be paid to the provision and delivery of child-friendly information, adequate support for self-advocacy, appropriately trained staff”.

It added that it is a core obligation of States to “review or amend their legislation in order to introduce mechanisms providing children with access to appropriate information, adequate support, if necessary feedback on the weight given to their views, and procedures for complaints, remedies or redress”.

The Committee has explained that international human rights law requires States to make clear in their legislation, policy and practice that the principle of the best interests of the child takes priority over migration and other administrative considerations. In doing so, States parties should ensure the availability of information on migration procedures, risks and rights, health and mental health support, legal representation and guardianship, interviews and other processes in a child-friendly and culturally sensitive manner.

The Committee highlighted that, for children to express their wishes and views freely in accordance with Article 12 CRC, “it is imperative that such children are provided with all relevant information concerning, for example, their entitlements, services available including means of communication, the asylum process, family tracing and the situation in their country of origin (arts. 13, 17 and 22 (2)). In guardianship, care and accommodation arrangements and legal representation, children’s views should also be taken into account. Such information must be provided in a manner that is appropriate to the maturity and level of understanding of each child. As participation is dependent on reliable communication, where necessary, interpreters should be made available at all stages of the procedure”.

The Council of Europe’s guidelines on child-friendly justice state: “From their first

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289 General Comment, No. 12 (2009) The Right of the child to be heard, CRC/C/GC/12, para 34.
involvement with the justice system or other competent authorities (such as the police, immigration, educational, social or health care services) and throughout that process, children and their parents should be promptly and adequately informed”.

The types of information include information on their rights, in particular with regard to judicial or non-judicial proceedings in which they are or may be involved; the system and procedures involved; mechanisms for reviewing decisions; existing support mechanisms; and the availability of support services (health, psychological, social, interpretation and translation, and other) or support organisations. The guidelines insist that the information and advice should be provided to children in a manner adapted to their age and maturity, in a language they can understand and which is gender and culture sensitive.

6.1.2 Provision of information to young people on their immigration status and duties

Children in Ireland face significant challenges in accessing clear, accurate and child-friendly information about their immigration status, pathways to regular immigration status and their duties under immigration law. The absence of clear information on the duty to register at the age of 16 (and the absence of any such requirement before that age) was a significant barrier to maintaining regular immigration status for those consulted.

To register with the GNIB, a person must go to the office of their local immigration officer with their identity documents and information about their permission to reside. In less straightforward cases, where a person needs to assert their right to reside or where permission is at the discretion of the Minister, they must make a written application to the Department of Justice.

293 Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.
Department of Justice decision-making and information-sharing procedures

Decisions relating to immigration status, nationality and citizenship are made on an administrative basis by the relevant section of the Department of Justice and Equality. Applications are made in writing and, outside of international protection decisions, there is no independent appeals mechanism. For some applications, there is the possibility of an internal review of a negative decision. Enquiries must be made either by email or post.²⁹⁵

Information relating to immigration and citizenship is available on the INIS website.²⁹⁶ Research participants found the site difficult to navigate. They found the inability to engage with a member of the Department of Justice frustrating. For example, Benjamin was exasperated that he was not given an opportunity to meet the people dealing with his case in person to find out what was expected of him.

When a non-Irish national does not have permission to be in the State, the Minister may require that they reside or remain in a particular place,²⁹⁷ or report to an immigration officer or member of An Garda Síochána at specified intervals. A non-Irish national who does not comply with these requirements “shall be guilty of an offence”. Where someone does not have permission to reside in the State, they could ultimately be removed. Therefore, it is essential that non-Irish national young people are aware of the requirements to register their presence in the State when they turn 16, and have the necessary documentation to do so.

For some of the young people interviewed, their parents or their parents’ human resource departments looked after all their migration matters and they did not need to concern themselves with them. Others, with less extensive support networks, were less fortunate. Many of those interviewed had not received any information about

²⁹⁶ [http://www.inis.gov.ie](http://www.inis.gov.ie)
²⁹⁷ Section 14 Immigration Act 2004.
immigration matters or the duty to register at 16 years. Others only became aware of their immigration status when they encountered a difficulty accessing services or when they witnessed their parents’ stress due to their immigration status.

Difficulties arose for those young people who did not have access to accurate information at the correct time and did not have access to the advice and assistance of informed advocates or legal representation. Some became undocumented as a result and missed out on educational and employment opportunities that would have been available to them if they had been given the proper information at the appropriate time.

Those who did register with the GNIB were informed of their duty to register and supported by parents or, where in care, by social workers or aftercare workers. John, George, Paul, Farah and Valentine all registered when they turned 16 years. John’s social work team in his residential centre helped him with information about his immigration status. He said the team seemed very informed about his situation and what needed to be done. However, many social workers are not aware of the obligation to register at the age of 16.

The individuals interviewed who were victims of trafficking did not initially receive accurate information about immigration status and none of them were registered at the age of 16 years. This increased their vulnerability as it left them outside the State’s protective mechanisms.

Maria remained undocumented for many years after turning 16. Harmony didn’t have any understanding about her immigration status: “I didn’t even know anything – I was just blind.” Kemi had no idea she needed permission to stay in Ireland until she went to the asylum office. Similarly, Hope did not know anything about immigration status or the asylum process until she was informed about it by a social worker in the maternity hospital.
6.1.3 Lack of awareness of need to seek information/advice

One striking finding of this research was that many young people and people supporting them did not realise they needed to seek out information or legal advice about their nationality and immigration status, and take action, until they encountered barriers to accessing services.

Alicia was the step-child of an EU national who was exercising his free movement rights in Ireland. Therefore, she was entitled to live and work in the State. However, she did not seek legal information or advice on the matter and believed she had no entitlement to reside in Ireland. She did not make contact with the Department of Justice to regularise her situation until she was almost 21 – in the interim, Alicia was unable to access employment or social services. With legal representation, an EU Treaty Rights application was submitted on her behalf, which was ultimately successful.

When Hope applied for asylum she was provided with details of the Refugee Legal Service, which would provide her with free legal aid. However, she did not appreciate the importance of legal representation. She believed that she could fill in the form herself and didn’t need any assistance. She was 16 at the time. This highlights the additional duties in explaining to children what legal advice and representation means so they avail of these services.
6.1.4 Challenges to accessing information for children in the care of the State

Accessing accurate information in a timely manner was a particular challenge for children in the care of the State, even for those who were appointed social workers. The dearth of information available and provided to children and young people caused significant frustration for children and advocates alike. Social workers described an “information gap” and said they did not know the right questions to ask in relation to immigration status. Social workers and aftercare workers said the most significant issue facing them was the lack of knowledge of immigration law, including migrant children’s rights, the obligation to register at 16 years of age, immigration permissions, pathways to citizenship for children in care and securing residence. When immigration matters were raised, each social worker had to seek the relevant information, which took considerable time and took them away from their core tasks. One social worker said it could take “up to six weeks each trying to find out the same kind of information”.

Where children are in voluntary care or have not been appointed a social worker, it is likely that they experience even more pronounced difficulties in accessing relevant information about their immigration status.

Aoife registered for the first time when she was 17 after her mother informed her of her obligation to register. She was in care when she turned 16, but was not informed about registration at that time. Benjamin only found out he needed to register when he sought to attend third-level education.

Amanda, who was placed in State care at the age of 13, was not aware of the obligation to register at 16. She attended the GNIB shortly before she turned 18 requesting Irish citizenship. She believed she was entitled to citizenship as she had lived in the State since she was 6. Amanda was then issued with a letter outlining the Minister’s intention to issue her with a deportation order. Following legal representations, Amanda was granted permission to reside in the State as an exceptional measure for a temporary period on a Stamp 4 basis, which was subsequently renewed.
Ruth was the child of a Stamp 4 residence permission holder when she was taken into the care of the State at the age of 16. She was almost 18 and approaching her Leaving Certificate before she was offered access to legal advice and advised on or made aware of her immigration status and the obligation for all third-country nationals to register with the GNIB at the age of 16 years. Ruth’s social workers and key workers had not been aware of the duty to register.

Razeen only became aware of the obligation to register at 16 years when she sought legal representation in applying for citizenship. Her lack of awareness of the need to register delayed her eligibility to apply for naturalisation.

Paul first became aware of the need to hold a residence permission when he was living in foster care. His foster family was planning on bringing him on a holiday to America but realised that he did not have a passport. Paul said that a few of the key workers in the residential unit where he later lived offered to help and gave him information. However, he found that different key workers gave him different information, often contradictory, and they did not know who they could refer him to for accurate advice.

Valentine’s social worker did not realise she had been issued with a stamp unsuitable to her situation, and her aftercare worker wanted to assist her to renew her permission but did not know how the process worked.
6.1.5 Need for information provision to young people

The young interviewees said information was the key support that could have helped them and that could assist other young people to regularise their immigration status.

Boris identified information provision as “the most powerful tool”. George said if he had the correct information, he would have taken appropriate action: “I could’ve sorted it out before, like before I had to lose a job because of it.”

Kemi said it would have helped if she had been given more information about what asylum meant before being brought to seek asylum as a child: “I would like them to give me time and explain to me ‘this is the process, this is how the process goes, this is what will happen, this is emmm... this is the thing in Ireland you need your status to be able to stay in Ireland... to go to school and work and stuff’.”

Benjamin said he would advise State agencies to give young migrants, and particularly people who had been in care, more information to equip them for the future – “just give them more information for the future” – and to appoint them a mentor or guidance counsellors to help them.
6.1.6 Comparative practice on access to information and advice

Research by the EU Agency for Fundamental Rights (FRA) found that in Germany, France, Poland and the UK there is a legal obligation to ensure that children are informed about civil law proceedings in the most appropriate way – having regard to their age, maturity and level of understanding and any communication difficulties they may have. It specifies the responsible authority, persons, time, content and format of information provided.298 In Norway, children must be informed that they have a right to state their views and information provided to children must be adapted to the child’s level of maturity.299

6.1.7 Whose duty is it to provide information to young people?

In Ireland, there is no specific agency or contact point tasked with providing information on immigration to children. This role largely falls to NGOs. Where children are in the care of the State, some social workers, aftercare workers, guardians ad litem and foster parents have sought out information to support migrant children and young people, but with varying results.

The young people interviewed had various suggestions about how best to disseminate information, which included orally via Government bodies such as ORAC, legal advice, specialist immigration organisations or through schools. Leaflets and online information were also suggested.

298 FRA, Child-friendly justice: Perspectives and experiences of professionals on children’s participation in civil and criminal judicial proceedings in 10 EU Member States (2015). Annex 2, Indicator overview tables and national legislation and policies. Bulgaria, Germany, Spain, Finland, France, Hungary, Poland, the UK.

299 Section 81 of the Immigration Act 2008 sets out that the King shall by regulations make provisions regarding a child’s right to be heard in cases under the Immigration Act that concern the child in line with Article 12 of the UN Convention on the Rights of the Child; Norwegian Directorate of Immigration (UDI), UDI Circulars: Children’s right to be heard in immigration cases – except asylum cases, cf. the Immigration Regulations sections 17-3 and 17-5, (UDI, 2010) https://udiregelverk.no/en/documents/udi-circulars/rs-2010-043/
Emma said: “Talking to people, I guess, and be patient. Just... make them understand. Sometimes you might read something in the paper and you might not understand, but talking to someone helps.”

Paul suggested that it would be beneficial for young people to receive information from an organisation specialising in immigration as he had found it very helpful. “Something like this [the Immigrant Council]. This is the first time I’ve known what I need to do and what’s involved in actually getting status and something like that. Just talking to them for like, the last hour. I’ve learned more in the last hour than in the past six years.”

Several of the young people also suggested schools as a suitable way to provide information to young migrants. Farah suggested “school, because school is what they’re going to do most”, adding that English resource teachers could act as a point of information for young migrants. Valentine stated: “I think school because they go to school every day”. She suggested that information could be made available on boards or posters in schools. She also added that she would approach a guidance counsellor for information.

A number of the young people thought that information should be made available in booklets or pamphlets and distributed to young migrants. Some of the young people stated that information leaflets should be made available in the GNIB and Legal Aid Board offices. Several also said that online resources needed to be improved. Aoife said the INIS website needed to be redesigned to make information more accessible and Amina suggested that the INIS website be made available in additional languages rather than just English.
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FRA emphasises that, to ensure children receive information in the most appropriate way, legal obligations for civil proceedings should specify the person(s) responsible for providing information and how this information is provided: timing, content and the use of a child-friendly manner. The FRA research established that those responsible for informing children in civil proceedings vary widely between countries. They include judges, social workers, guardians and lawyers.

In Bulgaria, a child has the right to be informed and consulted by the child protection department, which along with the court must provide information to children to help them form opinions, make choices and understand the consequences of their choices. In France, contact points have been established in several cities where children can access specialised lawyers for information about their rights, advice and support on civil or criminal legal matters. These meetings are free and confidential, and often offer drop-in services, as well as hotlines and awareness-raising sessions in schools.

The distribution of up to date, child-friendly, accessible information booklets and online materials on national identity and immigration matters through different methods could assist children, young people and their advocates in meeting their obligations to register. Particular groups such as children and young people in voluntary care could be targeted for information sharing as they are at particular risk of being unaware of their rights and obligations. This could be completed by the Department of Justice in collaboration with NGO partners such as the Immigrant Council.

300 Ibid, p 67.
301 Croatia, Estonia and Poland.
302 Bulgaria, Croatia, Finland and Germany.
303 Finland and France.
304 Germany and Poland.
305 Ibid.
Need for professional training and education

The young people interviewed and the professionals consulted highlighted the need for information and training about immigration matters to be provided on a regular basis to social workers. Recent graduates of the Masters in Social Work said there had been no aspect of immigration as part of their social work courses, despite the increase in children in care from migrant backgrounds. According to one graduate, this “represented a void in learning for social workers”. As a result, social workers felt they had to “learn as you go”. While some had training on a one-off basis approximately 10 years ago, none of the participants could identify recent training.

Another social worker had experienced issues with “the lack of information available, the process not being clear and no one seeming to know the correct information”. It was felt that the lack of information among professionals meant young people’s immigration status was only being addressed on a reactionary basis. It was suggested that Tusla enter a formal arrangement with a specialist NGO, such as the Immigrant Council, to provide regular information sessions and training on immigration matters, and to provide an information and advice service.

Training delivered by the Immigrant Council to 180 participants as part of this project was funded by philanthropy. To be sustainable and reach all relevant people, training needs to be State funded and provided on a comprehensive basis, at both degree level and in continuous professional development.
Designated contact point

Social workers and aftercare workers have an important role in identifying when a child needs to take steps to establish their nationality and confirm or seek permission to reside in Ireland. They must also support the children through that process. To carry out this role, they must be properly trained and equipped with accurate, up-to-date information. They should also have ready access to a specialist legal information helpline, be aware of when it is appropriate to seek specialist legal advice and representation, and have easy access to such advice and representation.

Social workers at the outreach sessions identified the need for a single contact point from which they could seek information and advice relating to children’s immigration status. They explained that this would take pressure off them, and empower them to raise and discuss immigration matters at an early stage.

Summary

The provision of clear information to children about their rights is essential both to children’s participation rights and to accessing their full range of rights. The absence of clear, correct information on immigration-related duties often results in young people becoming undocumented. There is a need for accessible, child-friendly information to be provided by the Department of Justice and disseminated broadly. Social workers and young people’s advocates also need to have up-to-date accurate information on immigration matters, or the ability to access such information, to adequately support children and young people. There is a need for training for social workers and for a specific agency to be identified and funded which could provide social workers with relevant information.
6.2 Access to legal representation

For many young migrants, their immigration status can be secured through the appropriate steps if they receive the right information and support in a timely manner. For others, the complexity of both their individual situation and the law means that recourse to specialist immigration lawyers is necessary to access their rights and secure appropriate legal status. In those situations, access to legal assistance and legal aid is an essential aspect of the right to an effective remedy and to a fair hearing.

6.2.1 European law on access to legal representation

EU law specifically sets out the right to an effective remedy and the right to be advised, defended and represented in non-criminal proceedings in respect of everyone whose rights and freedoms guaranteed by the law of the EU are violated. The EU Charter also states: “Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice”.

The right to a fair hearing under EU law applies to asylum and immigration cases, where EU law is engaged. Persons in respect of whom a removal order is made under EU Free Movement law are also entitled to access legal aid.

Due process rights have been developed extensively by the ECtHR since the right to legal aid in civil cases was recognised in the case of Airey v Ireland where such assistance proves indispensable for effective access to court. Generally, whether Article 6 requires the provision of legal representation to an individual will depend on whether, in the specific circumstances of the case, the lack of legal aid would

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307 Article 47 EU Charter of Fundamental Rights.
310 Airey v Ireland, s 26.
312 Steel and Morris v the United Kingdom 68416/01, [2005] ECHR 103, s 61; P, C and S v the United Kingdom [2008] ECHR 1581, s 100.
313 Airey v Ireland s 24.
314 McVicar v the United Kingdom ss 48-62; Steel and Morris v the United Kingdom, s 61.
deprive the applicant of a fair hearing. Relevant factors include the importance of what is at stake for the applicant, the complexity of the law or procedures being applied and the applicants’ capacity to represent themselves effectively. However, the European Court has excluded from the scope of Article 6, proceedings in the immigration field regarding the entry, residence and removal of aliens, proceedings concerning the granting of political asylum or applications to quash deportation orders.

Article 13 ECHR provides for an effective remedy before a national authority to those whose Convention rights and freedoms are violated. Article 13 has not been interpreted as being limited in the same way as the Article 6 right to due process and is applicable to immigration-related cases. For example, in GR v the Netherlands, the Court found a violation of Article 13 in relation to effective access to the administrative procedure for obtaining a residence permit due to the disproportionate administrative charge.

Article 13 has also been relied on by the ECtHR to facilitate access to justice, particularly for people without means. In MSS v Belgium and Greece, the Court found a violation of Article 13 where an asylum seeker was returned to Greece, lacked the means to pay a lawyer in Greece, did not receive information concerning access to organisations that could provide legal advice and guidance, and against a backdrop of a shortage of legal aid lawyers.

Certain groups of children with specific needs have additional rights to legal representation based in EU directives. The right of children who have been victims of crime to legal representation is supported by their right to access victim services.

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311 Maaouia v France (2000) ECHR 455 [GC], s 38; extradition: see Peñafiel Salgado v Spain (dec); 65964/01, 16 April 2002.
312 Mamatkulov and Askarov v Turkey 2005] ECHR 64 [GC], ss 81-83.
313 GR v the Netherlands [2012] ECHR 22251/07.
314 ECHR, MSS v Belgium and Greece [GC], No 30696/09, 21 January 2011, para 319.
315 Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.
and special confidential support services under Article 8 of the Victims’ Directive.  

Children who are victims of trafficking have an enhanced right to legal representation without delay in all proceedings relating to their victim status, including in relation to immigration status or asylum.

Children who are seeking asylum have the right to legal representation and legal aid. Unaccompanied children seeking asylum are entitled to specific protections. Member States are required to ensure that a representative represents and/or assists an unaccompanied minor with all procedures provided for in the Dublin III Regulation. This representative does not need to be a lawyer but must be “an appropriately qualified professional who has access to all of the relevant information in the child’s file”.

The Guidelines on Child-friendly Justice adopted by the Committee of Ministers of the Council of Europe in 2010 ensure the effective implementation of binding standards embedded in EU and international law and provide clear guidance on the participation of children in the justice system. The foreword highlights migration as a way in which children are likely to come into contact with the justice system. The guidelines “apply to all ways in which children are likely to be, for whatever reason and in whatever capacity, brought into contact with all competent bodies and services involved in implementing criminal, civil or administrative law”. This includes administrative immigration decisions. The guidelines aim to ensure that, in any such proceedings, “all rights of children, among which the right to information, to representation, to participation and to protection, are fully respected with due consideration to the child’s level of maturity and understanding and to the circumstances of the case”.

In relation to legal representation, the Guidelines on Child-Friendly Justice state:

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319 Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in a Member State by a third-country national or a stateless person (recast), Article 6.
322 Ibid, p 16, pt I (3).
“Children should have the right to their own legal counsel and representation, in their own name, in proceedings where there is, or could be, a conflict of interest between the child and the parents or other involved parties.” They further stipulate: “Children should have access to free legal aid, under the same or more lenient conditions as adults,” and that “adequate representation and the right to be represented independently from the parents should be guaranteed”.

6.2.2 Irish law and practice on access to legal representation

In Ireland, the absence of a right of access to independent legal advice and representation for children in relation to their immigration status acts as a barrier to children realising their rights. In early 2016, the Committee on the Rights of the Child recommended that Ireland “take measures to ensure that children in irregular migration situations are provided with independent legal advice and timely clarifications on their migration status”.

Civil legal aid is generally limited to issues such as family law, child protection and asylum. It does not extend to general immigration or other issues that may be relevant to migrant children and their families (such as housing, debt or employment). Civil legal aid is provided through the Legal Aid Board, which represents individuals, including children, who are applying for asylum or subsidiary protection at the Refugee Appeals Tribunal. This is the only administrative tribunal at which the Legal Aid Board represents individuals. The Legal Aid Board also has

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326 Ibid, pt 38.
327 Ibid, pt 43.
328 Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Ireland, 1 March 2016, CRC/C/IRL/CO 3-4.
329 For further details, see FLAC, Accessing Justice in Hard Times, February 2016.
330 The Legal Aid Board provides legal services in relation to: immigration status in the State, seeking asylum, recovery and reflection periods, temporary residence permission, leave to remain applications, seeking redress through the employment protection legislation (legal advice only – no legal representation before the Employment Appeals Tribunal), information on what is involved in a criminal trial for a victim/witness, legal representation in criminal prosecutions where an application has been made to adduce evidence about or to cross-examine the complainant’s past sexual history, information on compensation, information on voluntary return home.
the remit to provide free legal aid and advice to potential or suspected victims of trafficking referred to them by the GNIB in relation to their immigration status in the State. The International Protection Act 2015, when commenced, will introduce a provision that Tusla consider legal advice in assessing when a child in their care should become an applicant. This will be a positive development as currently children in care only access legal advice when an allocated social worker forms an opinion that they should apply for international protection and would benefit from legal representation.

Outside of international protection and trafficking, the Legal Aid Board does not represent individuals in relation to general immigration matters, where decisions are made on an administrative basis. Therefore, young people with uncertain immigration status do not have access to funded legal representation. Young people, and those acting on their behalf, wishing to seek legal advice must either instruct and pay a private solicitor or secure representation from an NGO or private solicitor on an unpaid basis. Very few children access independent legal representation.

There is no right to independent legal advice for children in State care and there is no formal system for securing legal representation for children in voluntary care. It is likely that the vast majority of those children and young people do not receive independent legal advice and representation about their immigration status.

The process of seeking legal representation in relation to general immigration law is currently on an ad-hoc basis. Where children are in the care of the State subject to a care order, Tusla appoints solicitors to act in relation to their child protection matters. Sometimes those solicitors are also asked to advise or make representations on a child’s immigration status. Some of those solicitors will have expertise and experience in the area of immigration law. Many others will not. Increasingly, Tusla social workers who have an awareness of immigration issues refer cases to the Immigrant Council
for legal representation. A barrister specialised in both immigration and child law, said she was briefed by solicitors for GALs, sometimes at the suggestion of the judge, and was often asked to give opinions on cases in which she was not acting. Judges, particularly those with knowledge of immigration law, increasingly make orders directing Tusla to address a child’s immigration status or to seek legal advice and representation on a child’s immigration status. However, this practice is inconsistent and dependent on the awareness and expertise of individuals and judges involved in the particular case. It was noted by a barrister and a GAL that judges outside of Dublin were not as aware of the issues and did not know to ask about immigration status. Child protection cases are held in camera and, until recently, were subject to reporting restrictions. The www.courts.ie website has published a small number of cases in which directions have been made in relation to clarifying immigration status and seeking legal representation. However, as this practice is inconsistent, it is likely that the vast majority of migrant children in care are not being given access to independent legal advice.

6.2.2.1 Right to be heard and access to legal representation under the Child Care Act

Children are not parties to proceedings under the Child Care Act 1991 unless they are joined by the Court (this means that the Court decides the child should be a party to the case so the views of the child can be heard). The Court has power to join a child under section 25 of the Child Care Act 1991 where it is satisfied that it is in the interests of the child and the interests of justice to do so. The court may appoint a solicitor to represent the child in the proceedings and give directions as to the performance of his duties.

The Child Care Act 1991, as amended by the Children Act 2001, provides for the

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322 Section 25 (2), Dublin Metropolitan District – Dolphin House Practice Direction, Case Management in Child Care Proceedings, issued by Judge Rosemary Horgan, President of District Court, 31 January 2013.
323 Parts IV.
324 Part VI.
appointment of GALs where the court is satisfied that it is in the interests of the child and the interests of justice to do so in any proceedings concerning care/supervision proceedings, children already in the care of Tusla, and in relation to children in need of special care and protection. The GAL independently establishes the wishes, feelings and interests of the child and presents them to the court with recommendations. A GAL is only appointed where the child is not a party to the proceedings themselves.

Child protection cases are held in camera and, until recently, were subject to reporting restrictions. The recent publication of cases gives some insight into situations where directions have been made to appoint a solicitor, clarify immigration status and seek legal representation.

In the case of Health Service Executive v M & anor, children requested to become parties to the child care proceedings and to be appointed a solicitor. The judge met with the children and concluded that they had sufficient understanding to instruct a solicitor, “in particular if the solicitor instructed is familiar with proceedings of this type and is used to dealing with children”. It was ultimately decided not to join the children as it would entail loss of the GAL from the case, whose input was “invaluable to the Court in deciding the case and his removal from the case would, at the very least, hamper the Court and could have serious, detrimental consequences for the children”. The judge was of the view that “the combination of provision of a GAL and the possibility of meeting with the judge satisfies the requirements of fair procedures and the provisions of article 8 of the European Convention on Human Rights and article 12 of the United Nations Convention on the Rights of the Child”.

In Child and Family Agency v JN (deceased) & anor, a direction was made by the

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336 www.courts.ie
338 (Care Order – No Legal Guardian) [2013] IEDC 15 (direction for HSE to assist with resolving legal status in the State).
court that the case be re-entered on a specific date “to consider the issue of her residency status in this jurisdiction (her right to remain in this jurisdiction after she is no longer subject to a care order) as it remains unresolved at this time”.

In the case of Health Service Executive v ML, Judge Horgan ordered that the HSE “continue to seek to clarify the legal status of the children and assist them in pursuing ‘leave to remain’ if their current High Court proceedings are unsuccessful”. The children were legally represented and had submitted an appeal to the Refugee Appeals Tribunal, as well as an application for judicial review of the negative ORAC determination. The GAL remained appointed for the children because of their “uncertain status in the jurisdiction”.

6.2.3 Feedback from young people and support workers on access to legal representation

The dominant themes of the Immigrant Council’s consultations with young people and child welfare practitioners were the lack of information on their immigration status and the absence of timely legal advice and representation. The absence of correct information and representation at critical points in their lives resulted in young people not applying for relevant residence permissions and becoming undocumented, experiencing unnecessary hardship, losing out on educational and employment opportunities and, in worst-case scenarios, experiencing exploitation.

Professionals working with young people were asked what they believed were the key supports needed to work with migrant children and needed by migrant children themselves. The top issue identified was the need for accessible information and
clarity on immigration law. The second most frequently reported necessary support was direct access to specialised legal professionals, as well as supports and services that fully understand the issues.

**Access to independent legal representation for children and young people**

The difference in reported outcomes between the young people who accessed specialised immigration legal representation and those who did not have legal advice was stark. The lack of specialist legal representation emerged as a significant barrier to realising their rights, among the young people interviewed who had not received immigration advice.

Young people, whose parents or social workers were well-informed and who could instruct a private solicitor or make contact with NGOs when necessary, were made aware of their immigration obligations and could maintain their immigration status and apply for naturalisation when appropriate.

However, many of the young people featured in the case studies did not have timely access to specialised legal advice.

When John was 16, his Tusla social worker referred him to an independent law centre for legal representation. A citizenship application was made on his behalf and he was naturalised as an Irish citizen shortly after he turned 18, smoothing his path to adult life. Salah’s case was taken on by a private solicitor on a pro bono basis following a request from his social worker. He was granted subsidiary protection following representations.
The experiences of the young people draw attention to the missed opportunities and increased vulnerabilities resulting from the lack of timely legal interventions relating to their immigration status.

Maria was trafficked to Ireland when she was 15. Many years after she had escaped from exploitation, she consulted a solicitor, who incorrectly advised her that there was nothing that could be done for her because there was already an outstanding deportation order against her. It was only when she was referred to a specialist law centre that she received legal advice that resulted in the deportation order being revoked and her child being declared a refugee.

Particular challenges arose for young people who had been in the care of the State. They could not rely on their parents’ reckonable residence or, in many cases, could not access their parents’ documentation or files. Most of those young people were not offered legal advice or representation in relation to their immigration status or citizenship while they were aged under 18.339

Amanda was in and out of the care system for years after her arrival in Ireland as a six-year-old child. She was never advised that she should seek legal advice on her immigration status. She secured legal representation in relation to her immigration status for the first time when a letter of intention to deport was issued to her at the age of 17.

Emma, a victim of trafficking, was in the care of the State for a number of months in the early 2000s. During that time, social workers raised concerns that the adults she had been living with were not her parents. However, this did not instigate any inquiry into the possibility of trafficking or request of legal advice about her immigration status. Emma’s case starkly highlights what can go wrong when a child is not provided with timely legal advice and representation. After she was refused refugee status at ORAC, Emma did not seek legal advice on her opportunity to appeal. Instead, she left the jurisdiction to a situation of further exploitation.
John was an exception in this regard.

Benjamin was also in State care for a number of years. Although his social workers commenced measures to secure his identification documentation, they did not seek legal advice when they encountered difficulties. This left Benjamin unnecessarily in a state of uncertain immigration status for a number of years.

Although he spent eight years in the care of the State and two years in aftercare services, Paul was never given an opportunity to seek legal advice about his immigration status. Paul aged out of aftercare services without immigration status and has remained undocumented for the past two years.

Valentine was 23 when her aftercare worker referred her to a law centre and she received legal advice for the first time. She had been in the care of the State since she was 17 but did not receive advice when she was incorrectly issued with a Stamp 2.

Harmony said that legal advice would have helped her as she didn’t even know what trafficking was so could not have known that she could be identified as a victim of trafficking. She said that if she had access to a solicitor soon after arriving in Ireland it would have changed her life and she wouldn’t have done the other “stupid things” which she did due to her uncertain situation.

Kemi highlighted the need for a child-sensitive, culturally sensitive approach by solicitors acting for child migrants so that they take time to build a relationship of trust. She described how she found it difficult to open up to talk and that she was required to repeat private details of her past in her application for asylum.

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119 John was an exception in this regard.
to their immigration status. In the cases of victims of trafficking such as Emma, Maria and Harmony, a lack of timely access to specialised legal representation can even further increase their vulnerability and leave them at risk of being re-trafficked or subject to further exploitation.

Feedback from support workers on accessing legal representation

Of the respondents to the Immigrant Council’s questionnaire, 37 per cent indicated that the key support required by practitioners was direct access to specialised legal professionals and legal services that fully understand the issues faced by migrant children and how these issues could be resolved. Several respondents also specified that there should be access to a centralised specialised service through contracting out to legal experts in immigration law that also have knowledge of child care law. Social workers at the Immigrant Council’s outreach sessions also highlighted that there was no clear route for them to seek legal advice or representation in relation to the immigration status of children in care.

Social workers, youth workers and legal practitioners also identified the need for direct access to specialised immigration legal advice for young people in care from competent persons with appropriate training and experience. They pointed to the
valuable time lost in young people’s lives when specialised legal advice was not available. One lawyer explained: “Getting immigration status right is so important. Young migrants in care are already at a disadvantage. They have so many difficulties to overcome.”

Social workers had sought support from their local Tusla solicitors who represent them in relation to child protection matters. Concerns were raised that, while a small number of Tusla solicitors had some knowledge of immigration law, many did not. A social worker stated that within Tusla, they have designated legal firms that they access but “they are not really able to assist well with issues of this kind as they mainly deal with child care proceedings and so do not have specialised knowledge in immigration law”. A social worker from the west of Ireland expressed concern that, in the recent past, local Tusla solicitors did not have the necessary knowledge to assist her with identity and nationality issues related to migrant children. The social worker added that more specialist legal services were required to provide representation in those cases.

Another social worker described how the solicitors they engaged “had come to a halt on knowledge as they do not have specialised information in this area.”

It was noted that on occasion, while immigration applications had been made on behalf of children in care, due to the lack of knowledge it was not possible to assess whether the decision granting residence permission was appropriate. An example was given where a child was granted a Stamp 2 to enable them to continue in second-level education, but this resulted in subsequent problems accessing necessary social protections.

The need for specialist immigration knowledge was also highlighted by a solicitor
working in child protection who was interviewed for this research. The solicitor stated that when a solicitor is representing a migrant child in child care proceedings, the acting solicitor has a duty to resolve the child’s immigration status. However, sometimes a solicitor is unable to do this due to a lack of knowledge or expertise in the area of immigration.

Another legal professional interviewed for this study also expressed the view that there was a potential conflict of interest in applications made by solicitors who also act for Tusla in respect of the child protection intervention, as they may be less inclined to seek a review of a decision issued.

Concerns were also expressed regarding the extent to which migrant children in care were advised directly regarding the particulars of immigration-related applications made on their behalf or given an opportunity to have their voice heard in relation to such applications.

Some social workers used their personal networks to seek representation from specialist immigration solicitors in private firms or independent law centres to act on behalf of young people in relation to their immigration status on a pro bono basis. One social worker described “begging” solicitors to take on cases and the difficulty when the “goodwill eventually ran out”. She explained that, with the growing number of migrant children, it would be increasingly difficult to secure pro bono legal representation in respect of children’s immigration status. Social workers also discussed that it was unfair that solicitors with expertise in immigration law were acting to secure children’s immigration status without payment, while solicitors acting in respect of child protection matters could earn substantial fees.

Social workers also reported that it was difficult to know which solicitors they could refer cases to “as there are so few immigration law solicitors”.

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While the establishment of Tusla’s in-house legal provision service was acknowledged by social workers, they expressed concern that they would be overwhelmed with other matters and could not be expected to have the necessary expertise in immigration law as well as their other areas of competency. Social workers suggested that Tusla could contract an independent organisation, such as the Immigrant Council, to provide immigration advice and representation to social workers in respect of the immigration status of children in care.

During the outreach sessions, it was recommended that Tusla incorporate the following provisions regarding legal representation:

• Timely access to specialist early legal intervention in respect of children’s immigration status should be available to all children in care and their social workers in order to resolve their immigration status before leaving care.
• Legal advice should be provided in a child-centred way to ensure optimal outcomes for children in care.
• The system for accessing information should be formalised – there should be one specialist, centralised organisation/designated contact point that could answer questions relating to immigration issues.
6.2.4 Comparative practice: right to independent legal representation

This section examines the extent to which the right of migrant children to independent legal advice and representation in matters concerning their immigration status is reflected in the legislation and policy of other countries reviewed. Several countries make provisions in child care law and policies that recognise the right of the child to independent legal representation. Examples of good practice in respecting the right of the child to be heard can be seen in the legal provisions of New Zealand, Sweden, Spain and Norway. The right of the child to be heard is provided for in their immigration and/or citizenship laws. The UK and Norway also made separate provisions, under policy provisions and guidelines, for due regard to the views of the child.

In New Zealand, the right of the child to independent legal representation is provided for under section 7 of the Child Care Act 2004. The court may appoint or direct the appointment of a lawyer to represent a child who is the subject of, or party to proceedings. Judges may make directions in child care proceedings that a child be provided with independent legal advice on their immigration status.

In the United Kingdom (England and Wales), any child who is party to a civil case, including child care or immigration proceedings, is appointed a guardian from the Child and Family Court Advisory and Support Service to conduct the proceedings on the child’s behalf.\textsuperscript{340} Guardians act as a proxy for children at court and are responsible for reporting on the children’s views and wishes. They are also responsible for explaining the legal process to the children and keeping the children informed about the case’s progress and its final outcome.\textsuperscript{341} However, these guardians also appoint solicitors to provide legal representation for the children – this is known as the

\textsuperscript{341} Ibid.
\textsuperscript{342} Ibid.
\textsuperscript{343} Ibid.
\textsuperscript{344} Ibid.
‘tandem model’ of representation. If the guardian’s opinion on the child’s best interest conflicts with the child’s view, a second solicitor can represent the child separately to the solicitor representing the guardian.\textsuperscript{342} The tandem model ensures that the best interests of the child are represented as well as ensuring that the child receives specialised legal advice and representation on their immigration law matters. In Finland, when a child’s parents cannot act as their guardians during legal proceedings, a guardian is appointed to represent the child’s best interests in court.\textsuperscript{343} In some Finnish municipalities (for example in the Kouvola-Kotka region), both a social professional and a legal counsel can be appointed as GALs in a system of representation also known as the ‘tandem model’.\textsuperscript{344}

**Legal representation in immigration matters**

In Germany, section 80 of the Residence Act 2008\textsuperscript{345} makes provision for the legal capacity of minors and non-nationals who are 16 years or older. It states that non-national children aged 16 years or older are capable of performing actions provided by the Act, provided that they have the legal capacity to do so in accordance with the German Civil Code or, on attaining majority, would not require supervision and prior approval in taking such actions. With regard to minors under the age of 16 years, an obligation is placed on the parents, guardians or legal representatives of children (which could include legal representatives of children in the care of the State) to make the necessary applications on behalf of the child regarding the issuing and extending of residence permissions, and the acquisition of passports and other identity documentation.


\textsuperscript{346} Schraer, R, Council to pay looked-after child £5,000 compensation for immigration advice failures, (Community Care, 2nd February 2016) http://www.communitycare.co.uk/2016/02/02/councilpaylookedchild5000compensationimmigrationadvicefailures/. In this case, the Ombudsman recommended that Greenwich Council in England pay a young migrant (who had been in the care of the State) exceptional compensation after her local council failed to assist her to apply for leave to remain in the UK when she was a child looked after by the State. Greenwich Council also agreed to devise an action plan to ensure it gives proper consideration to its duties to look after children who may be in need of legal advice.
In February 2016, the Local Government Ombudsman in England acknowledged a duty to assist young migrants in their care to regularise their immigration status, including funding independent advice and representation from a solicitor. The UK Department of Education also published statutory guidance on the care of migrant children, particularly unaccompanied and trafficked children. It states that care plans should include a description of how the child’s needs in relation to their immigration status will be met. The rationale is to ensure that everyone involved in providing care for the child is aware of their circumstances, thus enabling them to provide for any resulting needs. According to the statutory guidance, care plans should also note key stages relevant to a child’s evolving asylum or immigration status and the fact that children who are subject to immigration control will require specialised legal support and advice. This document further states that the child’s social worker or carer should arrange for them to be accompanied to all meetings with legal professionals.

It is clear that there is a duty on the care authorities in England to assist young migrants in care with the resolution of their immigration status, including the financial provision of and access to independent legal advice.

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Effective access to justice includes the right of access to legal representation and to have the child's voice heard. This right is applicable in administrative immigration decisions. Specialist immigration advice provided in a timely manner can be an essential prerequisite to children accessing their full range of rights. In Ireland, children's access to legal representation is inconsistent and provided on an ad hoc basis. Some children in care gain access to legal representation either directly or indirectly, usually where their social workers are aware of the need to act and have personal contacts to rely on. The case studies show positive outcomes for children who received immigration advice at an early stage and how children can fall out of the system and experience being undocumented and even exploitation when they do not receive legal advice. Social workers also need to have access to specialist immigration legal advice and representation on a formalised basis, so that they are no longer reliant on the good will of solicitors to secure a child’s future. They also need training so that they are alert to steps they can take and situations in which legal advice is necessary. In many countries, children have a right to legal representation in immigration matters. In England, there is a duty to assist young people in care to regularise their immigration status. This proves that it is possible.
6.4 Recommendations

Recommendations for the Department of Justice

**Recommendation:** Provide accurate, accessible information on the immigration status of children under 16 years of age and the duty to register when a child turns 16, and on the rights of young people in Ireland. (This could be completed in collaboration with NGO partners such as the Immigrant Council.)

**Recommendation:** Fund and direct young people towards a specialist focal point for the provision of information and advice on children’s and young people’s immigration status.

Recommendation for educational institutions

**Recommendation:** Incorporate training on immigration-related matters (and cultural competency) in university education for social workers.

Recommendations for Tusla

**Recommendation:** Disseminate child-friendly, accessible information booklets and online materials on national identity and immigration matters for all migrant children. Distribute such material widely. Emphasise, in particular, distribution of materials to children and young people in voluntary care.

**Recommendation:** Provide continuous professional development training, available to all social workers and aftercare workers on immigration matters and cultural competency for working with children in care as well as on indicators of trafficking, the importance of early legal intervention for victims of trafficking, and the steps to take to support victims of trafficking. This training could be carried out by specialist organisations, such as the Immigrant Council of Ireland.
Recommendation: Identify a single person responsible for preparing, informing and supporting a child in the care of the State in relation to securing their immigration status.

Recommendation: Introduce policy guidelines/a statutory obligation specifying the person(s) responsible for providing information and how this information is provided: timing, content and the use of a child-friendly manner.

Recommendation: Provide clear information to support workers who work with young people on how to support children and young people in addressing their immigration status.

Recommendation: Provide regularly updated immigration-related legal information to social workers and aftercare workers through Tusla’s internal information portal.

Recommendation: Develop a standard framework of action in relation to establishing the nationality and immigration permission of migrant children, to include:

1. Questions to ask of children and their families about immigration status
2. Steps to take to establish and resolve status
3. Avenues for legal advice from a competent person
4. Referral process from outside.

Recommendation: Provide training on immigration matters to persons deemed responsible for the provision of information to migrant children in care, as well as to social workers, aftercare workers and other relevant support workers.

Recommendation: Provide timely access to legal advice to social workers and aftercare workers through creating a formal alliance or service agreement with a specialised organisation or designated contact point.
**Recommendation:** Ensure timely access to specialised independent legal advice and representation for children in care regarding their immigration matters, in line with their rights under the United Nations Convention on the Rights of the Child. Legal advice should be provided in a child-centred manner to ensure optimal outcomes for children in care. This could be provided in conjunction with organisations such as the Immigrant Council of Ireland.

**Recommendation:** Formalise the system for accessing information. There should be one specialist centralised organisation/designated contact point that could answer questions relating to immigration issues.

**Recommendation:** Timely access to specialist early legal intervention in respect of children’s immigration status should be available to all children in care and their social workers in order to resolve their immigration status before leaving care.

**Recommendation to third-level education institutions**

**Recommendation:** Incorporate information on working with migrants, migrant children and the immigration system into social work education courses at third level so that social workers are aware of the issues and how to resolve them before they enter practice.

**Recommendation for the Irish Foster Care Association**

**Recommendation:** Distribute information on immigration status and trafficking to foster parents to raise national awareness of immigration and trafficking matters.
At an international level, it is recognised that the enjoyment of citizenship is a key element in promoting social cohesion. In addition to security of residence status, access to citizenship is regarded as an essential pre-condition to achieving integration. To facilitate integration into society, migrant children should be given access to citizenship so they can enjoy the same economic and social benefits as other children. Citizenship can often be the key to accessing fundamental rights such as education, particularly higher education. Citizenship is also essential for migrant children to enjoy equal access to civil and political rights. Therefore, Irish citizenship allows migrant children to contribute to, and participate more fully, in Irish society. As well as practical benefits, citizenship can also have psychological benefits for children. It can give them a sense of belonging, stability and certainty, and allows them to feel equal to their peers.

It is increasingly recognised that access to citizenship should be considered within a human rights framework and reflect the principles of respect for the rule of law, dignity, equality and proportionality. This is reflected by the Council of Europe Convention on Nationality 1997.

This chapter sets out the legislation, administrative policies and procedures that govern the granting of citizenship to migrant children in Ireland. It also identifies issues experienced by migrant children in accessing Irish citizenship, highlighting shortcomings in legislation and policies. A comparative international perspective is provided through an examination of the citizenship arrangements that are in place in other western countries.

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349 Ireland is not a signatory to this Convention.
7.1 Citizenship and naturalisation

Citizenship is regulated by the Irish Nationality and Citizenship Act, 1956, as amended by the Irish Nationality and Citizenship Act 2004. Irish Citizenship can be acquired through birth, descent or naturalisation at the absolute discretion of the Minister for Justice and Equality.

Since a referendum in 2004\textsuperscript{350}, the Irish Constitution limits Irish citizenship by birth to persons with at least one parent who “is an Irish citizen or entitled to be an Irish citizen” and to those in respect of whom citizenship is provided for “by law”.\textsuperscript{351} The implementing legislation introduced a residence requirement.\textsuperscript{352}

A child born in the island of Ireland to non-Irish nationals will not be entitled to Irish citizenship on birth unless one of their parents has been legally resident on the island of Ireland for at least three of the previous four years.\textsuperscript{353} Time spent undocumented or resident with an international student permission does not qualify. Children of British citizens and children of people entitled to reside in Ireland or Northern Ireland without restriction on their period of residence are also entitled to Irish citizenship.

7.1.1 Citizenship by foreign birth registration

A child born abroad who had a grandparent born on the island of Ireland or a parent who had claimed their Irish citizenship before the child’s birth is automatically entitled to claim Irish citizenship by applying for a foreign birth registration.\textsuperscript{354}

\textsuperscript{350} Until 2004, all children born in Ireland were automatically entitled to Irish citizenship. This right was based in legislation until 1999, when it became a constitutional right as part of the Good Friday Agreement.

\textsuperscript{351} The 27th Amendment to the Constitution inserted a new Article 9 that states: “... a person born in the island of Ireland, which includes its islands and seas, who does not have, at the time of the birth of that person, at least one parent who is an Irish citizen or entitled to be an Irish citizen is not entitled to Irish citizenship or nationality, unless provided for by law.”

\textsuperscript{352} Irish Nationality and Citizenship Act, 2004.


\textsuperscript{354} For practical details, https://www.dfa.ie/passports-citizenship/citizenship/born-abroad/registering-a-foreign-birth/
7.1.2 Citizenship by naturalisation

Individuals can also apply for Irish citizenship through naturalisation when they have completed a specified period of lawful residence in Ireland, in line with certain conditions. Naturalisation is granted at the absolute discretion of the Minister for Justice and Equality. Applicants must be “of full age” or “a minor born in the State”.

For a certificate of naturalisation for a child, the “applicant” means the “parent or guardian of, or person who is in loco parentis to, the minor.” This means that children cannot apply for naturalisation independently. They are reliant on the application being made by their parent or guardian. This fails to recognise the evolving capacity and growing autonomy of children. It can also prevent access to citizenship where the parent or guardian is not available or willing to submit an application in respect of a child, or where there is disagreement about who can act as the child’s guardian for the purpose of the application.

The INIS website states: “An application on behalf of a child cannot be made until one of their parents is naturalised first, unless they were born in the State or are of Irish descent.”

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355 Irish Nationality and Citizenship Act 1956 as amended by the Irish Nationality and Citizenship Acts 2001 and 2004, part III Conditions: 15 (a)(i) is of full age or (ii) is a minor born in the State; (b) is of good character; has had a period of one year’s continuous residence in the State immediately before the date of the application and, during the eight years immediately preceding that period, has had a total residence in the State amounting to four years; (d) intends in good faith to continue to reside in the State after naturalisation; and (e) has... made a declaration of fidelity to the nation and loyalty to the State, and (ii) undertaken to faithfully observe the laws of the State and to respect its democratic values.

356 Irish Nationality and Citizenship Act 1956, Article 15.

357 Irish Nationality and Citizenship Act 1956, Article 16. The Minister may, if he thinks fit, grant an application for a certificate of naturalisation in the following cases, although the conditions for naturalisation (or any of them) are not complied with: (a) where the applicant is of Irish descent or Irish associations; (b) where the applicant is a parent or guardian acting on behalf of a minor of Irish descent or Irish associations; (c) where the applicant is a naturalised Irish citizen acting on behalf of his minor child.


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associations”. This policy is reflected in the application forms. This position is the opposite of reduced residence requirements which exist for children in some jurisdictions. Irish associations are defined as “related by blood, affinity or adoption to a person who is an Irish citizen”. However, the situations in which successful applications are made on the basis of associations are unclear. While applications on the basis of Irish siblings have been refused on the basis of associations, some applications by promising sports stars have been successful.

These provisions, together with the accompanying application forms, restrict the eligibility for naturalisation for children whose parents have not yet naturalised. The requirement for a parent to naturalise first delays the child’s access to citizenship – it is not possible for the applications to be submitted and considered concurrently.

This policy does not appear to have rational basis. Parents, as well as children, have a right to choose whether they seek Irish nationality. Considerations might include whether their country of origin permits dual nationality, personal loyalties and the high cost of a certificate of naturalisation if granted. Where a parent’s application for naturalisation is refused (for example on grounds of a conviction), their children are penalised because of crimes they did not commit.

The impact was particularly severe where a child was taken into State care because of parental abuse which also resulted in a criminal record and the refusal of the parent’s application for naturalisation. Irish law is not responsive to the specific situations of children who are in the care of the State in respect of their access to citizenship. This matter is explored further below.

Legal provisions allowing for independent naturalisation of migrant children

Unlike Ireland, many jurisdictions have legal provisions that permit the naturalisation of children independently of their parents’ naturalisation process, some of which also have reduced residency requirements for children. They include Sweden, Finland, Italy, Austria, Norway, New Zealand, Spain, France, Switzerland, the United Kingdom, Australia, Greece and Slovakia. Seven of the countries reviewed also make specific references to the naturalisation of migrant children who are in the care of the State.
Who can submit applications for naturalisation on behalf of a child?

The Swedish Citizenship Act\textsuperscript{360} states that a child that does not hold Swedish citizenship can apply for citizenship, through their guardian(s), if the child holds a permanent Swedish residence permit and has been domiciled in Sweden for five years. It further specifies that the application must be made before the child reaches the age of 18. The consent of children over 12 years is required.\textsuperscript{361}

In the UK, where the Home Office has “a broad discretion to register any child as British,”\textsuperscript{362} guidance states that “anyone who has assumed responsibility for a minor may apply for the minor’s registration under the Nationality Act”.\textsuperscript{363} In practice, it is expected that applications for nationality will be submitted “by one or both parents; a guardian; or a local authority which, because of the existence of a care order, shares parental responsibility for a child with the parents”.\textsuperscript{364} The guidelines state that it may be appropriate for the application to be made by the minor or someone else who has responsibility for the minor.\textsuperscript{365} A child who is 17 or older when the application is considered, and who signifies in writing a wish to be registered as a British citizen, may be registered despite any parental objections.\textsuperscript{366}

\textsuperscript{360} Section 7, Swedish Citizenship Act 2001.
\textsuperscript{361} Consent is not required if the child is prevented from giving their consent due to a long-term disability such as a mental disorder or similar.
\textsuperscript{362} Coram Children’s Legal Centre, Migrant Children’s Project FACT SHEET – Registration of children as British citizens, Coram (May 2015).
\textsuperscript{363} UK Home Office, chapter 9, Registration of Minors at Discretion section 3(1) British Nationality Act 1981.
\textsuperscript{364} Ibid, Paragraph 3.2 of chapter 9.
\textsuperscript{365} Ibid, Paragraph 3.3 of chapter 9.
\textsuperscript{366} Ibid, Paragraph 9.18.18 of chapter 9.
Finnish law permits applications for naturalisation to be made by a Finnish guardian or trustee of a child,\textsuperscript{367} which allows some flexibility. In Norway, the relevant Act sets out that “if the parents have been deprived of parental responsibility or if the parents are dead, the guardian shall act on behalf of the child” in respect of lodging an application for naturalisation of a child.\textsuperscript{368} The consent of children aged 12 years and over is required, while children under 12 are given the opportunity to express their opinion, with importance attached to the child’s opinion in accordance with their age and maturity. In Spain, children over 14 years may opt for Spanish citizenship with assistance from their legal representative. Where a child is under 14, their legal representative may complete the declaration to opt for Spanish citizenship on the child’s behalf. This is subject to approval by the chief officers of the civil registry in consideration of the child’s best interests.\textsuperscript{369}

**Lack of clarity and consistency in the processing of applications**

In Ireland, there is a significant lack of clarity and an absence of consistency in the processing of applications for naturalisation in respect of children. This is the experience of the Immigrant Council and of child welfare practitioners, solicitors and barristers consulted during this research.

Social workers and GALs expressed their frustration at the lack of clarity and certainty around the processes and requirements for naturalisation, particularly in respect of children in the care of the State.\textsuperscript{370} One social worker at the Cork outreach session spoke of making applications for naturalisation on behalf of two children who were both subject to full care orders in almost identical circumstances. One application was granted while the other was refused, with no apparent justification.


\textsuperscript{368} Norwegian Nationality Act 1950, section 31.

\textsuperscript{369} Article 20.2 (a) of Book 1 of the Spanish Civil Code.

\textsuperscript{370} 17% of questionnaire respondents.
She felt that discretion had been exercised in the application granted because the child was an athlete who could represent Ireland internationally. She found the refusal of other children’s application unfair, saying “I want... equality, is what I want.”

A case worker at the Limerick session had made two applications for naturalisation, using Form 10 for both, in respect of siblings under full care orders with identical circumstances. She said that although both applications contained the same supporting documentation, one application was granted while the other was not. No reasons for the decision had been given.

**Further barriers to accessing citizenship**

During this research, the Immigrant Council heard from a social worker regarding the case of a child subject to a full care order. An application for naturalisation on the basis of associations had been made as all of the child’s siblings were Irish citizens by birth. The child was subject to a full care order until the age of 18. However, the application was refused because of the child’s mother’s antisocial behaviour in the State. The child’s mother had come to the adverse attention of the authorities as she had abused and neglected the child.

**Reduced residence requirements for children**

Some jurisdictions require shorter lengths of residence for children than for adults. In Slovakia, applicants over 18 years must have eight years of residence to apply for citizenship, but children can apply if they have three years’ uninterrupted permanent residence. If their legal representative or guardian is a citizen of the Slovak Republic or a legal entity appointed by a court of the Slovak Republic, only two years’ residence is required. Children in care are not required to have a minimum period of residency to make an application for naturalisation.

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371 Article 7, section 1 (a) and 2 (c) Slovakian Nationality Act.
372 Article 7, section 2 (d) Slovakian Nationality Act.
In Spain, children in care can apply for naturalisation after a reduced period of residence of one year when they have been legally placed for two consecutive years under the tutelage, guardianship or in the care of a Spanish citizen or institution.

The Immigrant Council recommends that the Minister for Justice, Equality and Law Reform amends the Nationality and Citizenship Act to enable children to make applications for naturalisation independently, if they meet specified criteria and have completed a prescribed length of residence.

**Children in the care of the State**

Under Irish law, there is no specific process for naturalisation for children in the care of the State.

Difficulties have arisen for children in the care of the State where their parents are not available, qualified or willing to submit an application for naturalisation on behalf of their children. Social workers were frequently informed that they could not make an application for children who were subject to full care orders, even where it was in the best interests of the child. This leaves children who do not have contact with their parents without the possibility of naturalisation before they reach 18, despite having resided in Ireland for more than five years.

For example, in 2014, an application for naturalisation was made for Faith, who was subject to a full care order, by her social worker. The INIS refused to process her application. Faith was lucky that, despite her poor relationship with her mother and the fact that her mother had not naturalised herself, her mother was eventually persuaded to sign Faith’s application for naturalisation. John and Susan had similar experiences.

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373 Rather than 10 years generally, five years for refugees or two years for citizens by birth of Latin-American countries, Andorra, the Philippines, Equatorial Guinea or Portugal, or for Sephardic Jews.

374 Article 22 of Book 1 of the Spanish Civil Code.
In 2015, a case came before the District Court (which was reported in the Child Care Law Reporting Project\textsuperscript{375}) in which the Department of Justice agreed to allow a social worker sign the application for naturalisation, acting as the de facto guardian of the child. A witness from the INIS set out, before the court, the initial objections of the INIS to the social worker signing the application on behalf of the child. The witness said: “If the State was to naturalise the child, that would be in breach of Article 41 of the Constitution.” The court heard from the solicitor for Tusla that it had very wide powers when an order was made in respect of a child under section 18 of the Child Care Act, 1991. Section 18(3) of the Child Care Act states: “Where a Care Order is in force, the health board shall have the like control over the child as if it were his parent, and do what is reasonable (subject to the provisions of this Act) in all the circumstances of the case for the purposes of safeguarding or promoting the child’s health, development or welfare.” The judge said that legally the child is in care and the parents do not have any rights, whether or not they are living or in contact with the child.

Following this decision, the INIS acknowledged that “recently, under the direction of the Court, an application was received and processed on this basis”. However, it went on to say that it was open to a person to apply on their own behalf on reaching 18 years of age.\textsuperscript{376}

Subsequent to the Court’s decision, the Immigrant Council was informed that an application for naturalisation in respect of a 17-year-old, who had been in the care of the State under a full care order for more than nine years, had been referred to the Attorney General for an opinion on whether a social worker can sign an application for naturalisation of a child in care. The opinion continued to be awaited in November 2016.

There has been no clear change in legislation, policy or guidance since the District Court’s decision. Furthermore, in response to a question regarding the existence


\textsuperscript{376} Acknowledged by INIS representatives in a meeting that took place on 4 September 2015.
of any policy concerning the processing of citizenship applications for children in the care of the State under full care orders, a written response was received by the Immigrant Council from the Director General of the INIS in October 2016. It stated: “The fact that a care order under the Child Care Act 1991, as amended, is in place in respect of the child does not affect the rights or duties of parents or guardians under the 1956 Act, as amended.” The position of INIS in this regard, therefore, continues to be at odds with the reasoning of the judge outlined above.

Further, there is a need to clarify that time spent in the care of the State, as a child, is reckonable for residence regardless of the immigration status of a parent during that time.

**Comparative practice: Legal provisions specific to citizenship for children in care**

France, Spain and Slovakia have specific provisions relating to the acquisition of citizenship for children in care independently of their parents. The French Civil Code allows for a child, who for at least three years has been sheltered and brought up by a person of French nationality or who for at least three years has been entrusted to the care of child social services, to claim French nationality.377 In Switzerland, the Secretary of State for Migration of the Swiss Department of Justice and Police specifies in its manual on nationality that if a child is in care, the agreement of the care authorities is not necessary for naturalisation as the acquisition of nationality is considered to be a highly personal right.378 The child in care can decide to naturalise and inform their legal representative to make an application.

Other countries – including the UK, Australia, Greece and Austria – make specific provisions in their laws as to who can consent to the making of an application for naturalisation of a child in care.

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Australian law allows applications for citizenship from qualifying children.\textsuperscript{379} Applications are accepted from children aged 15 years and under, where the application is signed by a responsible parent with whom the child lives.\textsuperscript{380} A responsible parent includes “any person who has guardianship or custody of the child under an Australian law or a foreign law, whether because of adoption, operation of law, an order of a court or otherwise”.\textsuperscript{381} Australian law also makes provisions for unaccompanied minors in care; unaccompanied humanitarian minors who are wards of the Minister require the consent of the Minister’s delegate for their naturalisation applications. If an unaccompanied minor is not a ward of the Minister, the application requires the consent of the minor’s responsible carer.\textsuperscript{382}

Greece also provides for applications for naturalisation to be submitted in respect of qualifying children in the care of the State, “by him or her to whom the parental responsibility of the minor has been allocated or who exercises it exclusively”.\textsuperscript{383} In cases of unaccompanied minors, to whom international protection has been granted, the declaration and application are submitted by the appointed tutor or the personal representative.\textsuperscript{384}

The current difficulties for children in accessing citizenship could be resolved through allowing children to make applications for naturalisation independently, clarifying that social workers can sign applications for children in the care of the State and providing that the time children spend in care is reckonable and can be counted for naturalisation.

\begin{itemize}
\item Australian Citizenship Act 2007, sections 21-22: “(a) is aged under 18 at the time the person made the application; and (b) is a permanent resident: (i) at the time the person made the application; and (ii) at the time of the Minister’s decision on the application”.
\item Department of Immigration and Border Protection, Children aged 15 years and under or unaccompanied minors (Australian Government) \url{https://www.border.gov.au/Trav/Citi/pathways-processes/application-options/Children-aged-15-years-and-under-or-unaccompanied-minors}
\item Section 6 the Australian Citizenship Act 2007.
\item Australian Department of Immigration and Border Protection, Children aged 15 years and under or unaccompanied minors \url{https://www.border.gov.au/Trav/Citi/pathways-processes/application-options/Children-aged-15-years-and-under-or-unaccompanied-minors}
\item Article 1A.2 of the Greek Citizenship Code 2004.
\item Article 30, section 1 of the Greek Presidential Decree 906/2008 (Government Gazette 152 A).
\end{itemize}
7.2 Practical barriers to accessing citizenship

7.2.1 Lack of documentation

Another practical barrier to applying for Irish citizenship is the challenge of obtaining original birth registration documentation from children’s countries of origin, where parents are not available to assist, and individuals have been living out of their country of origin since childhood. Sworn affidavits of birth are accepted by the INIS’ Citizenship Division “in exceptional circumstances”. These circumstances are not defined and appear to be applied inconsistently. Some of those interviewed for this research have lived in Ireland for more than 20 years, have never returned to their country of origin and have made repeated attempts to acquire their birth certificate and passport, to no avail.

Benjamin, Chris and Jerome experienced difficulties acquiring a valid passport from their country of origin, which is required by the INIS to process an application for naturalisation as an Irish citizen. Despite all three of them holding original birth certificates from their country of origin, the authorities in their countries of origin failed to acknowledge them as citizens. They did not assist them in acquiring a passport or national identity card, which is required for a passport to be issued. The three young men have made considerable repeated attempts to acquire a passport, including travelling to embassies of their country of origin located abroad (using Irish travel documents), which have been documented in detail to the INIS. The Citizenship Division has failed to acknowledge the clear lack of cooperation of the authorities in their country of origin. The Citizenship Division has continued to refuse to process Chris’ and Jerome’s applications for naturalisation. Benjamin’s application was granted in 2015 on the basis of a sworn affidavit and without a national passport.

385 The INIS has set out in the Form 8 naturalisation application form (p 2), that “in certain limited and exceptional circumstances a birth affidavit may be accepted in lieu of a birth certificate where you can show satisfactory evidence that the certificate is not available and cannot be obtained. If you are not in possession of, or have lost, your birth certificate, an affidavit will NOT be accepted. You must obtain it from the relevant authorities before applying.”

http://www.inis.gov.ie/en/INIS/Form%208%20Ver%205.5%20Aug%2016.pdf/Files/Form%208%20Ver%205.5%20Aug%2016.pdf
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This is not the only instance that demonstrates the inconsistencies in the applications of requirements for citizenship, even within families.

The Citizenship Division initially refused to process Gabrielle’s application for naturalisation as she did not hold her original birth certificate or a passport from her country of origin. Her brother’s application had been processed the previous year on the basis of a sworn affidavit of birth.

7.3 Stateless children and access to citizenship

7.3.1 International framework relating to statelessness

The 1954 UN Convention relating to the Status of Stateless Persons and the UN 1961 Convention in the Reduction of Statelessness set out the UN’s response to the phenomenon of statelessness. The 1954 Convention defines a stateless person as a person who is not considered as a national by any State under the operation of its law. It outlines core principles for the treatment of stateless people and implies the need for States to put in place mechanisms to identify stateless people.

The UNCRC outlines that every child has the right to acquire a nationality and that States should safeguard against a child becoming stateless. The ICCPR says: “Every child has the right to acquire a nationality”. The Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Elimination of All Forms of Discrimination Against Women also contain relevant provisions. The ECtHR has recognised that the right to a nationality is an aspect of the rights to private life and non-discrimination.

386 Article 7.
387 Article 24(3).
388 Article 5.
389 Article 9.
390 See Genovese v Malta 2011 ECHR (application no. 53124/09) and Kaftailova v Latvia 2006 ECHR (application no 59643/00).
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In essence, children must acquire a nationality at birth or as soon as possible after birth so that they are not left stateless for an extended period. Nationality plays an important role in children’s development as it is part of a child’s identity.\(^{391}\)

The UNHCR estimates that a child is born stateless somewhere in the world every 10 minutes. Many inherit their statelessness from parents who are also stateless, while others are the first in their family to experience statelessness because of gaps or conflicts in nationality laws.\(^{392}\)

7.3.2 Statelessness in Ireland

Ireland signed the 1954 UN Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness in 1962 and 1973 respectively. However, their provisions have never been transposed into domestic law. Ireland continues to lack a formal stateless determination procedure and does not have any legislation or policy documents on the issue.

The Irish Nationality and Citizenship Act 1956 gives the Minister for Justice and Equality the power to dispense with the conditions for naturalisation in cases involving stateless persons. While the 1956 Act provides a safeguard for stateless children born in Ireland, there are significant practical obstacles to accessing that discretionary mechanism in the absence of a specific regime governing statelessness. The provision is of no assistance to stateless children who migrate to Ireland.

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\(^{391}\) European Network on Statelessness, Preventing Childhood Statelessness in Europe, Issues, Gaps and Good Practice, p 7.

\(^{392}\) For a full discussion, see European Network on Statelessness, Preventing Childhood Statelessness in Europe, Issues, Gaps and Good Practice.

\(^{393}\) This case was taken by Karen Berkeley of Brophy Solicitors and Michael Lynn BL.

http://brophysolicitors.ie/?s=stateless&submit=Search

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No official figures are available pertaining to the number of stateless people living in Ireland or how many are registered with the GNIB with immigration permissions. Equally, there is little insight as to what status is held by children whose birth in Ireland cannot be registered by their parents, for a variety of reasons. Two individuals were issued with Declarations of Statelessness – one case was the result of High Court Judicial Review proceedings\textsuperscript{393} and the other followed four years of the Immigrant Council advocating on the client’s behalf.\textsuperscript{394}
7.4 Recommendations

Recommendation for the Minister for Justice, Equality and Law Reform

Recommendation: Amend the Nationality and Citizenship Act to clarify that children can make applications for naturalisation independently on meeting specified criteria and on the completion of prescribed lengths of residence. A fee waiver should be granted in cases of hardship.

Recommendation for the INIS

Recommendation: Confirm that social workers have the authority to sign applications for the naturalisation of children in the care of the State including, if necessary, amending the relevant provisions of the Irish Nationality and Citizenship Act 1956.

Recommendation: Confirm that time spent in the care of the State is counted as “reckonable residence” for citizenship regardless of whether a parent held a legal residence permission during that time.

Recommendation: Provide for the acceptance of sworn affidavits of birth in respect of children who cannot acquire identity documentation from the authorities in their countries of origin despite making reasonable efforts to do so, where it is not reasonable to expect that they return to their country of origin to obtain documentation and where their identity is accepted by other State authorities.
Migrant children who are in the care of the State face additional barriers to realising their rights. Without the presence of parents who can advocate for their needs and without legal autonomy, they are reliant on others to take action to secure their immigration status. Living away from parents from whom they can derive their immigration status and the absence of a specific tailored permission, they lack clarity and certainty about their immigration status and rights. In this context, children’s social workers are essential to ensuring that children can access appropriate residence permissions or Irish citizenship.

Issues around identity are of enormous relevance for migrant children, particularly where they cannot access details about their family history or original documentation. While identity issues can upset all young people on a personal level, they have significant legal implications for migrant children for whom it can be extremely challenging to access birth documentation.

While the specific issues relating to residence permissions and accessing citizenship for children in care are addressed in chapters 5 and 7, this chapter looks at social workers’ role in securing children’s immigration status, issues around identity and transitioning to aftercare.

8.1 Child Care Act 1991

The Child Care Act 1991, as amended, is the primary legislation regarding child care policy. It sets out provisions relating to the promotion of welfare of children, the protection of children in emergencies, care proceedings, children in need of special care or protection, and children in the care of Tusla. The Act was extended to separated children by the Refugee Act 1996. An equity of care principle applies since 2010, which means that separated children receive the same standard of care as other
CHAPTER 8: ISSUES SPECIFIC TO MIGRANT CHILDREN IN CARE OF THE STATE

children at risk or in State care. The Child Care Act as amended is silent on the issue of the immigration status of a child subject to a care order.

Where a care order is made in respect of a child, Tusla shall:

(a) have the like control over the child as if it were his parent
(b) do what is reasonable (subject to the provisions of this Act) in all the circumstances of the case for the purpose of safeguarding or promoting the child’s health, development or welfare;

and shall have, in particular, the authority to:

• decide the type of care to be provided for the child under section 36...
• give consent to the issue of a passport to the child, or to the provision of passport facilities for him, to enable him to travel abroad for a limited period.

The Child Care Act provides for the appointment of a GAL for a child, where the child is not party to the proceedings, at the discretion of the court where “it is necessary in the interests of the child and in the interests of justice to do so”.

The Child Care (Amendment) Act 2015 introduced a statutory entitlement to a personalised aftercare plan following an assessment of the young person’s needs. The provisions have not been commenced at the time of writing. The needs to be assessed include education, financing, training and employment, health and wellbeing, personal and social development, accommodation, and family support. For migrant care leavers, secure immigration status is a prerequisite to accessing many of the needs specified for assessment.

395 The Minister indicated that the commencement of the relevant provisions will depend on the outcome of consultations with Tusla with regard to appropriate timing and the readiness of Tusla to implement same. http://www.parliamentary-questions.com/question/23039-16/
8.2 Immigration status – duty to act

Although the Child Care Act 1991 is silent on the area of immigration specifically, Tusla does have a duty to “do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child’s health, development or welfare”. The Immigrant Council believes that this duty extends to the resolution of a child’s immigration status in the State.

However, this research has shown that this duty is not always fulfilled before children age out of the care system. Participants at the Immigrant Council’s outreach sessions said that young people’s immigration status was dealt with on an ad-hoc basis, usually when they encountered barriers to accessing services, such as further education, and often when young people reached the age of 18 or 19 and had already aged out of care. They indicated that questions about immigration status are not being asked early enough in children’s lives. Social workers and other practitioners at the Cork session also said that children themselves often raise their immigration status with social workers or foster parents when they are faced with related problems from the age of 16. A GAL stated that she had cases where children had been in care from the age of 10 but the children’s immigration status had not been addressed by the time the children aged out of the care system.

Practitioners at the Dublin City session noted that young people would not have the support of social workers or aftercare workers later in life and would experience much greater difficulties in securing their immigration status later on. Social workers at the Cork session stated that, from 2015, some social workers had begun to flag immigration status as an issue to child protection teams and at case review meetings. A principal social worker added that they had begun to ask questions and establish the immigration status of a child and their parent(s) earlier on in a child’s engagement with their services, partly because it was increasingly likely that they would be asked about it in court.

A barrister interviewed for this research stated that she believes that there is a duty on Tusla to resolve the immigration status of a child in the care of the State “If a child in the care of the State and it’s not a child in the protection process and that child is
not a citizen then I think there’s a duty on the Child and Family Agency to make an application for that child to have a formal permission to live in Ireland.” In order to ensure that Tusla complies with its duty towards children in the care of the State, immigration status should be included in care plans and after care plans alongside the issuing of accompanying statutory guidance, as outlined in further detail below.

8.3 Inclusion of immigration status in care plans and aftercare plans

The inclusion of immigration status in the care plans and aftercare plans of children in care would be a first step towards ensuring that children’s nationality and immigration status is considered.

Social workers said that immigration status does not generally form part of children’s and young people’s care plans or aftercare plans. A Dublin based GAL outlined that immigration status is not part of the normal care plan and its inclusion depends on the team in which a social worker is based as “offices with a high proportion of migrant children are better at understanding the issues”. Another GAL stated that, even where immigration status forms part of a care plan, “it is superficial and lacks understanding”. A GAL suggested that, from recent experience, immigration issues are starting to be introduced into care plans but that no one, including the social workers and GALs, know what to do about it.

Social workers, GALs and lawyers consulted for this report agreed that immigration status should be included in statutory care/aftercare plans so that it is “named from day one”. One barrister explained: “There is no field in the care template. If it was in the protocol, it should be addressed from the first day the case is assigned and flows right through to the end. There should be a framework for everyone to operate in.”

396 Committee on the Rights of the Child, day of general discussion on the rights of “all children in the context of international migration”, 2012, Para 69.
The introduction of statutory guidance on assisting young migrants in care to secure their immigration status, coupled with increased knowledge and supports, could prevent many young people becoming undocumented when they leave care. It would also assist in bringing Ireland in line with the duty, as highlighted by the Committee on the Rights of the Child, to provide access to “adequate follow-up, support and transition measures... when they reach 18 years of age, particularly those leaving a care context, including by ensuring access to long-term regular migration status and reasonable opportunities for completing education and integrating into the labour market.”

Such guidance has been provided in other jurisdictions and is outlined below.

8.4 Comparative practice: policies and guidelines on working with migrant children in care

Statutory guidance in England states that care plans for children subject to immigration control must include a section on immigration status, including a description of how a child’s needs in relation to their status will be met, to ensure that all care providers are aware of the circumstances and related needs of the child. It also asserts that care plans should note key stages relevant to a child’s evolving immigration status. The English Local Government Ombudsman decided in February 2016 that local authorities in England have a duty to assist young migrants in their care to regularise their immigration status.

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396 Committee on the Rights of the Child, day of general discussion on the rights of “all children in the context of international migration”, 2012, Para 69.
398 Schraer, R, Council to pay looked-after child £5,000 compensation for immigration advice failures, (Community Care, 2nd February 2016) http://www.communitycare.co.uk/2016/02/02/councilpaylookedchild5000compensationimmigrationadvicefailures/
Norway and the US provide policies and guidance to social workers and other child welfare practitioners on the significance of, and steps necessary to secure, the immigration status of a child in care at the earliest possible stage. Policy guidelines issued by US authorities stress the importance of access to legal advice for children and young people as well as the inclusion of immigration status as a factor in care and permanency planning.398

Norway’s child welfare service must obtain information from the immigration authorities, at the earliest opportunity, about the status of any ongoing immigration case involving the child’s family, and the rules governing confidentiality do not impede the provision of such information. The child welfare service also has a responsibility to provide information to the immigration service so that the child’s best interests can be considered. Relevant information to be provided includes:

- the grounds for and estimated duration of the care order;
- the child’s ties to the parents’ and the parent’s access rights;
- the child’s ties to the foster home.399

The guidelines stipulate that if a care order decision is made after a final rejection of a residence permit application, this may form grounds for reassessing the child’s (and possibly the parents’) immigration case. It explains that, as information about the child welfare case will be new information for the immigration authorities, the parents have the opportunity to request a re-examination of the immigration case. It states that, in some cases, a child under the care of the child welfare service may be granted a residence permit in Norway while the parents’ application has been rejected and the parents are, therefore, obliged to leave the country.400

In the US, the Maine Office of Child and Family Services has a policy on refugee, immigrant and undocumented minors.\textsuperscript{401} It outlines the procedures and special considerations necessary for working with a child who is not a US citizen. The policy stresses that immigration is a complex field of law with many potential consequences and the importance of establishing a child’s immigration status as soon as possible so that no options are eliminated. It sets out the steps that should be taken to secure a non-US citizen’s immigration status.

The US Department of Health and Human Service’s Administration on Children, Youth and Families has issued a memorandum stating that child welfare agencies should screen all children in their care who are without an immigration status to check their eligibility for the special immigration status for migrant children in the care of the State and provide eligible children with necessary information prior to aging out of the care system.\textsuperscript{402} It emphasises that helping children and young people to access legal assistance is critical and directs child welfare practitioners to a list of legal service organisations that provide free or low-cost immigration legal assistance and representation for non-detained children in immigration proceedings. It also stipulates that identification of immigration status must be prioritised as a factor in permanency planning.

Ireland could learn a lot from the models used in England, Norway and the US. A further best-practice consideration is the training of child welfare case workers on topics such as challenges in immigration and acculturation; culturally and linguistically appropriate services; how immigration status affects families, children, and young people; access to services and benefits; and the complexities of immigration enforcement.

\textsuperscript{401} US Department of Health and Human Services Administration on Children, Youth and Families, Information Memorandum: Case Planning and Service Delivery for Families with Parents and Legal Guardians who are Detained or Deported by Immigration Enforcement, (Issued 20 February 2015), \url{http://www.acf.hhs.gov/sites/default/files/cb/im1502.pdf}
The right to preservation of identity is protected by Article 8 CRC. It stipulates: “States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference”. The CRC Committee has affirmed that a best-interests determination requires a clear and comprehensive assessment of the child’s identity, including nationality; upbringing; ethnic, cultural and linguistic background; particular vulnerabilities; and protection needs.

Young people and social workers consulted for this research experienced significant difficulties in accessing original documentation to prove identity, particularly when parents or previous carers had left Ireland, were not contactable or did not cooperate. This resulted in knowledge gaps about a child’s background. Other barriers included requirements in certain countries that their nationals travel to present themselves, or reside, in the country of nationality in order to obtain a national passport.

As well as being essential for international travel, national passports issued from a person’s country of citizenship are necessary as proof of identity in many situations in Ireland. Without a birth certificate and passport, it is almost impossible to obtain other forms of identification. There are countless situations requiring proof of identification, which include registering your permission to reside, opening a bank account, instructing a solicitor, applying for a driving licence, seeking a PPS number and accessing many forms of employment. To be granted naturalisation in Ireland, proof of identity in the form of a national passport is required. As well as the
challenges that identity issues present from a legal perspective, it can also affect a person’s social and personal development.

Benjamin arrived in Ireland on his mother’s passport when he was seven and was taken into the care of the State as a teenager. His mother subsequently died. Initial efforts were made by his social worker to obtain his birth certificate and passport from his country of origin. These attempts were abandoned due to cost implications. His lack of identification documents hampered his ability to regularise his status. He was granted permission only as an exceptional measure provided he made efforts to gain his national passport. Despite extensive efforts made and exhaustive communications with embassies in both the UK and France, he found it impossible to obtain his national passport. This was due in part to the length of time that had passed since he had lived in his country of origin, as well as a change in the requirement for passports and identity documents there.

The absence of identification documents affected almost every aspect of Benjamin’s life. For example, he had difficulties in opening a bank account, could not travel outside Ireland for work or pleasure, and could not attend pubs or nightclubs with his friends.
Delays in seeking original documentation can exacerbate difficulties in obtaining that documentation. One social worker pointed to a case of a 17-year-old child who was in the care of the State for 14 years. No steps had been taken during that time to establish the child’s nationality. The social worker felt that it would be extremely difficult to resolve the child’s situation as “there was no real knowledge of the child’s heritage”.

An advocacy officer at the Immigrant Council’s Cork session spoke of working with a 14-year-old child who had no identity documentation and was believed to have been born in another EU Member State to African parents. The young person, who is in long-term foster care under a full care order, had missed trips abroad with her foster family and school due to the lack of identity documentation.

During the Cork session, the case of a non-EEA national young person was raised. She had been born in Britain and was in the care of the State in Ireland from the age of 10 until 18. It was stated that no nationality had been established for her before she aged out of the care system. She went to Britain to try to locate her family but was sent back to Ireland by the British authorities. She was not entitled to British citizenship, could not claim the nationality of her parents as she had not lived in the relevant country in the past 10 years, and she was not entitled to Irish citizenship even though she was in the care of the State as a child for eight years. She is now approaching 30 years of age and has no status. It was said that she had disengaged with services and may be living undocumented in Ireland.

During the Immigrant Council’s Dublin City session, a social worker described how young migrants who do not have any identity documents are effectively “stuck in limbo”. An aftercare worker from Wicklow highlighted the case of a young male who had no contact with his mother who was believed to be in the country. He had been granted leave to remain but did not know how he would apply for a passport to renew his status or apply for citizenship in the future without the necessary information from his mother. A social worker in Cork had met similar difficulties; the parent of a child had disappeared without contact, leaving the child with no identity documentation or details with which to obtain it.
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These issues illustrate the need to assist children in obtaining their original birth certificates, certificates of nationality (where appropriate) and passports to preserve their identity. It is vital that information and documentation are gathered from parents or previous caregivers at the earliest opportunity, after the safety of the child has been secured.

Such cases also demonstrate the need for the Minister for Justice to exercise discretion in processing applications for residency and naturalisation for children who have been in the care of the State; where Tusla records show that there has been no contact with a child’s parent(s); and reasonable efforts have been made to establish identity, and contact parents and relevant embassies to acquire documentation.

8.6 Allocation of social workers

Some of the young interviewees were not allocated a social worker or had no social worker for periods of time. Others spoke of a lack of engagement from their social workers with their case.
An engaged, informed social worker with adequate time and training might have prevented Aoife and Paul from leaving the care system without lawful immigration status. According to statistics provided by Tusla which were correct as of August 2016, there were 4,727 open cases of children who had been assessed as needing a dedicated social worker and were waiting for one to be allocated. It is vital that measures are taken within Tusla to ensure that there are no waiting lists for the allocation of social workers. There also needs to be mechanisms that are accessible to young people through which they can raise concerns if they believe they are not getting the necessary support.

Paul had periods during his early teenage years when he had no allocated social worker. Despite the fact that he moved between foster placements regularly, he had no social worker to support his transition from one placement to another.

Aoife did not feel that her social worker really engaged with her and her case while she was a child in the care of the State. When she reported to her social worker that her foster mother was an alcoholic, no action was taken to follow up on this. Aoife felt the social worker didn’t have enough time to support her properly, which has caused difficulties for her as an adult in terms of her immigration issues.

403 Katherine Zappone, Kildare Street - Written Answers, 27th October 2016
https://www.kildarestreet.com/wrans/?id=2016-10-27a.530&s=social+worker+allocation#g531.g
8.7 Equity of care for asylum-seeking children

Children in Ireland who arrive unaccompanied are referred to the Separated Children Seeking Asylum Unit. They are assessed and placed with a foster family while they are children seeking asylum. Once they turn 18, they are typically moved from their foster family to a direct provision centre while their application for asylum is being processed. Other children in care receive aftercare services when they turn 18, including access to or support with suitable accommodation up until the age of 21 (or 23 if they are in full-time education).

While Salah was waiting for his subsidiary protection application to be processed, he was moved from his foster home to a direct provision centre shortly before his Leaving Certificate exams, despite protests from his foster mother. This affected his study as he found it difficult to concentrate in the direct provision residential centre due to the levels of noise. He also suffered from the loss of his support network.

Kemi was told that she would be moved from her foster home just before sitting her Leaving Certificate exams and was only given a couple of weeks' notice before being transferred. She said that during those weeks and during her Leaving Certificate exams, she felt upset and scared about going to live in an adult hostel. Kemi found it difficult to adjust to life in the hostel and being confined to one room. She said the main problem was the food quality and her baby getting sick. Kemi’s GP diagnosed her baby with food poisoning. She wanted to prepare her own food for her baby but she was not allowed to cook in the hostel.
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When young migrants such as Salah and Kemi are moved from the care system to direct provisions, unlike other care leavers, they do not benefit from the full range of aftercare supports. This represents a lack of equity in care for separated children seeking asylum who would benefit from aftercare supports. As a barrister consulted for this research commented: “If equity of care applies, direct provision is not suitable for children who age out of care.”

The Immigrant Council recommends that the Department of Justice implements policy that ensures asylum-seeking children are given equity of care. Policy should be changed so asylum-seeking children are given equal access to full aftercare supports, including assistance with accommodation, and are not moved from their care placement to direct provision.

8.8 Data on migrant children in care

The collection and analysis of accurate data on children affected by migration is essential to the formulation, implementation and monitoring of effective public policy, law and practice relating to both children and migration. Data is of particular importance for children in State care. The reporting guidelines for States Parties to the CRC call for detailed disaggregated statistical and other data. The Committee on the Rights of the Child has also stated: “A holistic picture of the numerous ways migration affects the wellbeing of children is hindered by the lack of reliable data”.

However, disaggregated data on the numbers of migrant children in the care of the State is not gathered or recorded in Ireland, save in respect of separated children. This hinders the realisation of the rights of children in the context of migration, including their rights to access information and legal representation, and to have their best interests considered in immigration decisions. It means there is no clarity on how many of those children may need to secure permission to reside in Ireland.

One GAL interviewed during this research stated: “We need to know how many migrant children are in the care of the State and also what stage they are at.”
researcher present at one of the Immigrant Council’s outreach sessions said that, while some of the information recorded by Tusla is relevant and accessible, the data mechanisms used mean that sometimes nationality/ethnicity is not recorded. Therefore, the data may not necessarily be useful in making estimations on the numbers of migrant children in care or proving over or under representation. She added: “The issue in Ireland is that we don’t have the proper facts.”

The recording of accurate information on children in the care of the State who were born outside of Ireland and who may or may not be Irish citizens would assist in policy formulation, service planning and the identification of training needs.

On an individual basis, if data such as nationality, immigration status, birth certificate and passport were collected for case files, this would help social workers to identify when steps need to be taken in relation to seeking identity documents, securing immigration status or seeking legal representation.

It is recommended that Tusla includes sections on nationality, immigration status, birth certificate and passport on social work case files.
8.9 Recommendations

Recommendations for Tusla

**Recommendation:** Include nationality and immigration status as items / part of assessment of need in statutory care plans and aftercare plans to identify and record a child's nationality and immigration status and ensure that any necessary steps are taken to gather relevant identity documentation, secure a child's immigration status and, where appropriate, apply for Irish citizenship at the earliest possible opportunity.

**Recommendation:** Amend statutory guidance to require the drafting of a clear plan for determining nationality/establishing citizenship (where relevant) and resolving immigration status for children in care.

**Recommendation:** Provide guidelines to social workers and aftercare workers on the steps necessary to secure a child’s immigration status at the earliest possible opportunity.

**Recommendation:** Introduce policy guidelines specifying the person responsible for informing and supporting a child in the care of the State in relation to securing their immigration status, setting out how that information is provided including timing, content and the use of a child-friendly manner.

**Recommendation:** Make every effort to obtain children's birth certificates and national passports at the earliest opportunity.

**Recommendation:** Provide for the funding of fees to acquire birth certificates and national passports, where required, in both care packages and aftercare packages, and for GNIB registration fees in aftercare packages.

**Recommendation:** Include sections on nationality, immigration status, birth certificate and passport on social work case files.
Recommendation: Record data on children’s nationality and immigration status and regularly publish disaggregated data reports to enable effective service planning.

Recommendation: Ensure that asylum-seeking young people who were in care as children receive equity of care in the provision of aftercare services.

Recommendation for social workers

Recommendation: Include immigration status as action points in care plans and aftercare plans so that relevant information and documents, including passports, birth certificates and national identity/consular cards, are gathered at the earliest opportunity.

Recommendation for chairs of case review teams

Recommendation: Monitor implementation of inclusion of immigration status in care plans as part of review process and disseminate relevant information to social work teams.

Recommendation for Department of Children and Youth Affairs

Recommendation: Allocate adequate funding to Tusla to enable the appointment of social workers to all children in a timely manner. Where a child unavoidably does not have an allocated social worker or aftercare worker for a period, they should be informed about, and linked in with, alternative supports and services, including legal advice.

Recommendations for Department of Justice

Recommendation: Exercise discretion in processing applications and allow for the use of sworn affidavits of birth in respect of children where records show a history of State care and that reasonable efforts have been made to acquire documentation from the authorities of a child’s country of origin.

Recommendation: Amend policy to ensure that asylum-seeking care leavers are granted equal access to full aftercare supports, including assistance with accommodation, and are not moved from their care placements to direct provision.
CHAPTER 9
Chapter 9: Implications of Immigration Status and Lack of Access to Citizenship

Delays in addressing a child’s immigration status in a timely manner can restrict or prevent their access to further education, employment, social welfare and housing as access is dependent on secure immigration status.

The policies of many departments outside the Department of Justice have a profound impact on the lives of young migrants. This is particularly true of policies that determine access to education, housing and social welfare. It appears that, in drafting policies around eligibility for assistance in accessing those services, adequate consideration is not given to the wide range of situations in which immigration permission is granted to individuals. Instead, policies are drawn narrowly, listing very specific permission scenarios. This failure to consider the rights of children in different situations restricts their access to education, housing and social welfare.

9.1 Access to third-level education for migrant children and young people

The issue of access to third-level education emerged as the top priority for the young people and support workers consulted for this research. Under the provisions of the Student Support Act 2011 and Student Support Regulations 2016, certain categories of migrant children are not eligible for financial support for third-level education. This is despite the fact that they have been lawfully resident and settled in Ireland for a number of years and have completed their secondary and, in many instances, primary education in Ireland. Several of the participants could not afford to attend third-level education because their immigration status restricted their access to financial support.

Under the terms of the Free Fees Initiative, only Irish, EEA and Swiss citizens and their family members, those with refugee status and their family members, and those with subsidiary protection or leave to remain following the revocation of a deportation order are eligible for free fees. They must also meet other criteria such as fulfilling
a required period of residency in the State. This means that young people from outside of the EEA who fall outside of the eligibility criteria must pay international student tuition fees. For many courses, these can be up to and in excess of €20,000 per year. For example, young people liable for non-EU fees who wish to qualify as a social worker would currently have to pay €23,098 per year to study at Trinity College Dublin, while aspiring nurses or scientists would face fees of €22,400 per year to study at University College Dublin.

Students who meet the criteria for a grant from Student Universal Support Ireland (SUSI) receive at a minimum a fee grant that covers the annual student contribution charge or registration fee. Students who are not eligible for a fee grant must pay this fee, which currently stands at €3,000 per year, to their higher education institutions. Eligible students who fall below specified income thresholds also receive a maintenance grant to subsidise other costs of education such as accommodation, travel and text books.

The Student Support Act 2011 and Student Support Regulations 2016 stipulate that only certain categories of non-EEA citizens are eligible for a student grant from SUSI. The Student Support Act 2011 defines “student” as a person who is ordinarily resident in the State, meaning resident for three out of the previous five years, among other conditions. Additionally, a person must fit within prescribed nationality or residence categories. They must be family members of an EEA citizen, have refugee status or have been granted subsidiary protection. Additionally, persons prescribed by the Minister for Justice and Equality in the regulations, and with the consent of the Minister for Finance, also qualify for financial support.

When prescribing a class of person, the Minister must have regard to matters including (a) the period for which they have been ordinarily resident in the State; (b)
the basis on which they were granted permission to reside within the State; (c) the conditions attached to their permission to reside within the State; (d) the degree of connection they are likely to have to the State; (e) their entitlement to benefits or services provided by a Minister of the Government, a local authority, the Health Service Executive or the holder of any office or a body; and (g) resources available for the provision of student support.

The Student Support Regulations 2016 are the most recent regulations that set out the types of eligible permissions. It limits the types of permission allowed to: (a) a person who has been granted humanitarian leave to remain in the State prior to the coming into operation of the Immigration Act 1999; (b) a person in respect of whom the Minister for Justice and Equality has granted permission to remain following a determination not to make a deportation order; and (c) a person granted subsidiary protection. The regulations also include family members of a person exercising their EU right to free movement and dependent children of people who are married to or in civil partnerships with Irish nationals residing in the State.

The restrictive use of these residence categories does not appear to be based on a rational or justified aim, or driven by or linked to immigration policy of the Department of Justice. The current regulations exclude young people who were granted permission to reside on an exceptional basis or based on discretionary grounds, as well as young people who were granted permission to reside with their Irish-citizen siblings. Many of the young people in the care of the State are granted permission to reside on exceptional grounds without a deportation order being issued against them. They are unable to access financial support for further education. However, if they had taken action to secure their immigration status at a later, more precarious time, after the issuing of a deportation order, they would be eligible for free fees and to apply for a grant.

408 Statutory Instrument No 154 of 2016.
410 Pursuant to the European Union (Subsidiary Protection) Regulations 2013 (SI No 426 of 2013).
CHAPTER 9: IMPLICATIONS OF IMMIGRATION STATUS AND LACK OF ACCESS TO CITIZENSHIP

This arbitrary policy restricts access to education on the basis of immigration status and is in breach of Ireland’s ECHR commitments to respect the right to education without discrimination, including discrimination on the grounds of immigration status.411 Article 2 of the First Protocol to the ECHR stipulates that “everyone has the right to education”. This means “the right in principle to avail themselves of the means of instruction available at a given time”.412 Where institutions of higher education are set up by States, they are under an obligation to “afford an effective right of access to them”.413 If there is discrimination, it must be justified. The exclusion of certain groups of migrant children from access to student support makes it prohibitively expensive for those students to access higher education, making the right to education “theoretical or illusory”, rather than “practical and effective”.414

The ECtHR considered a case in which two boys, who had moved to Bulgaria as young children and were fully integrated into Bulgarian society, were required to pay secondary school fees. The ECtHR found that the requirement to pay fees because of their nationality and immigration status was not justified. It explained that “the notion of discrimination includes cases where a person or group is treated, without proper justification, less favourably than another, even though the more favourable treatment is not called for by the Convention”.415 The ECtHR also recognised the indispensable role of education “to the furtherance of human rights” and “in order to achieve pluralism and thus democracy, society has an interest in the integration of minorities”.416

A UK court found the discriminatory manner in which a migrant student was denied access to a student loan was in breach of her ECHR right to be afforded access to education on equal terms with her peers.417 During the hearing, Professor Ian Walker told the court about research that shows both individuals and the State benefit financially from a university degree, with the benefit to the Government of the order

412 Belgian Linguistics case (No 2) (1968) 1 EHRR 252, at p 281.
414 Airey v Ireland, App No 6289/73, judgment of 9 October 1979.
417 R (on the application of Tigere) (Appellant) v Secretary of State for Business, Innovation and Skills (Respondent).
of £264,000 from male graduates and £318,000 from female. In weighing the overall fair balance of rights, Baroness Hale outlined that consideration should be given “alongside the harm done to the individuals, [to] the harm done to the community by such delay [in young people accessing third-level education]”. She added: “Some of these young people may be lost to higher education forever. Others will not join the productive higher-skilled workforce until much later than they otherwise would have done... The overall benefits to the exchequer and the economy... will be reduced.”

While the State has the power to distribute finite resources in line with policy, it does not appear that consideration was given to the right of young people with long-term permission to reside in Ireland to access to education, or that there is any justifiable reason to refuse certain young people funding to access third-level education.

9.1.1 Access to financial support for further education for migrant children in care and migrant care leavers

Young migrant care leavers’ experiences of student grant issues

Jérôme has lived in Ireland since he was 4 years old and was in the care of the State. He was granted permission to reside in Ireland on a discretionary basis. He applied for and was granted a higher education grant to study an undergraduate science course. However, when Jérôme was midway through the third year of his course, he received a letter from SUSI stating that he had been issued the grant in error. SUSI said it would not issue him with a grant for that academic year or for the remainder of the course. Jérôme went through the appeals process with SUSI but was unsuccessful due to his Stamp 4 permission having been issued on a discretionary basis. He had no option but to drop out of his degree course as he could not afford to pay the fees. Jérôme found employment and is saving to return to study.

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419 Para 41; Evidence re economic impact was set out by Professor Walker.
Valentine has lived in Ireland since she was 11 years old and was taken into the care of the State as a teenager. Valentine was incorrectly registered on Stamp 2 conditions. This meant that she was ineligible for a grant from SUSI but even when her permission was changed to a Stamp 4, it was granted on a discretionary basis so she was still ineligible for free fees and a grant and could not progress to university where she had hoped to study social science.

David faced a separate practical barrier to obtaining a higher education grant. Although David had been granted family reunification with a parent who was a recognised refugee, he could not access a higher education grant as he lacked any photo identification, which was requested when making the application. David achieved the highest leaving certificate results in his school. He wished to study science at university and received the necessary points to do so. However, due to the uncertainty surrounding his student grant, he accepted a specific sponsored scholarship to study towards a degree in a discipline that was not remotely related to his original areas of interest.

The issue faced by David further emphasises the need for adequate efforts to be made to acquire identity documents for children in the care of the State at the earliest possible point.
Social workers’ and practitioners’ experiences of student grant issues

Support workers said that barriers to further education were a key issue affecting migrant children. The majority of social workers and other practitioners present at the Dublin City, Cork and Limerick sessions had experienced situations in which young migrants could not gain access to further education as they were not eligible for a grant from SUSI due to their immigration status or had received incorrect information about eligibility, which meant they did not apply for grants. The social workers said that particular difficulties arose for young people who had been granted Stamp 4 permission at the discretion of the Minister or “in exceptional circumstances” when they were leaving the care of the State, even when the child previously derived Stamp 4 permission from a parent on other grounds.

A social worker spoke of one young person who appealed a negative decision through SUSI and the Department of Education and Skills but was refused seven months into the first year of the course. Another social worker at the Cork session gave an example of a case in which a young migrant was informed that she had been awarded a grant and began studying at university. However, three months later, SUSI said it had been granted in error and it was revoked.

During the course of this research, the Immigrant Council learned of a case in which a girl’s social workers were unsure about her status or whether she would be entitled to a student grant. When she enquired as to the basis of her Stamp 4 permission in order to determine her eligibility for free fees and a student grant, she was issued with a section 3 letter (a notice of intention to deport). She subsequently received a letter stating that she was being issued with leave to remain on the basis of the revocation of a deportation order, which meant she was then eligible for free fees and to apply for a SUSI grant. While this approach overcame the particular barrier in that case, many other children

Over 25 per cent of questionnaire respondents.

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exiting out of care have been supported by the State up to Leaving Certificate level, but cannot progress to third-level education to improve their employment prospects due to their Stamp 4 permission having been granted on a discretionary basis.

The Irish NGO EPIC (Empowering People in Care) recently submitted to the Department of Education and Skills that “all young people leaving care should be entitled to the full SUSI grant. These young people should be given priority access to third-level grants as these young people have little or no familial supports.” EPIC also pointed out that the anomaly of care leavers with discretionary leave to remain not being eligible for SUSI grants needed to be addressed.

9.1.3 Positive practice

The introduction of the Government’s Pilot Student Support Scheme was a positive development for young people who are still in the protection system awaiting the determination of their application for protection or leave to remain. It enables those young people who meet certain conditions (such as having been a protection applicant or at the leave to remain stage for a combined period of five years) to access funding for further education. However, no similar scheme has been introduced to allow migrant children in the care of the State or migrant care leavers with discretionary Stamp 4 permission to access funding for further education.

The National University of Ireland Galway launched a scholarship scheme in June 2016 that is open to young people with any permission to remain in Ireland, as well as young people in the protection process, as long as they are ineligible for a grant from SUSI and meet certain other criteria such as having been a pupil in a secondary school in Ireland for the three years preceding their application. The Inclusive Centenaries Scholarship Scheme is merit based and four scholarships were available for the 2016 academic year.

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422 For more information, see: http://www.education.ie/en/Learners/Services/Pilot-Support-Scheme/

423 For more information, see: http://www.nuigalway.ie/colleges-and-schools/arts-social-sciences-and-celtic-studies/icscholar/
9.1.4 Need for reform

Measures must be taken to remove the barriers that restrict migrants’ access to further education. Restricting access to further education results in limited job opportunities for young care leavers, which could stimulate a cycle of vulnerability and disadvantage. It also has a negative impact on the emotional and mental wellbeing of young migrant care leavers as they feel unequal to their peers and have to cope with the stress and psychological effects of being prevented from achieving their goals and dreams.

While fee waivers and other such measures are necessary and can be offered by individual third-level colleges, there is a need to look at broader funding mechanisms and to address the situation of those who may be in limbo. The law should be reformed to allow any young person who is resident in the State, as the dependent child of a legally resident parent, to access free fees and to meet the SUSI eligibility criteria. The State could consider imposing a habitual residence condition or a requirement to have completed a specified amount of second-level education to counter any perceived pull factor. Reforms also need to be implemented to allow migrant children in the care of the State and migrant care leavers to access free fees and to meet the eligibility criteria for SUSI.

9.1.5 Comparative practice

Initiatives in Canada show how migrant care leavers can access financial support for third-level education on an equal basis to Canadian citizens where they have immigration status. Children in the care of the State and care leavers who have resided in Canada for many years are generally advised to apply for residency on humanitarian and compassionate grounds. Successful applicants are granted permanent resident status. This entitles them to financial supports for post-secondary educational opportunities,

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424 Dr Piaras MacÉinrí (University College Cork), Immigrant Council of Ireland Conference, A call to action and unity: Forming Ireland’s response to the refugee and migration crisis, 9 June 2016.

such as State-provided student assistance programmes\textsuperscript{425} and the Government’s Canada Student Loans,\textsuperscript{426} scheme on the same conditions as Canadian citizens.\textsuperscript{427}

### 9.2 Access to social welfare

Many of the young people interviewed could not access social welfare because their immigration status had not been secured. The Social Welfare (Miscellaneous Provisions) Act 2004 amended the Social Welfare Acts to introduce a habitual residence condition, which restricts access to certain social welfare payments. The habitual residence condition requires applicants to demonstrate a connection to Ireland, including a “right to reside”, which posed issues for several of the young people. Although they had resided in the State for several years, and many had been in State care, they were not considered to be lawfully resident and could not access social welfare payments.

The barrier that the habitual residence condition raises for many vulnerable groups (including migrants and asylum seekers) seeking access to social security payments has been highlighted by the Irish Human Rights and Equality Commission,\textsuperscript{428} the European Commission against Racism and Intolerance,\textsuperscript{429} and the former UN Independent Expert on Human Rights and Extreme Poverty.\textsuperscript{430}

The Irish Human Rights and Equality Commission submitted a report to the Committee on the Rights of the Child on how children’s human rights are respected in Ireland.\textsuperscript{431} The report highlighted issues of specific relevance to migrant children. This included the discriminatory impact of the habitual residence condition on the accessibility of child benefit to children from a migrant background as well as for

\begin{footnotesize}
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\item \textsuperscript{425} Government of Canada, Apply for Canada Student Loans – Eligibility \url{http://www.esdc.gc.ca/en/student_loans/eligibility.page}
\item \textsuperscript{426} Where children have no legal immigration status, they are identified as ‘visiting/foreign students’ and must pay the higher international fees. Ontario Association of Children’s Aid Societies, Immigration Status Matters: A Guide to Addressing Immigration Status Issues for Children and Youth in Care, Ontario Association of Children’s Aid Societies (2014) p 3-4.
\item \textsuperscript{427} Report to UN Committee on Economic, Social and Cultural Rights on Ireland’s third periodic review May 2015, \url{http://www.ihrec.ie/download/pdf/icescr_report.pdf}
\item \textsuperscript{428} European Commission against Racism and Intolerance (2013) ECRI Report on Ireland (fourth monitoring cycle), Strasbourg: Council of Europe, para 130.
\end{itemize}
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asylum-seeking children,\textsuperscript{432} concerns around diversity and education in Ireland,\textsuperscript{433} and the need for Ireland to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW).\textsuperscript{434}

Paul, who was in the care of the State from the age of 10 to the age of 18 and in aftercare services until he was 20, found himself undocumented leaving aftercare services. Due to his lack of legal residence permission, he could not work and was not entitled to social welfare payments. This effectively left him destitute after having spent half of his life in the State. At the time of interview, Paul was relying on the goodwill of friends to provide him with food and shelter.

Amanda arrived in the State when she was six years old. She was taken into care on several occasions before being allocated a foster placement at age 13 years, which was intended to last until she was 21 years old. Amanda was unaware of the obligation to register with the GNIB at the age of 16 and spent several years undocumented in the State. This meant she was unable to access social welfare and had to depend on the goodwill of friends.

\textsuperscript{432} Ibid p 24-25, s4.4.3.
\textsuperscript{433} Ibid s5.3.
\textsuperscript{434} Ibid, s2.2.1.
9.3 Access to housing

Young people, whose immigration status was not secured as children, can face barriers to accessing housing. The national housing circular⁴⁰⁵, issued in 2012, requires that a person is legally resident in the State, with one of several specific types of immigration permissions, to be placed on the housing list for access to social housing. The circular excludes those with a Stamp 4 issued on a discretionary basis from eligibility for the housing list. This means that migrant care leavers issued with a discretionary Stamp 4 are unable to access social housing.

In order to be eligible for the new housing support scheme currently available in some local authorities, the Housing Assistance Payment (HAP), a person must qualify for social housing support. As their immigration permission means that they are ineligible for social housing, young care leavers with Stamp 4 permission to reside on a discretionary basis are also precluded from accessing the Housing Assistance Payment scheme.

Furthermore, to be eligible to receive rent allowance, migrants must hold a legal residence permission. Therefore, young people who are not assisted to secure their immigration status before reaching adulthood or before aging out of the care system can face serious difficulties in finding affordable housing.

The Immigrant Council recommends that the Department of Housing, Planning, Community and Local Government amend and update the housing circular to broaden the categories of immigration permission eligible for social housing. Amendments should ensure that care leavers and others with discretionary Stamp 4 conditions are eligible to be placed on the housing list.
9.4 Recommendations

Recommendation for the Department of Justice

Recommendation: Issue a specific, tailored immigration permission to children in and leaving the care of the State, which is expressly eligible for a SUSI grant for the full duration of studies.

Recommendation for the Department of Education

Recommendation: Amend the Student Support Act 2011 and the Student Support Regulations 2016 to provide for the eligibility of migrant care leavers with discretionary leave to remain for 'home' tuition fees and to apply for a full student grant under the same conditions as Irish students (i.e. provided that they have been continuously resident in the State for three out of the previous five years).

Recommendation: Amend the Free Fees Initiative to broaden the categories of eligible immigration permissions. Provide specifically for care leavers and children granted Stamp 4 permission “in exceptional circumstances” to have access to the Free Fees Initiative.

Recommendation: Amend the Student Support Act 2011, the Student Support Regulations 2016 and the Free Fees Initiative to provide that young people with leave to remain on the basis of their Irish-citizen siblings should be eligible for free fees and to apply for a SUSI grant (provided that they have been continuously resident in the State for three out of the previous five years).
Recommendation for third-level institutions

**Recommendation:** Make scholarships and fee waivers available for migrant children and young people who are ineligible for SUSI and free fees to facilitate equality of access to education, thereby fostering inclusion.

Recommendation for the Department of Housing, Planning, Community and Local Government

**Recommendation:** Amend and update the housing circular to broaden the categories of immigration permission eligible for housing. Specifically include care leavers and others with discretionary Stamp 4 conditions as eligible to be placed on the housing list.
CHAPTER 10: JOURNEYS, EXPECTATIONS AND INTEGRATION

This research primarily set out to examine children and young people’s experiences of the Irish immigration system and citizenship process, and the related issues which they encountered. However, the interviews generated a significant amount of data on the young people’s experiences of migrating to Ireland and integrating into Irish society.

This chapter examines the experiences of the young migrants in their journeys to Ireland, their reasons for and feelings about moving to Ireland, as well as their prior perceptions of Ireland. It also outlines the expectations that the young people had as children migrating to Ireland, whether these expectations were met and their most significant earliest memories in Ireland. The chapter also discusses other important aspects of their lives in Ireland and integration into Irish society including language, building trusting relationships in Ireland, their experiences of education and access to youth services in Ireland, as well as their experiences of equality and integration. It draws on the experiences of the young people interviewed for this research, feedback from social workers and other practitioners given during the Immigrant Council’s training and outreach sessions on the topic of migrant children, and interviews conducted with practitioners and legal professionals.

10.1 Migration journey

The majority of the young people travelled to Ireland with at least one family member, while some were trafficked to Ireland, or had fled persecution or dangerous situations in their countries of origin. Some treated the journey as an adventure, but others were frightened.
George took two flights to Ireland alone at the age of 12. He found the journey “pretty exciting, it was my first time being on a plane”.

Hope said a priest in her country of origin had arranged flights and a visa for her to travel to Europe when her aunt, who was exploiting her in forced prostitution, found out she was pregnant. She met an Irish woman when she landed in Europe and the Irish woman encouraged her to travel to Ireland with her. When asked if she felt safe on the journey, Hope explained: “I was going with a stranger so I felt quite scared.”

Harmony, who was trafficked from her country of origin, felt unsafe and scared on the journey and was given instructions by her traffickers: “I was not really safe, I was scared, because I was young, but they were like ‘oh, don’t worry, just don’t say much and do what we told you’. That’s what they say.”

Paul, who travelled to Ireland alone at the age of 9, felt scared on the journey: “Yeah it was [scary], I had never been on a plane in my life so I really didn’t know. I didn’t have a clue where I was going. I knew I was meeting my dad but the rest of the information was just blind.” He felt safer as he travelled first class with an air hostess “...because one of the air hostesses on the plane just took me along. She brought me first class because, like you said, I was a kid. I was scared. I was crying, so she felt bad for me. She said ‘come here so I can mind you’. So yeah, lovely lady.”
Others had mixed emotions on the journey:

“I think it was a mixture of emotions really. You know like, excited to begin this new life, sad to leave my friends behind…” (Amina)

“[Trafficker’s name] was really nice to me, so I felt kind of safe. But at the same time... I was a bit worried. But... I used to think there was nothing worse than my current situation. I wasn’t really overshadowed by my fear.” (Emma)

Most of the young people took a series of connecting flights, or flights and ferry trips, to reach Ireland and entered Ireland under family reunification or on visit visas. However, some spoke of the journey they had made and the measures taken to flee persecution or dangerous situations in their countries of origin and had entered Ireland without the necessary documentation.
Before explaining how he used a false passport to travel from France to Ireland, Boris described his journey from his country of origin, including some time in Russia where he was subjected to abuse, and how he managed to enter the EU and travel across the continent to France. His travel was organised by an international NGO. He had to pay "$1,500 or something to the people to pass the Polish border. But they were working with [international NGO]”.

Interviewer: And were you in the back of the van or sitting up front? Boris: No, it was like normal seats. It was good, no problem. It’s not like I was in the trap, hiding somewhere. Interviewer: And did you feel safe then along the way? Boris: I felt safe, I was living in… in a dangerous city so for me it was okay. I was training boxing, I could always take care of myself.

Vincent fled from the war in his country of origin and was concerned for his family on the journey to the border. “if I was alone maybe it’s safe a little bit but, because I was with a family, I was afraid for them.” He described how a journey that should have been a one-hour drive took four or five hours as they were stopped by the military and asked questions such as: “Where you going? Who is with you? Where are you heading to? What have you with you?”

Farah described how she and her family, as refugees, entered Ireland to seek protection: “It was through the UK, and then through Belfast, and then from Belfast it was by land. So it was very legitimate. I mean, I’m sure many people have had, kind of, worse experiences. For us, we even had visas to go to the UK, so the only illegal part, you could say, was the fact that we got the bus from Belfast to come to Dublin without a visa. But up to that point, everything was legal, because my mom had managed to get a UK visa, a tourist visa. It was a very different kind of experience, you know, compared to most kind of refugees that come over.”
10.1.1 Children’s involvement in decisions to migrate

Many of the young migrants said the decision to move to Ireland was mainly made by their parents. Aoife stated: “I suppose, my father was from Ireland and he wanted to come back. It was mostly my mother’s decision…”

Children who moved to Ireland when they were younger than five years old, including John and Benjamin, stated that they had been too young to participate in the decision-making. Benjamin explained that he was too young at the time to ask why they were moving “so I just kind of went along with it”.

Even those who felt they were old enough to express their opinions on moving to Ireland said they had not been consulted about the move. The decision was exclusively or mainly the decision of their parents:

“My dad wanted me to come over and that was that.” - Paul

“It wasn’t really my choice. I came here with my mom and my brother. So it was primarily her choice to come to Ireland.” - Farah
10.1.2 Reasons for migration

The families of the migrant children or the migrant children themselves had varying reasons for deciding to migrate to Ireland.

Quality of life and opportunities

Aoife said her mother decided to migrate to Ireland because “it would be safer”. John thought that his mother had probably decided to migrate to Ireland for the job opportunities: “Probably for jobs, I dunno, maybe for jobs or something.” Stefan said his family had moved “for the economic opportunities and... my mother got a work permit granted so that’s why really.”

The children who migrated to Ireland alone stated that they were in search of a better quality of life or were escaping from a difficult situation in their country of origin.

Hope decided to look for a better life for herself and her young child and Kemi stated: “I’m coming here for a better life and stuff... all my hope was like, okay, when I come here I’m going to have a better life... go to school because I want to be a nurse in future so that was like my aim”
Join family and friends

Three of the young people had come to Ireland to reunify with family members.

George said: “My mom and my little brother were already over here and I was at home so I wanted to move.” Amina and Alicia both followed their mothers to live in Ireland. Their mothers had migrated to Ireland to avail of a “better life”. Amina cited better opportunities and better work conditions as motivating factors for her mother. Benjamin suggested that they may have moved to Ireland as his mother already had friends living here.

Forced migration

Farah’s mother was a political refugee and fled to Ireland to escape the struggle in their country of origin. Emma said: “I didn’t really have a choice... Because I didn’t have any family, I was all by myself.”
George just felt excited about moving to Ireland: “It was actually not only my first time on a plane, it was my first time going abroad so it was an exciting experience. I wasn't nervous or scared or anything like that. I just couldn't wait to see my mom and my little brother.”

Emma was also excited about moving to Ireland; she thought nothing that happened to her here could be worse than what had already happened to her in her country of origin. “I felt kind of excited really, because I thought nothing could be worse than what had happened to me... I was really happy.”

Benjamin couldn’t recall really wanting to stay in his country of origin as his only family members travelled with him. He didn’t really remember any friends in his country of origin so didn’t have any attachments there.

Amina and Alicia both felt upset at first at the thought of leaving home and their friends behind and having to go to a new school:

“I was very upset, yeah, because I kinda went to primary school. I had my childhood friends there and I started, like, growing up as a teenager in Mauritius and then suddenly this move kinda burst my dreams, if you know what I mean. It’s like, you know as a teenager you have these things in your head like ‘oh I’m gonna do this’, you know like ‘these people are gonna be my friends forever’, you know, like all my childhood friends.” (Amina)

“I was not that happy, because I had friends so I was kinda sad to leave my friends and then start again to go to high school again you know.” (Alicia)
However, most were happy about the prospect of a better life or were happy once they arrived here:

“I guess I was happy because I knew there was gonna be a better life. I didn't know what that meant though. ‘Better life’ my mom said. ‘Oh it’s a better life’ over here. I didn’t know what that meant, but I kinda took her word for it” (Amina)

“I was happy when I came here; it was just different and I liked it here in the start.” (Alicia)

Farah had mixed feelings about moving to Ireland: “I really didn’t know what to expect because I didn’t know we were coming here as refugees and I didn’t know that we would end up living in a refugee camp. So it was kind of hit and miss like; it was exciting but, at the same time, it was kind of terrifying…"

Stefan, who was a teenager when he travelled to Ireland, recalled: “Well I was excited on one hand but, on the other hand, I didn't know the language and I left loads of friends and a girlfriend at home.”
10.2 Ireland

The young people were asked about their knowledge of Ireland prior to travelling and their impressions on arrival. While some had seen pictures of the landscape, the majority had no or very little knowledge about Ireland. Many had never heard of Ireland and only understood that they were travelling to Europe.

Boris had learned about Ireland before his arrival: “I know history very well... I saw pictures, it was beautiful.”

“I didn’t have a clue. Like I was really young, all you really know about abroad is America and like England or wherever... I just knew I was going to Dublin. Everyone said: ‘You’re going to Dublin, just keep that in mind’. I’d never heard of Dublin, like I didn’t have a clue.” (George)

“No, never heard of it [Ireland].” (Salah)

Hope: No, I did not hear of Ireland before.
Interviewer: So you thought you wanted to go to Europe in general?
Hope: Yeah.
As children, some had thought they were travelling to the UK and knew more about it than Ireland:

“I never, I’d seen it in a bible, to be honest, that’s all I’ve seen it on – the map of the bible. But other than that, no I thought I was coming to the UK.” (Paul)

“I knew something about the UK... The queen, the prince, everybody’s beautiful, beautiful stuff they wear and everything, that’s what I know. But Ireland, I only know that it’s green, it’s very green and it rains a lot; that’s all my mom told me. And it’s a beautiful country, that’s what she told me when I came.” (Harmony)

“I knew a lot about the UK because my mom had some extended family that were living in London, so I knew a lot about London. But I had no idea where Ireland was, or what language they spoke; it was very unfamiliar to me.” (Farah)

Salah recalled when he first found that he was in Ireland: “‘This is Ireland’ and I said ‘what is Ireland?’ and I still remember ‘what is Ireland?’ ‘Ireland is a country.’ ‘Where is that country?’ and he said *laughing* ‘You are serious?’... and then I know this is Ireland.”

Some recalled assurances made by family members about Ireland: “...She [her mother] was telling me ‘it’s good, you will make friends and they are kind people.’” (Alicia)
10.3 Migration expectations

Most of the young people who could recall their prior expectations of life in Ireland or Europe said they had expected to have a better quality of life here than they would have had in their countries of origin:

> Interviewer: What kind of life did you think you would have in Europe?
> Hope: Ah Europe... good life.
> Harmony: I expected good life, change of environment, nobody treat me bad or, like equal, I don’t know how to say it... like, treat me nice.
> Emma: I didn’t know much about Ireland. [I was told] it’d be good, I’d be looked after... I would have a different life, a good life.
> Paul: I expected life over here to be peachy you know, everybody gets what they want to make them happy, that’s the kind of expectation that we’re taught in [country of origin].

Several stated that they hadn’t expected the weather to be so bad:

> “I didn’t expect it to be so rainy. When I got here it was real rainy and cold. She [his mother] said it was cold but, I mean, I didn’t really mind it back then, the rain and the cold, but I didn’t expect there to be so much of it.” (George)

> “Well I didn’t know it was always raining.” (Boris)

> “Aahhh... just the weather, you know... I thought maybe the weather is much like better little bit... that was for me just completely because of the weather.” (Vincent)
Some of the young people said their expectations of life in Ireland were met, and that their lives and prospects were of a much higher quality than those which they would have had if they had remained in their countries of origin:

“Well the life I found here was actually the life I wanted for myself, was the good life I wanted for myself. Good education, I got education for myself, so I got it.” (Hope)

“Yeah, it was safe, so it was okay for me.” (Boris)

“It was more... more better. It changed my life... If it’s not Ireland, I say every day, if it’s not Ireland, if it’s not I came here, I don’t know how my life would be there. It really, really changed me.” (Harmony)

“Yeah, it is safer.” (Vincent)

“War... and you can have peace and education. Everything’s better, I suppose.” (Valentine)

Amina’s mother had told her that the Irish education system was excellent and that there would be more opportunities in Ireland. Those expectations about the education system had been realised: “Mom did say it’s better to come over here, it’s a better education, which is actually true.... Like, you have a larger margin to get into something that you want to do [in Ireland].”

Amina recalled that it was a culture shock for her. As well as the different Irish accents and the food, she was struck by the different cultural norms, such as how her peers spoke to their teachers. “When I first started in secondary school I thought ‘wow, how can they ask such questions to the teacher?’ you know, like talk like that to the teachers. In Mauritius, I guess the teachers are stricter.” She was also surprised by young people smoking and drinking, or young couples living together outside of marriage.
Some reported that the reality of life in Ireland had not lived up to the ideal life portrayed to them in advance:

“Life is better over here – that’s what we’re taught. Coming over here I realised that the problems may not be the same but there are different problems. People still have to struggle to get what they want here.” (Paul)

“When I got here, the first little while was good and then things started getting rough out there a bit… So I had to go through some kind of crazy stuff in order to stay… She [his mother] had to like put me in a place and I had to go into foster care and whatnot.” (George)

“When I came to Ireland… even though I had all these promises – I was going to be looked after, everything was going to be great and the most important part was when she said I would be able to go to school. Then I got here and none of that happened. Even though it was bad – the woman, she treated me really badly – but even though she treated me really bad, I was kind of grateful that I had somewhere to sleep, somewhere to eat… a roof over my head. I was homeless back in Nigeria.” (Emma)
10.4 Earliest memories in Ireland

The young people’s earliest memories of Ireland included reuniting with family members, life in direct provision, the weather and observations of cultural differences.

George recalled reuniting with his mother in Ireland when he was 12 years old: “Well I kinda remember the day I came over… it was pretty cool. I actually have this picture at home of when I was running towards my mom at the airport; she took the picture so it’s me like running.”

John remembers living with his mother when he was about four years old in accommodation where “everyone shared the same kitchen”.

The earliest memory for many of those interviewed was being struck by the cold, inclement Irish weather.

“When I went out of the airport, the cold just hit me”. (Kemi)

“Umm, cold. I think we would’ve arrived around when the Christmas decorations were getting put up... and it was a lot colder, and toys as well, in shops.” (Benjamin)
Emma recalls feeling very cold and feeling numb from fear. She also described some positive impressions of Irish people:

Emma: It was very, very cold. I wasn't wearing thick clothes. I felt numb.
Interviewer: Why did you feel numb?
Emma: I guess it was the fear of the unknown.
Interviewer: What were your first impressions of Ireland?
Emma: The people were really nice. I noticed the difference, the way there were more white people, than black people. It was totally different. The smell was different... I could smell this fresh smell from everybody. People were so smiley. People helped me; it's like they were always there for you.

Emma said this treatment of her changed when she was brought to the house in which she was exploited, as a child, in domestic servitude for a number of years.

Amina recalled the first walk that she took when she arrived in Ireland: “I think it’s a walk we took, I still remember this very clearly. The very first walk that my mom took myself and my brother outside... I remember I was walking near Christchurch and we just went down along Dame Street near Trinity and that’s when I saw, you know, the huge university, the Bank of Ireland. I think we might have gone to Stephen's Green as well, but I remember that walk. It was just kind of eye opening you know. I felt everything was so big. You know the big Dublin church, I was like ‘wow, this is huge!’”

Some said their earliest significant memories were cultural differences that stood out to them soon after arriving in Ireland.

Salah spoke of his surprise at seeing people drinking in the streets: “First I was walking around and it was raining and... this... the Garda was going, people was drinking and even in my own country I didn’t see anything like that.”
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Farah’s first memory in Ireland was her shock at seeing children smoking: “I think the very, very, very first memory, which is kinda odd, it was on the bus from Belfast to Dublin. I don’t know what town we were going through, but I remember seeing like, a group of young kids sitting on a wall and smoking cigarettes. I was completely shocked because, at that age, smoking cigarettes is not something you’d do at like 10 or 12... This was a very mesmerising image that I saw because it was completely contrasting to what I would remember, you know, from Iran, so that was my very first memory.”

Farah described some other significant early memories for her, including finding the direct provision centre in which she stayed. “It was kinda scary because all these empty buildings are just lying there. They haven’t been touched in years and there’s like mould growing and there’s broken windows and there’s kinda this scary feeling that ‘what’s gonna happen at night time?’” Over time she developed more positive memories and spoke of activities at Christmas and trips away with the direct provision centre.

10.5 Language

Language is the means by which people communicate and understand information, ideas, feelings, subjects and thoughts. It is also the means by which we interpret, organise and interact with our world and the society around us. Hence, the ability to communicate in the language of the country of residence is one of the important factors for migrants’ integration.

Proficiency in English is therefore an essential tool for successful participation of pupils in the school community, and their integration with the Irish education system. Children who arrive in Ireland and enrol in Irish schools have a very mixed level of English skills, ranging from no knowledge at all to a full proficiency in English.
Previous research\footnote{436} conducted by the Immigrant Council in the area of youth integration reported that migrant children may fall behind in the curriculum or underperform at school due to their limited English skills. Low language proficiency also puts migrant children in a vulnerable position that may expose them to instances of abuse, racism and discrimination, in a similar manner to adult migrants.\footnote{437} Therefore, English language competence is an essential tool for integration both within and outside of the school system.

Equally important is the proficiency in, and access to education in children’s mother tongue. Children who have speech and literacy skills in their native language are better enabled to learn an additional language.\footnote{438} The continued enhancement of the child’s speech and literacy skills in his/her native language is also important for the child’s affective development\footnote{439} especially in the area of navigating dual cultural identity, maintenance of family relationships and interaction with members of their ethnic communities. Language diversity also provides an additional skills pool for the school community who can enhance their own language skills through everyday interaction with native speakers.

Two of the young people spoke English as their mother tongue when they arrived in Ireland, but most spoke a different first language.

George and Amina had learned and spoke English alongside their mother tongue before migrating to Ireland and did not experience significant difficulty in speaking English on arrival. Amina stated: “I spoke English well but not like now. But no, I spoke English well I guess, because I used to do it in school.”

\footnote{438}{Knapp Werner, Language and learning disadvantages of learners with a migrant background in Germany, Council of Europe, Language Policy Division, Strasbourg 2006.}
Many of the young people experienced difficulties communicating when they arrived.

Valentine’s earliest stand-out memory in Ireland was struggling to speak and understand English: “I have no English... I was trying to speak English and... I just didn’t have a clue... what my brothers and sisters were telling me.”

“Yeah, at first, yeah, because my English was not that good so I found it difficult.” (Hope)

“I couldn’t speak English, but I could understand a little bit. I couldn’t speak at all. I remember when I came here, she [woman who exploited her] had to use her hands to show me food or drink... I wasn’t able to properly communicate.” (Emma)

“I just used to nod my head and just laugh and I didn’t know what they were saying.” *laughs* (Valentine)

John arrived in Ireland when he was three. He found it challenging to communicate through English for many years of his early childhood:

John: It took me ‘til I was six, or maybe five, until I could understand what I was saying to people.
Interviewer: And what kind of problems did that give rise to then, when you didn’t have much English?
John: Probably scared, like a bit more scared because I didn’t know what was going on... New things were happening and I was probably starting to think like ‘what’s going on here?’ So when I took all that in, I was so scared to even tell someone ‘what’s this?’ or ‘what’s that?’
Others found it difficult to adapt to Irish accents and the speed at which Irish people speak.

“Well that was really difficult as well because the Irish has an accent... and they use fast and strong, so the starting is difficult for few days and after then I used to it so then it was fine.” (Salah)

Farah explained how language is vital in order to build an understanding with others and for integration with other peer groups. She described how fluency assists someone’s ability to understand local humour and avoid misunderstandings:

“I think, even in terms of racism in school, I can only think of maybe one or two incidents where I felt like maybe I was being discriminated against. But at the same time, as I grew older, I kinda realised that it was more my perception, so often times maybe people in the class would say things to me, but they were kinda just joking around. But when you don’t understand the humour, you take it personally. You think they’re actually making fun of you, whereas, if you’re a little more fluent in the language and if you understand the humour, you kinda make a joke with them and that’s it. You get over it so you don’t take it personally. So I think the language and the level of humour is a huge thing.”

10.5.1 Additional English-language supports

At least four of the young people received additional English-language supports in school when they arrived in Ireland.

John, who arrived in Ireland aged three, received extra supports with an English resource teacher up to fifth class in primary school. He said the classes were “one to one, sometimes one other person, but it was good like that”. Amina spoke of benefiting from additional English-language supports: “I
Social workers and other practitioners said additional language skills supports for children moving to Ireland were essential in order to access education. They said the need was particularly stark for children arriving in their teenage years. They reported difficulties in securing English classes for young people, particularly out of school term.

Farah received additional English classes in school but also received significant support in learning English from her mother: “I did find it useful but I was very fortunate because my mom was fluent in English. She had studied a good level of English up to university level, so I think my mom was a bigger help than the teachers, because my mom would sit down with us every single day after school and literally translate, you know, passages word by word. But still the English classes we had were really useful as well.”

Boris received English classes when he arrived in Ireland but they were too elementary a level for him so he stopped attending. He preferred to watch television to improve his English: “I started to watch television a lot. I found this is the best way, to watch TV shows.”

Emma and Alicia did not receive any additional English-language supports when they arrived in Ireland, despite arriving at ages 15 and 14 and not speaking English at all (Emma) or not speaking English well (Alicia). Alicia felt that additional English classes would have helped her: “Yeah I think it would be a good idea, but nobody thought of that.”
10.5.2 Preservation of mother tongues

Several of the young people spoke their native language with family members or friends from their country of origin in Ireland to preserve their ability to speak their native language.

However, some of the young people had forgotten how to speak their mother tongue as they had begun to speak English at home with their families when they moved to Ireland.

John spoke English at home and was unsure of what his mother tongue had been: “I think we spoke South African, I think it was. But it was a very long time ago. But I’m pretty sure if I went into school not speaking English I must’ve been speaking South African.”

Amina said they began to speak English at home to help them, but added that her mother has begun to forget how to speak their native language now: “At home we speak English now... I think we did it as a family to like help our own English... My mom has kinda lost her French.”

Valentine, who had two native languages, had the opportunity to study one at school. She said she can now only speak her tribal dialect and cannot write it: “I can speak but I can’t write.”

George began to forget his native language when he was taken into the care of the State in Ireland at the age of 12: “Going through the homes, going through the boys’ homes and all, I came straight from South Africa, went into an environment where like I didn’t speak it at all for a while. I mean, having a short memory it just sorta dissipated, know what I’m saying? To this day I can’t really...” He finds it “pretty embarrassing” that he is unable to speak his native language now.
A GAL interviewed for this research also raised the issue of migrant children in care losing their mother tongue, particularly children who are taken into care at a younger age. She said this can cause difficulties if a child’s natural parents do not have a strong command of English – the children have no means to communicate with their family if they ever seek to reunite.

Three of the young people had the chance to study their native language, French, when they arrived in Ireland as French is examined for the Leaving Certificate:

“I actually did French for my Leaving Cert, so yeah, that was my easy A1.” (Amina)

“I was doing French in high school... Because I had no other option and I already [spoke] French it was okay, I just took the class.” (Alicia)

“I think it wasn’t until secondary that we started taking up French as a course... verbally it was easy because I kept practicing with family, but... I’d never learned how to write in French, so that I started learning. But then looking at the writing I could recognise the words from the way they were structured, so I could read French but I couldn’t write in French.” (Benjamin)

The Immigrant Council recommends that the Department of Education should put specific supports in place for mother-tongue education such as mother-tongue and bilingual textbooks and other appropriate language supports.
10.6 Building trusting relationships

Some of the young people had found it difficult to trust people or form trusting relationships as children in Ireland. While the young people living with their families could usually rely on their parents for support, the young people in the care of the State were more likely to be without anyone they could trust or discuss worries with. Those who had GALS appointed to them, or who had supportive social workers or aftercare workers, built positive trusting relationships with them.

10.6.1 Appointment of a guardian or adviser

Building trust has been described as a procedural safeguard in ensuring the voice of the child is heard and their best interests are considered.\textsuperscript{440} In recognition of the importance of trusting relationships with an adult for children, particularly those in a vulnerable situation, the CRC recommends the prompt appointment of a guardian or adviser to separated or unaccompanied children.\textsuperscript{441} To create the underlying legal framework and take necessary measures to secure proper representation of a separated child’s best interests, States should “appoint a guardian or adviser as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangement until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction”.\textsuperscript{442} The guardian should have a role in planning and decision-making processes, including immigration hearings and efforts to seek durable solutions for the child, and ensuring that the child’s interests are safeguarded and their needs are met.\textsuperscript{443}

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\textsuperscript{440} UNHCR & UNICEF, Safe & Sound: What states can do to ensure respect for the best interests of unaccompanied and separated children in Europe, Life Projects, box 5, p. 31. “A careful, considered and empathetic approach to an unaccompanied or separated child builds trust and brings the child’s information and viewpoints to bear in the process.”
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\textsuperscript{441} See: http://www.refworld.org/docid/5423da264.html
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\textsuperscript{442} Articles 18(2) and 20 (1) CRC.
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\textsuperscript{443} CRC General Comment 6, para 33.
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In Ireland, the identification of a separated child does not instigate the appointment of an independent guardian. The legal guardian of separated children in Ireland is Tusla, which includes social workers, project workers and social care workers. GALs are appointed at the discretion of the court. Research has found that, where a GAL is appointed, the child has better overall care.

John felt he could talk to both his social worker and GAL. His GAL made a “big difference” to his life by representing his best interests, including in front of the District Court judge. John’s GAL secured funding for him until he reaches 23 so he can continue working on his training course and attend the gym. His GAL also secured private placements for him. John felt that his GAL was respected by the judge. He met the GAL about every two weeks and still keeps in contact with him. John said that he also particularly trusts a previous foster parent. “I trust her a lot. I tell her anything.”

George also trusted his social workers while he was in care and Valentine trusted her aftercare worker.

Other young people didn’t have anyone to trust.

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445 Child Care Act 1991 as amended by the Children Act 2001. For further discussion, see section on Legal Representation.

Emma, who was in State care in the early 2000s, never met a social worker and never had any further contact from the key worker once she had been placed with a foster family. Emma said it would have helped if she had someone to trust. “I think it would have helped if I had the facilities, someone to trust, like a solicitor, or even someone from immigration, during the [asylum] interview.”

Paul found it difficult to trust anyone; confiding in a teacher led to him being taken into care “No. I’m not a very trusting person... I did once and that time it... was a teacher, I told her some of my problem... I ended up, the social worker ended up in school and then ended up in the HSE and then...”

Benjamin, who was taken into care, also spoke of finding it difficult to trust adults:
Interviewer: Were there any adults you could trust?
Benjamin: I just avoided adults at all times... I just knew to avoid adults. I didn’t wanna get involved with them.

Having recounted that her foster parent was an alcoholic and that her social worker did not support her or engage with her case, Aoife explained that she managed to get support from the teachers in her school: “I had a really supportive school. They would try to help me with as much information about the passport and things like that as they could as it came up to the end term of sixth year.”

Kemi, who felt that she could not talk openly with her foster parents or social worker, trusted her ‘big sister’ mentor, who was paired with her through a volunteer programme run by an NGO. “I trust ['big sister’ mentor]... she’s very good... she’s there for me... she understands me like from A to Z... so she's the person, if I needed to talk or if I'm stuck or something, like I call her. I feel free with her to discuss even my private things.”

Some of the young people reported that they had someone to trust in Ireland for the first time when they were referred to services such as Ruhama and the Immigrant Council.
Harmony hadn’t trusted anyone in her life until she began to build up trust with her support worker from Ruhama. “Nobody, all my life, I can’t even trust my mom. The only trust I was trying to build up was [name], I think, in Ruhama, because I feel comfortable… kind of… talking to her.”

Maria, a victim of trafficking, first trusted someone in Ireland when she met someone from Ruhama: “When I spoke to that woman, she’s not there anymore, at Ruhama… When I see her I dunno, I feel different… She even came with me the first time when I went to Burgh Quay to sign up. I wouldn’t go otherwise unless she was with me.”

The Immigrant Council recommends that Tusla appoints an independent guardian to separated children as soon as they are identified as separated children. It recommends that Tusla maintains such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction and ensures that the guardian is accessible, has relevant competencies and is free of potential conflicts of interest.

10.7 Education

Education is a very important vehicle for integration for migrant children, and children are at the forefront of integration. Multi-cultural schools provide the platform for interaction between individuals from diverse backgrounds and it could be a natural environment for integration if that diversity is embraced and celebrated.

Irish schools are established by patron bodies which define the ethos of the school. The vast majority (96%) of primary schools in Ireland are owned and under the patronage of religious denominations and approximately 90% of these schools are owned and under the patronage of the Catholic Church. Under the Education Act 1998, schools are allowed to draw up their own admissions policies. Therefore, Irish

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Equality legislation allows for educational institutions, predominantly those affiliated with a particular faith to refuse entry to those students who do not belong to the faith ethos of the institution. Also, in areas of high demand, schools tend to give children of past-pupils priority. This legislation inevitably disadvantages children of migrant families who may have only recently moved into an area, or who are a member of different religious community, or those who have no religion at all.

In Ireland, there is a clustering of migrant children in a handful of schools. Information collected during the Department of Education’s annual census for the school year 2013-2014 shows that 23 per cent of Irish schools educated almost 80 per cent of children of immigrant origin. Residential patterns alone do not explain this: sometimes schools next to each other have very different numbers of migrant students. It appears that school enrolment policies contribute to this negative development.

Most of the young people interviewed started school almost immediately after their arrival or after the school holidays.

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Emma described how she was kept in domestic servitude and not permitted to attend school.

Vincent and Sophie were unable to attend school in Ireland because they arrived as 17-year-old children. The many schools they tried said they were unable to offer them a school place due to their age and due to Vincent’s level of English. Vincent was particularly disappointed that, after all his years of studying at primary and secondary school in Syria, he was unable to obtain a school completion certificate (Leaving Certificate) in recognition of his learning and achievements. “I was really good studying, you know... I was really like disappointed... I was studying for 11 years and I couldn’t get any certificate.”

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10.7.1 Positive or negative experiences of school

Several of the young people recalled school in Ireland as being a positive experience:

“Yeah, school was good.” (George)

“I really enjoyed the school. The school were really nice to me. They were really caring. I still appreciate what they did... I really enjoyed it.” (Harmony)

Others found it difficult to settle into their new schools because of bullying:

“It was new and it was hard for me to make friends. I was crying and I would say to my mom ‘maybe I should change schools, move to a different high school’... because there was some people who were mean to me. Of course, when you are new to the school and, you know, but, yeah, then when my mom found a new high school I didn’t want to leave because it was okay, we were getting along with each other.” (Amina)

Kemi found school very difficult when she first arrived in Ireland: “It’s very hard for me... I have difficulty like in spellings, so it’s very hard for me and I was not able to talk because they won’t understand, like my tongue is different. So I don’t talk in class because I just feel they’re going to laugh at me.”
10.7.2 Adapting to the Irish education system

Some of the young people started school in Ireland a year or two behind students of the same age to give them a chance to improve their English and adapt to the education system.

Farah stated: “Based on my age and on the level I had studied in Iran, I should’ve gone to... secondary school. They told me ‘Secondary school is too difficult if you can’t speak the language. We recommend that you go back a year and stay in primary school.’”

Amina felt that this was a good idea to allow her to adapt and make friends more easily: “I think it was, yeah, because it kinda gave me a chance to adapt as well and to start everything new from first year. Maybe if I had gone into second year I might not have been able to adapt. You know, first year you get to know people, so you make friends. If you start in second year, people already kinda have their own groups.”

Paul’s care placements were changed often, so he often had to move from one school to another. This meant he had to repeat the same academic grade several times: “I did sixth class like two or three times because I moved. I didn’t have a foundation at that stage because my social worker moved me to a place to stay for like two months. After that I moved to another place and got education in sixth class, then like three, four, five months moved again, finished my sixth class period somewhere else. So then in first year the same thing happened... A lot of bouncing around yeah, all over Ireland.”

Paul attended 13 or 14 different schools all over Ireland due to frequently changing care placements while he was in the care of the State from the age of 10. He didn’t receive any additional supports in school to help him catch up with the work-load, despite the fact that he moved schools so frequently. On some occasions, he had covered the material in a previous school so he “messed around a lot” as he already knew the material that they were covering.
10.7.3 Immigration status and difficulties accessing education

Many of the young people had difficulties in accessing third-level education due to their immigration status.

Hope had issues accessing education before she was recognised as a refugee on the basis of being a victim of trafficking and issued with leave to remain on Stamp 4 conditions. If she hadn’t been issued with the Stamp 4, she wouldn’t have been able to gain access to the course of her choice. She had previously been refused a place on a FETAC course due to her lack of a Stamp 4 permission: “I think if I don't have my Stamp 4 I don't think I would have gone back to, after this course it took, very difficult for me to take another course. But the first course interview I went to, they denied me because of the [lack of] Stamp 4.”

Further education

Once Boris had his immigration status resolved, he was able to avail of further education and completed a post-Leaving Certificate (PLC) course. The main reason he chose to do the PLC course was to improve his written English. “The main purpose for me was... to write good, to learn how. Because I was okay with speaking, but for me it was a little bit problem with writing and spelling.” After the PLC course, he went on to complete another course of further education.

10.7.4 Future plans for education

Several of the young people would like to further their education.
Many of the young care leavers who could not progress to third-level due to their immigration status would also like to return to education once they have naturalised as Irish citizens and can access student grants.

### 10.8 Access to youth and community services

Only one of the young people attended a community youth club or youth service.

Alicia, who withdrew from school before completing her Junior Certificate because she had a baby, would like to return to education and resume her education: “I was planning to do it this year because now he [her child]’s big. I was telling this to my mom, you know ‘I will be doing this’. He will start school in August too so I will have time... I want to do again everything from when I left off the course and start from there. I think it will be better.”

Aoife described her experiences with the youth club as “really positive”.

Paul engaged in youth-specific services when he attended a YouthReach centre for approximately half an academic year. (He was moved from one care placement to another and, therefore, from one school to another in the middle of the academic year so attended YouthReach until the next academic year commenced). He described this as a good experience as he got to meet new people and it helped him to become more comfortable in talking to different people:

“It was good, basically mostly about... just meet some new people that you don’t really know from different parts of Dublin, like – not the friendliest, the people you’d normally see on the street and walk the other way. Just meeting them and actually getting to know them and realising they’re actually normal human beings... Yeah it helped me because before that I was, I was always paranoid if you get me. I was a paranoid kid growing up. I was always told to watch over my shoulder.”
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Most of the other young people had no engagement with any youth activities or extracurricular activities. However, some spoke of several very positive services or activities that they had engaged with as migrant children in Ireland.

Hope received support from a teen parent support service, while John spoke about a youth group within the residential care facility where he lives and participating in activities such as mountain biking.

When asked if he had gone to any youth clubs or youth services, Benjamin said that he hadn’t. However, he had taken part in extracurricular activities such as hurling with the Gaelic Athletics Association (GAA) for a time and Tae Kwon Do when he got older:

“I didn’t do much with, like I did a few every now and then, not youth clubs but like football clubs and stuff like that. Hurling and Gaelic as well, but I didn’t participate too much in it because I just didn’t know much about it you know like, so, it wasn’t for me... later on in the year, I started doing Tae Kwon Do and that was more my kind of sport... And the Tae Kwon Do club was great. Everybody was welcoming in there and I had no problems in Tae Kwon Do... it was actually due to being bullied in school when I, like I was in secondary school when I got into a few fights after school that I figured I might as well do self-defence.”

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10.9 Experiences of equality

Discrimination is commonly understood as different, less favourable treatment on the basis of group membership.\textsuperscript{449} It is important to be conscious of the limits of the subjective nature of the experience of discrimination. Those who experience unequal treatment may under-report incidences of discrimination for a variety of reasons, for example, that they do not believe the treatment is unfair or that they do not believe the treatment, while unfair, relates to their group membership. The experience may be subtle or indirect, and these forms may not be picked up by migrant children especially if they have a limited English and/or Irish culture competency. Lastly, the key point relating to interpretation of instances of discrimination is that two people may perceive the same behaviour differently: one may report it as discrimination, the other not.

The issue of subjective interpretation of instances of discrimination is linked to an individual’s level of education\textsuperscript{450} and language and cultural competency\textsuperscript{451}. Previous research shows that the highly educated tend to report discrimination more as they tend to be well informed about equality legislation and sensitive to unequal treatment. Language and cultural competency gives people the tools to recognise and name instances of discrimination, and gives them the confidence to speak about it.

Although the experience for most migrants in Ireland has been positive, some 24 per cent of non-Irish nationals feel they have been discriminated against, just over twice the rate for Irish nationals.\textsuperscript{452} Therefore it is crucial to recognise the importance of English language support and integration for migrant children to realise their protection against unequal treatment.


\textsuperscript{450} On speaking Terms, Introductory and Language Programmes for migrant in Ireland, Immigrant Council of Ireland, 2007.

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The majority of the young people interviewed for this research reported that they felt they were treated equally to other students in schools or in wider Irish society:

“No, it was good like I was involved with everything. I always got myself involved.” (John)

“I think I was yeah. Like, I can’t think of any kind of experiences in school where I wasn’t.” When asked if she could think of any times in society generally when she wasn’t treated equally, she replied: “I actually can’t think of any, maybe it’s just me?” (Amina)

“Yeah, the teacher was very kind to me and explained to me whenever I did not understand something, they always explain very well. Yeah, it was good.” (Alicia)

“Yeah, they treated me good and of course I was brought back [she was brought back to Ireland after having been incorrectly returned to Italy] so they actually treat me good.” (Hope)

When asked if she felt her young son is treated differently to Irish children, Hope responded: “No, he’s treated equal.”

Harmony didn’t feel that she was treated differently in school, except by one teacher. Other than that, she felt she was treated equally: “It was only just one teacher... but the rest... I feel I was equal. I feel like that’s why, I really feel something special when I was there.”

Farah did not feel she was treated differently to other children but that the Irish children in her school thought that non-native English speaking children were being treated differently and more favourably by being given additional English classes:
Various reports have documented disturbing levels of racism in Irish society\textsuperscript{453}. Such abuse is often targeted at the most vulnerable members of society. Immigrants and ethnic minorities are frequently at the receiving end of these abusive practices. Participants in previous research carried out by the Immigrant Council on young migrant men\textsuperscript{454} and Muslim communities\textsuperscript{455} recalled their experiences of being

\textsuperscript{453} Taking Racism Seriously: Migrants’ Experiences of Violence, Harassment and Anti-social Behaviour in the Dublin Area, Immigrant Council of Ireland, 2011
\hspace{1em} http://immigrantcouncil.ie/files/publications/0bbf7-191680_immigrant_council_report_final_with_cover.pdf

\textsuperscript{454} Reports of Racism in Ireland, Quarterly reports, ENAR Ireland http://enarireland.org/report-quarterly/

\textsuperscript{455} Islamophobia in Dublin: Experiences and how to Respond, Immigrant Council of Ireland, 2015
\hspace{1em} Voices of Young Migrant Men, Immigrant Council of Ireland, 2015
\hspace{1em} http://immigrantcouncil.ie/files/publications/6de97-mimen-voices-of-young-migrant-men-report.pdf
excluded and indeed abused through racist and discriminatory practices by teachers, classmates, neighbours and passers-by. They also reported instances of systemic discrimination in terms of policies and practices of public service providers e.g. schools, police forces.

The Immigrant Council offers a Support and Referral Service for victims and witnesses of racism. The service is in operation since 2010 and since that time it has recorded a yearly increase in the numbers of reported instances of racism and discrimination. The statistics compiled from that service indicate that around 20% of victims and 15% of perpetrators are below the age of 18. Child victims receive harassment and abuse from other children and adults alike.

The majority of the young people interviewed as part of this research project reported that they were treated equally and hadn’t experienced much, if any, racism.

For example, George stated that he never had to go through any racism or conflict: “Yeah, because like, you know the way you hear a lot about like, racism, and I never had to go through that like. Going through school I was never bullied or had any kind of conflict.”

However, some did report incidents of racism or discrimination. Benjamin didn’t feel he was treated differently when he started school in Ireland at the age of 4, but he felt as though he was treated differently and experienced some racism as he got older:

“And that’s when we went to [a new school ], and that’s when I noticed that it was, I think I got older, closer towards the teens, that’s when I started noticing that it got, like, worse and worse... Just, they were just, there was a lot more discrimination, and I just started noticing which people were nice and which people were not nice. I think, before that, it didn't really matter - it was just kids. But I think as they got older, the more they learned, they went into one category or the other.”
When asked what kind of discrimination he experienced as a child, Benjamin said: “Just from the way they speak to me or not speak to me, or the way they would speak to others or the way they would treat others, and they’d be very disrespectful as well. But I knew to avoid those kind of people and stick to just the ones that were nice.”

He added that discrimination was probably worse for his older brother as he would have gone to school with children who would have been less accustomed to immigration and having migrants in their class: “Maybe he [his older brother] would’ve had it worst because he was the oldest and he would’ve come into a generation that would’ve gone longer without seeing different people, so I think it would’ve been probably worse for him.”

Alicia feels, now she is a little bit older, that she is discriminated against by landlords when she is looking for accommodation:

“I have this, I don’t know how to describe this, like when you go to see a house or apartment, I feel like they give only to the Irish people. Like, oh, I don’t know like, from the EU country, but they watch, I think they watch if you are like, say, Asian, they give priority to the Irish. Maybe I’m wrong but I just, because I went to look for a few houses and I just did not get a chance to get everything the houses I went to see.”

Valentine had frequently experienced racist remarks being made towards her: “You get it every day, calling you names like black and whatever but... Then it was hurtful but now, it’s just... I don’t mind really.” When asked if she thought racism was a big problem, she replied: “Not now.” She agreed that people are now more accepting of different cultures.
Aoife experienced some discrimination but it was mainly because some children didn’t know any better, for example they didn’t know that someone could be white skinned but still be from Africa: “It was really mixed communicating with some Irish kids because a lot of them, you know what you’d see on TV, thought that Africa was just like starving children... and a lot of Irish kids were like “Oh, you’re from Africa! Why aren’t you black?” and all the racism...” She added: “It was really a matter of ignoring those kids because they just didn’t know any better.” She also said that she didn’t find it difficult to deal with as she found it funny: “I thought it was hilarious. It was exactly like [the film] Mean Girls:” She thought she may have experienced more difficulties if she had been of a different ethnicity: “If I’d been a different colour, it probably would’ve been rougher:”

Paul attended 13 or 14 schools from when he was taken into the care of the State at the age of 10 as he had to move care placements frequently, which also meant moving schools. Out of all those schools, he only felt he was treated unequally in one school. In that school, one of the teachers made racist remarks towards him, but that he didn’t blame her as he had acted disrespectfully towards her:

“I don’t blame her. I was a d***h**d in school... I was just thinking I like education, I like learning something, but I didn’t think there’s much point to actually, because I was a kid. I look at the teacher, I’d just think she was a robot. I didn’t really think... she had feelings, she had any of that, it wasn't, it took me awhile to learn that.”

Paul said his bad behaviour was partly because he expected to be moving schools within a short time anyway so that he “didn’t really care.” The fact that he was not an Irish citizen also made him feel like he was different and not equal to his friends.

Paul: They’d just be joking like you know, because there was a big group of us of every nationality possible – we were like the European Union in a sense. This group of lads, a few from the Philippines, a few from China, a few from America, one from Canada, a few from Ireland as well. Interviewer: But you felt it was something bad to be foreign? Paul: Yeah because they were from different nationalities but their parents were already in Ireland for a long period of time so they were born in Ireland; they were just Irish citizens.
While participants in this study did not report significant levels of racism or discrimination, it is worth noting that people can develop coping mechanisms due to emotional distress caused by abuse and harassment. It has been reported that migrants adopt various narratives in order to preserve self-esteem, through interpretation of their experience in positive ways despite instances of racism and discrimination.

Social workers and other child welfare practitioners who attended the Immigrant Council’s training and outreach sessions were aware of incidents of racism towards migrant children. Social workers at the Limerick session heard about racist comments that were sometimes silly but could amount to bullying. One Limerick social worker remarked that racism comes not just from the children’s peers but also from teachers who say things with racist connotations, although it might not be deliberate. It was stated that this may be due to the lack of cultural sensitivity training for teachers. It was agreed by social workers that these would generally be isolated incidents and that the migrant children with whom they worked were mostly happy in school.

Practitioners at the Immigrant Council’s Cork session stated that racism was a worry for some young people. They said that children who came to Ireland at a young age usually have better language skills and are more culturally immersed so they are able to adapt quickly to a change of school/environment etc. They felt that they would have fewer concerns around racism.
10.10 Culture and identity

A project worker at the Immigrant Council’s Dublin session described identity as being a “massive issue” for young migrants in care as they struggle to find a sense of their own identity and who they are. A social worker added that further issues can arise due to a lack of identity documents to help them establish who they are and where they came from. One residential social care worker based in Monaghan said that the private residential facility in which she worked hired people of the same ethnicity as the young people in their care to provide identity work. They can draw on their first-hand cultural experience and knowledge to benefit the young people.

Practitioners at the Cork outreach session had experienced young people reporting that they were happier and more confident in third-level education as they had a stronger sense of identity. It was easier for them to feel that they fitted in, as universities were more multicultural than many primary and secondary schools, particularly in rural areas.

10.11 Integration

No specific questions were posed during the interviews regarding the young people’s integration into Irish society, but some indicators of their integration arose naturally in their responses to questions.

Aoife only felt different in Ireland with some children when they brought it up, but she had always considered herself to be Irish. “I never considered myself South African. I’ve always considered myself Irish; like I have the accent, I have the pale skin.”
Amina recalled that, although it was difficult at first, she did manage to settle in and make friends here in Ireland, whom she still keeps in touch with: “I think at first it was hard, but yeah, I made friends. I still talk to them.”

She also experienced several culture shocks when she first arrived in Ireland but, when asked more about them, she had to think about it to recall what they were. She stated that everything was just normal to her now, indicating that she had integrated into Irish culture and norms:

   Interviewer: What was the most shocking?
   Amina: It’s kinda hard because now I find everything normal.

Farah illustrated the importance of language for integration. She only made friends with other young children in her direct provision camp when she first came to Ireland. She felt more confident talking to them as she felt they would be more understanding of the fact that her English was not perfect.

“I don’t particularly remember making friends with people within the class. Like I said, if I made friends, it was either with other people from the camp or other non-Irish students. Because I always felt more confident talking to them because I kinda felt like, you know, they will be more understanding towards the fact that I don’t speak perfect English because they have the same experience.”

She made friends with other non-Irish students when she moved out of the direct provision camp and went to secondary school. Farah said it was only in transition year that she began to make Irish friends:
“I convinced my mom to let me do fourth year because I told her this will help me get better Leaving Cert results because it’s another year that I can improve my language. And it was only in that year because we were in a really small group – there were 14 of us in fourth year – we were kind of forced to get to know each other, and that’s when I really started making friends with my Irish friends.”

Similarly to Farah, Stefan mainly befriended other migrants that spoke his native language: “Most of my friends were Russian-speaking friends”. He found it difficult to make friends with Irish people due to the cultural differences: “In terms of making friends, it was kind of difficult because of like cultural values.” These cultural differences arose due to him not liking sports much and because he and his classmates did not understand each other’s humour. “Well I’m not much into sports, any sports, so like in terms of playing, I was... and so that was a difference... I guess it was not very convenient for my class mates to explain Irish jokes to me and it was not much fun to explain them Russian or Russian jokes to them.”

Farah was appointed deputy head girl in her final year in school. It was the first time in the school that a non-Irish student had become deputy head girl. She and others then tried to encourage a lot of younger people from migrant backgrounds to become prefects in order to empower them to have their say and to play a role in the school community:

“And so I feel like, in my few years at school, we really tried to empower the international students or the migrant students to take up more positions because it used to just be Irish students being prefects or being head girl or doing things, and the immigrant students were always kinda quiet in the corner. And so I really kinda tried, during my time in school, to make them feel like they also can have a say and I got really involved with the student council in my school.”
Farah was made to feel included by the teachers, as they gave her opportunities to speak about her culture to the other students: “I never felt being treated differently. If anything, I felt the teachers were very kinda open and, for example in religion class, my religion teacher would get me to talk about Islam or would get me to bring in a Qu’ran or, you know, talk about what it’s like to live in an Islamic country. In geography, my geography teacher would get me to talk about the weather in Iran, so actually they were very inclusive.”

She also spoke about having an African English resource teacher in the school who started organising annual international days to showcase different cultures. The event started small and expanded to represent 20 countries with stands, food and dance, and coverage by the local media. Farah recalled how this helped her to open up to others about her culture. It empowered her and facilitated integration and inclusivity:

“I felt like during that day, even the bullies in the class couldn’t bully you anymore because they were still interested in your culture. So it was like, it created an opportunity for you to talk about where you were from, even with the difficult kids. I really found that very powerful. On that day, it didn’t matter who didn’t like me in class, they would still come up to me and they would still want to try the food from my country and they would still ask me tons of questions… it really enhanced my experience in terms of feeling like I fit in and that we were all friends.”
10.12 Recommendations

Recommendations for the Department of Education

Recommendation: Put specific supports in place for mother-tongue education such as mother-tongue and bilingual textbooks and other appropriate language supports.

Recommendation: Adequate English language supports should be provided to all children and young people who do not speak English as their first language.

Recommendation for Tusla

Recommendation: Appoint an independent guardian to separated children as soon as they are identified as separated children. Maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction. Ensure that the guardian is accessible, has relevant competencies and is free of potential conflicts of interest.
CHAPTER 11: CONCLUSIONS AND RECOMMENDATIONS FOR REFORM

11.1 Summary of key findings

A person’s immigration status can define and determine their life path. It is central to their access to employment, education and social services. Yet, in Ireland, there has been little policy analysis or dissemination of information to ensure that children have a recognised, appropriate immigration status, and that they can apply for naturalisation when they have fulfilled specific criteria.

The wide range of situations in which children and young people migrate to Ireland is not addressed. The Irish immigration system does not allow a child under 16 to hold immigration status on an individual basis - it assumes the immigration permission of such a child to be that of their parent. Therefore, the immigration status of a child lacks clarity, consistency and transparency, which can result in practical difficulties for children. Children in the care of the State, who may not have parents on whose status they can rely, are not formally catered for under Irish immigration law or administrative arrangements.

Children have been silent and invisible in much of the discussions, policy formation and academic literature around migration. The child-specific research that has been carried out has tended to focus on separated or unaccompanied children seeking asylum. The needs and rights of the broader migrant child population have largely been ignored. The absence of children’s perspectives or child-rights-based analysis from the discussion has resulted in migration law and policies that are not child-sensitive and do not respond adequately to the needs of migrant children.

Ireland’s migration-related legislation, policy and practice lack a child-sensitive lens, while the laws and policies relating to children in care, though equally applicable to migrant children, do not take into account the specific needs of migrant children and children from migrant backgrounds. The need for consolidation of legislation relating to immigration law, and for new legislation to be child-proofed, is apparent from an overview of the multiple pieces of legislation relevant to the lives of migrant children.
11.2 Recommendations

11.2.1 Recommendations for key stakeholders

**Recommendations for the Department of Justice**

**Recommendations:**
Adopt a comprehensive, child-sensitive, human rights compliant, transparent legal framework for immigration that includes:

- The “best interests of the child” principle as a guiding principle in all immigration matters including applications for visas and residence permissions;
- Statutory, rights-based procedures for family reunification in respect of Irish nationals and non-EEA nationals, with expanded categories of migrants eligible for immediate family reunification;
- Clear and accessible formal procedures for conferring immigration status on children and their families, including those who are in irregular migration situations;
- An independent appeals mechanism to review negative decisions in applications;
- Appropriate, tailored immigration permissions for children who are required to register;
- A statelessness procedure – access to a formal statelessness determination procedure for people who cannot establish citizenship of any nation.

**Recommendation:**
In respect of children in the care of the State, the legislation should:
- Grant children who are subject to Care Orders permission to reside that enables access to employment (from when they are of legal age to work) and access to social welfare, housing and financial support for education on the same basis as Irish citizens.
CHAPTER 11: CONCLUSIONS AND RECOMMENDATIONS FOR REFORM

**Recommendation:** Provide accurate, accessible information on the immigration status of children under 16 years of age, the duty to register when a child turns 16, and on the rights of young people in Ireland.

**Recommendation:** Provide publicly available guidelines to the GNIB and the INIS on registering children and young people in different scenarios with appropriate permissions.

**Recommendation:** Provide guidelines on the registration of individuals without a passport, in situations where they are delayed or prevented from obtaining or renewing a national passport, to avoid situations of individuals becoming undocumented in such circumstances.

**Recommendation:** Amend the Nationality and Citizenship Act to clarify that children can make applications for naturalisation independently on meeting specified criteria and on the completion of prescribed lengths of residence. A fee waiver should be granted in cases of hardship.

**Recommendation:** Confirm that social workers have the authority to sign applications for the naturalisation of children in the care of the State including, if necessary, amending the relevant provisions of the Irish Nationality and Citizenship Act 1956.
CHAPTER 11: CONCLUSIONS AND RECOMMENDATIONS FOR REFORM

**Recommendation:** Confirm that time spent in the care of the State is counted as “reckonable residence” for citizenship regardless of a parent’s residence.

**Recommendation:** Provide for the acceptance of sworn affidavits of birth in respect of children who cannot acquire identity documentation from the authorities in their countries of origin despite making reasonable efforts to do so, where it is not reasonable to expect that they return to their country of origin to obtain documentation and where their identity is accepted by other State authorities.

**Recommendation to the INIS:** Provide a letter to all parents or guardians of non-EEA national children stating that children under the age of 16 are not currently required to hold independent residency permission and that they are legally resident in the State. This position should also be set out on the INIS website.

**Recommendation:** Amend policy to ensure that asylum-seeking care leavers are granted equal access to full aftercare supports, including assistance with accommodation, and are not moved from their care placement to direct provision.

**Recommendation:** The GNIB should put in place a registration fee waiver system for young people aged 18+ who are in aftercare services and for other young people aged 18+ in exceptional circumstances.
**Recommendations regarding asylum-seeking children**

Amend the International Protection Act 2015 to:

- Include the definition of separated and unaccompanied children as outlined by the UNHCR, UNCRC and SCEP;
- Provide for a social age assessment procedure that includes psychosocial development and available documentation, and is undertaken by an independent interdisciplinary body consisting of people who are not involved with the child’s care or protection needs.

Research already exists on the issues facing asylum-seeking children in Ireland. These recommendations are not intended as duplication but rather to focus on issues, that haven’t already been raised in other research and, which have been discussed in this report.

**Recommendations regarding victims of trafficking**

In relation to victims of trafficking, the legal framework should:

- Place the formal identification of victims of trafficking on a statutory footing, with specific provisions and a protective process for the identification of child victims of trafficking;
- Provide that asylum-seeking victims of trafficking can be formally identified and granted relevant permissions to reside while awaiting a determination of their application for international protection;
- Provide for the rights of victims of trafficking, as set out in the directive;
- Clarify that ‘historic’ victims of trafficking can be formally identified as victims of trafficking, provided with assistance and issued with appropriate residence permissions.
Multi-disciplinary Recommendations

Recommendation: Adopt a joint protocol between Tusla, An Garda Síochána and the Department of Justice in relation to the accommodation, care and protection of victims, or suspected victims, of child trafficking.

Recommendations for Tusla

**Recommendation:** Include nationality and immigration status as items / part of assessment of need in statutory care plans and aftercare plans to identify and record a child’s nationality and immigration status and ensure that any necessary steps are taken to gather relevant identity documentation, secure a child’s immigration status and, where appropriate, apply for Irish citizenship at the earliest possible opportunity.

**Recommendation:** Develop a standard framework of action to establish a child’s nationality and immigration permission, to include:

1. Questions to ask of children and their families about immigration status
2. Steps to take to establish and resolve status
3. Avenue for legal advice from competent person
4. Referral process for legal representation.

**Recommendation:** Introduce policy guidelines specifying the person responsible for informing and supporting a child in the care of the State in relation to securing their immigration status, setting out how that information is provided including timing, content and the use of a child-friendly manner.

**Recommendation:** Provide continuous professional development training to all social workers and aftercare workers on immigration matters and cultural competency as well as on indicators of trafficking, the importance of early legal
intervention for victims of trafficking, and the steps to take to support victims of trafficking. This training could be carried out by specialist organisations, such as the Immigrant Council of Ireland.

**Recommendation:** Ensure timely access to specialised independent legal advice and representation for children in care regarding their immigration matters, in line with their rights under the United Nations Convention on the Rights of the Child. Legal advice should be provided in a child-centred manner to ensure optimal outcomes for children in care. This could be provided in conjunction with organisations such as the Immigrant Council of Ireland.

**Recommendation:** Provide regularly updated immigration-related legal information to social workers and aftercare workers through Tusla’s internal information portal.

**Recommendation:** Provide access to legal advice to social workers and aftercare workers through creating a formal alliance or service agreement with a specialised organisation or designated contact point.

**Recommendation:** Record data on children’s nationality and immigration status and regularly publish disaggregated data reports to enable effective service planning.

**Recommendation:** Provide for the funding of fees to acquire birth certificates and national passports, where required, in both care packages and aftercare packages, and for GNIB registration fees in aftercare packages.

**Recommendation:** Standardise practices so that all separated children receive follow-up support following family reunification.

**Recommendation:** Appoint an independent guardian to separated and unaccompanied children in the care of the State.
**Recommendation:** Ensure that asylum-seeking young people who were in care as children receive equity of care in the provision of aftercare services.

**Recommendation to chairs of case review teams:** Monitor the implementation of inclusion of immigration status in care plans as part of the review process and disseminate relevant information to social work teams.

**Recommendation:** Disseminate child-friendly, accessible information booklets and online materials on national identity and immigration matters to all migrant children. Emphasise, in particular, the distribution of materials to children and young people in voluntary care.

**Recommendations for the Department of Education**

**Recommendation:** Amend the Student Support Act 2011 and the Student Support Regulations 2016 to provide for the eligibility of migrant care leavers with discretionary leave to remain for ‘home’ tuition fees and a full student grant under the same conditions as Irish students (i.e. provided that they have been continuously resident in the State for three out of the previous five years).

**Recommendation:** Amend the Student Support Act 2011 and the Student Support Regulations 2016 to provide that young people with leave to remain on the basis of their Irish-citizen siblings should be eligible for a SUSI grant (provided that they have been continuously resident in the State for three out of the previous five years).
Recommendation: Amend the Free Fees Initiative to broaden the categories of eligible immigration permissions. Provide specifically for care-leavers and children granted Stamp 4 “in exceptional circumstances” to have access to the Free Fees Initiative.

Recommendation: Put specific supports in place for mother-tongue education, such as mother-tongue and bilingual textbooks, and other appropriate language supports.

Recommendations for third-level institutions

Recommendation: Incorporate information on working with migrants, migrant children and the immigration system into social work education courses at third level so that social workers are aware of the issues and how to resolve them before they enter practice.

Recommendation: Provide scholarships and fee waivers to migrant children and young people who are ineligible for SUSI and free fees to facilitate equal access to education and thereby fostering inclusion.
CHAPTER 11: CONCLUSIONS AND RECOMMENDATIONS FOR REFORM

Recommendation for the Irish Foster Care Association

**Recommendation:** Distribute information on immigration status and trafficking to foster parents to raise national awareness of immigration and trafficking matters.

Recommendation for the Department of Housing, Planning, Community and Local Government

**Recommendation:** Amend and update the housing circular to ensure that young care leavers with discretionary leave to remain on Stamp 4 conditions and other young migrants with leave to remain on Stamp 4 conditions are eligible to be placed on the housing list.

Recommendation for Department of Children and Youth Affairs

Allocate adequate funding to Tusla to enable the appointment of social workers to all children in a timely manner. Where a child unavoidably does not have an allocated social worker or aftercare worker for a period, they should be informed about, and linked in with, alternative supports and services, including legal advice.
APPENDIX 1: INTERVIEW QUESTIONS

1. Why did you/your family decide to move? Why Ireland?
2. What age were you when you arrived in Ireland?
3. What country did you live in before you came to Ireland?
4. What did you expect to find? How did the reality differ from your expectations?
5. How did you feel about the move? Did you have any input into the decision to move?
6. What languages did you speak when you arrived? What was your experience of communicating with others in Ireland? Did you get a chance to study your mother tongue at school?
7. Could you describe your journey to Ireland? Did you stop in any countries on the way? Who did you travel with? Did you feel safe?
8. What are your earliest memories in Ireland?
9. Who did you live with? Where did you live?
10. What happened when you started school? Were you able to participate?
11. Were you treated differently to other children?
12. Did you have any access to youth services?
13. Who did you trust growing up in Ireland?
APPENDIX 1: INTERVIEW QUESTIONS

Immigration status

14. Did you have any understanding about your immigration status (i.e. whether you had permission to live in Ireland)?

15. Did your immigration permission impact your daily life? If so, how? Did you have any problems accessing health, education, social welfare payments or accommodation?

16. Were questions ever raised about your age? If so, how were they resolved?

17. Before you reached 16 years, did anyone ask you for proof of your permission to be in Ireland? In what context?

18. When you turned 16, were you registered? What stamp were you registered with? If relevant, what stamp do your parents have?

19. Did anyone advise you about your immigration status? Did anyone offer to help you find out information about it? If so, who?

20. Do you feel that you had an opportunity or sufficient opportunity to be heard in relation to your immigration status?

21. Did you have an opportunity to speak to a lawyer about your immigration status? Why?/Why not? Did you speak to her/him privately? Did he/she take action to clarify your immigration status?

22. What is your current immigration status? Since when?

23. What do you think would have helped you in relation to your immigration status?

24. What do you think could be done to help young migrants better understand their rights and the immigration system in Ireland?
APPENDIX 1: INTERVIEW QUESTIONS

Those with experience of living in care

25. Do you know if you were in voluntary care or involuntary care?
26. (If there was a hearing) did you have your voice heard in court (the proceedings)?
27. Did you have access to an advocate (someone to speak on your behalf like a guardian)? Did you have access to a social worker and/or an aftercare worker?
28. While in care, who took care of you?
29. Did you ever get an opportunity to see or speak to your parents or family members?
30. Do you know if you had a care plan or aftercare plan? If so, did/do you know what was in it or did you get a chance to read it?
31. Did you have a transition period when you turned 18? What options were open to you?
The following is an explanation of the main stamps as set out on the Irish Naturalisation and Immigration Service (INIS) website:456:

### MAIN IMMmISSION STAMPS

#### Note:
This outlines the main immigration stamps used by the immigration authorities. The immigration stamps, in conjunction with the Certificate of Registration issued by Garda National Immigration Bureau (GNIB), are evidence of permission to be in the State. They are not an indicator of, nor an interpretation of, legal entitlements other than those explicitly set out in the stamps. The immigration authorities have the right to assign or refuse immigration stamps to the various categories of persons as appropriate. Please note that the stamps are kept under ongoing review and may be updated from time to time.

#### Stamp 0
**(Temporary and limited permission)**
This person is permitted to remain in Ireland on condition that the holder does not receive State benefits and has private medical insurance. The holder must be fully supported by a sponsor in the State and/or be of independent means. The holder is not entitled to work or engage in a trade, business or profession unless specified in an INIS letter.

- A service provider sent to Ireland by an overseas company to carry out a particular task for a limited time
- An extended visit in exceptional humanitarian circumstances
- Visiting academics
- A non-EEA (European Economic Area) retired person of independent means

For further information see this guideline note Stamp 0

#### Stamp 1
This person is permitted to remain in Ireland on condition that the holder does not enter employment unless the employer has obtained a permit, does not engage in any business or profession without the permission of the Minister for Justice and Equality and does not remain later than a specified date.

- Non-EEA national issued with a work permit
- Non-EEA national issued a Green Card Permit
- Non-EEA national who has been granted permission to operate a business in the State

Working Holiday Authorisation holder

#### Stamp 1A
This person is permitted to remain in Ireland for full-time training with a named body until a specified date. Other employment is not allowed.

- Non-EEA national studying accountancy

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### APPENDIX 2: EXPLANATION OF MAIN STAMPS

<table>
<thead>
<tr>
<th>MAIN IMMIGRATION STAMPS</th>
<th>MAIN CATEGORIES OF PEOPLE PERMITTED TO BE IN THE STATE</th>
</tr>
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<tbody>
<tr>
<td><strong>Stamp 2</strong></td>
<td>• Non-EEA national attending a full-time course of study</td>
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<tr>
<td>This person is permitted to remain in Ireland to pursue a course of studies on condition that the holder does not engage in any business or profession other than casual employment (defined as 20 hours per week during school term and up to 40 hours per week during school holidays) and does not remain later than a specified date. The person has no recourse to public funds unless otherwise provided.</td>
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</tr>
<tr>
<td><strong>Stamp 2A</strong></td>
<td>• Non-EEA national attending course of study not recognised by the Department of Education and Science</td>
</tr>
<tr>
<td>This person is permitted to remain in Ireland to pursue a course of studies on condition that the holder does not enter employment, does not engage in any business or profession, has no recourse to public funds and does not remain later than a specified date.</td>
<td></td>
</tr>
<tr>
<td><strong>Stamp 3</strong></td>
<td>• Non-EEA visitor</td>
</tr>
<tr>
<td>This person is permitted to remain in Ireland on condition that the holder does not enter employment, does not engage in any business or profession, and does not remain later than a specified date.</td>
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<tr>
<td></td>
<td>• Non-EEA minister of religion and member of religious order</td>
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<td></td>
<td>• Non-EEA spouse/dependant of employment permit holder</td>
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<tr>
<td><strong>Stamp 4</strong></td>
<td>• Non-EEA family member of EEA citizen</td>
</tr>
<tr>
<td>This person is permitted to remain in Ireland until a specified date.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Non-EEA spouse of Irish citizen</td>
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<td></td>
<td>• Refugee</td>
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<td></td>
<td>• Non-EEA person granted family reunification under the Refugee Act 1996</td>
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<td></td>
<td>• Programme refugee</td>
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<tr>
<td></td>
<td>• Non-EEA parent of Irish-citizen child where parent was granted permission to remain in the State</td>
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<tr>
<td></td>
<td>• Non-EEA family member of EU citizen where family member qualifies under the European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I 656 of 2006)</td>
</tr>
</tbody>
</table>
## APPENDIX 3: PROFILES OF MIGRANT CARE LEAVERS

<table>
<thead>
<tr>
<th>Case Study</th>
<th>Time spent in Care</th>
<th>Ages when in care</th>
<th>Age when given legal advice</th>
<th>Age status resolved</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case Study 1 (Aoife)</td>
<td>4 years (and 1.5 in aftercare)</td>
<td>14-18 years</td>
<td>19</td>
<td>Age 19 - S4 renewal Foreign Birth Reg still pending docs from Country of Origin</td>
</tr>
<tr>
<td>Case Study 2 (Hope)</td>
<td>3 years</td>
<td>16-18 years</td>
<td>16</td>
<td>Age 19 - refugee status</td>
</tr>
<tr>
<td>Case Study 3 (John)</td>
<td>5 years</td>
<td>13-18 years</td>
<td>17</td>
<td>Age 18 - naturalised citizen</td>
</tr>
<tr>
<td>Case Study 4 (George)</td>
<td>1 year</td>
<td>12-13 years</td>
<td>20</td>
<td>Age 20 - Stamp 4</td>
</tr>
<tr>
<td>Case Study 5 (Salah)</td>
<td>1.5 years</td>
<td>16-18 years</td>
<td>16</td>
<td>Age 19 - subsidiary protection</td>
</tr>
<tr>
<td>Case Study 8 (Boris)</td>
<td>4 months approx.</td>
<td>17-18 years</td>
<td>25</td>
<td>Age 25</td>
</tr>
<tr>
<td>Case Study 9 (Benjamin)</td>
<td>2 years</td>
<td>16-18 years</td>
<td>24</td>
<td>Age 22 - Stamp 4 Age 27 - naturalised citizen</td>
</tr>
<tr>
<td>Case Study 10 (Comfort)</td>
<td>8 months</td>
<td>17 years</td>
<td>30</td>
<td>Age 31 - temporary Stamp 4 as a victim of trafficking</td>
</tr>
<tr>
<td>Case Study 11 (Harmony)</td>
<td>6 months</td>
<td>17 years</td>
<td>17</td>
<td>Age 17</td>
</tr>
<tr>
<td>Case Study 12 (Paul)</td>
<td>8 years (and 2 in after care)</td>
<td>10-18 years</td>
<td>21</td>
<td>Age 21 - undocumented with case work in progress</td>
</tr>
<tr>
<td>Case Study 15 (Kemi)</td>
<td>3 years</td>
<td>15-18 years</td>
<td>Unknown</td>
<td>Age 21 - Stamp 4 Zambrano.</td>
</tr>
<tr>
<td>Case Study 17 (Valentine)</td>
<td>1 year (and 5 years in aftercare - extended until age 23)</td>
<td>17 years</td>
<td>23</td>
<td>Age 18 - Stamp 4 Age 23 – citizenship application made.</td>
</tr>
<tr>
<td>Case Study 20 (Amanda)</td>
<td>1.5 years (but care order was for 5 years)</td>
<td>13-18 years (full care order until 18 but ran away from care)</td>
<td>18</td>
<td>Age 20 - Stamp 4</td>
</tr>
</tbody>
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<tr>
<td>Case Study 21 (David)</td>
<td>2 months approx.</td>
<td>17 years</td>
<td>17</td>
<td>Age 17 – Stamp 4</td>
</tr>
<tr>
<td>Case Study 23 (Faith)</td>
<td>6 years +</td>
<td>10-18 years</td>
<td>17</td>
<td>Age 17 – naturalised Irish citizen</td>
</tr>
<tr>
<td>Case Study 24 (Susan)</td>
<td>7 months +</td>
<td>16 years</td>
<td>17</td>
<td>Age 17 – naturalised as an Irish citizen</td>
</tr>
<tr>
<td>Case Study 25 (Diana)</td>
<td>2 years</td>
<td>16-18 years</td>
<td>17</td>
<td>Age 18 – Stamp 4 leave to remain</td>
</tr>
<tr>
<td>Case Study 26 (Ruth)</td>
<td>2 years</td>
<td>16-18 years</td>
<td>19 years</td>
<td>18 years – incorrect Stamp issued</td>
</tr>
<tr>
<td>18 years – incorrect Stamp issued Case Study 27 (Chris)</td>
<td>Ward of the State</td>
<td></td>
<td>18 years – incorrect Stamp issued 19 years – Stamp 4 Age 34 – work ongoing to acquire identity documents and citizenship</td>
<td></td>
</tr>
<tr>
<td>Case Study 30 (Jérôme)</td>
<td>5 years</td>
<td>13-18 years</td>
<td>18</td>
<td>Age 18 – Stamp 4 Age 24 – work ongoing to acquire identity documents and citizenship</td>
</tr>
</tbody>
</table>