

Article

UASC Hotels: An ECHR Children's Rights Analysis of a Not So 'Temporary' Emergency Measure

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Abstract

Whilst all asylum seekers find themselves in a difficult position while trying to be recognised as refugees, some are in more perilous situations than others. Those asylum seekers that are unaccompanied (UAS) children are manifestly in greater need of care and protection than most adult asylum seekers, given their minority (under 18) and being without the protection of a primary carer. Any child who is in the care of the state should always be placed in age-appropriate and safe accommodation and in the care of staff who are properly trained; UAS children are no different. Typically, these functions are performed by local authorities through their social work departments. However, the UK's previous Conservative government's practice of using hotels to accommodate UAS children in England from 2021–2024 fell short of its human rights obligations towards UAS children. This paper argues that through this and related policies, the government was actively involved in compounding the victimisation of already susceptible children who had fled their country of origin thinking (mistakenly) that their human rights would be respected here.

Keywords: asylum; child; unaccompanied; UK; England; UASC; contingency hotel; ECHR; refugee

1. Introduction

Any child in the care of the state should be placed in age-appropriate and safe accommodation with staff who are properly trained. The unaccompanied asylum seeker (UAS) child requires still further protections and safeguarding. A UAS child is a person under 18 and is applying for asylum in his or her own right and has no relative or guardian in the jurisdiction.¹ The UK's previous Conservative government's practice of using hotels to accommodate UAS children, and the contracting of for-profit companies for this purpose, fell short of its legal obligations.

By means of doctrinal methodology, this paper evaluates the UK government's human rights record concerning their unlawful 'unaccompanied asylum seeker child' (UASC) hotel policy as implemented in England. The time scale involved covers events that led to the introduction of this policy (July 2021) up to the General Election in June 2024 that resulted in a change of government. This article argues that the UK government breached several Articles of the European Convention on Human Rights (ECHR) in pursuance of their UASC hotel policy and, through this policy, further compounded the discrimination against these lone children who fled to this jurisdiction seeking sanctuary. The rationale for conducting this retrospective analysis, now that the policy has ended, is because it is a



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¹ [Home Office \(2016, Part 11, \[352ZD\]\)](#).

rare opportunity to consider the human rights implications over the lifetime of this flawed policy. Independent reports published at the time on UASC hotels made no reference to these ECHR rights. In the landmark domestic judgment on this issue, *R(ECPAT UK) v Kent County Council and the Secretary of State for the Home Department*,² though alluding to the ECHR on occasion,³ the High Court limited itself to the nature of the power that the minister had at the time.⁴ Therefore, in terms of present and future governments learning lessons from the mistakes of their predecessors, a critical evaluation of whether those reception conditions amounted to a breach of these children's ECHR rights is a timely and valid contribution to the discourse.

In terms of scholarship in the area of UAS children in this jurisdiction, there has been little legal or human rights focus outside the general texts such as [Costello et al. \(2021\)](#), [Hathaway \(2021\)](#), [Arnold \(2018\)](#) and [Pobjoy \(2017\)](#), in terms of international refugee law, and [Schabas \(2015\)](#) in terms of the ECHR. In terms of UK texts since 2021 on immigration, [Clayton and Firth \(2021\)](#), [Yeo \(2022\)](#) and [Whelan \(2023\)](#) proved useful. Scholarship prior to 2021 that focused specifically on UAS children's protection and reception conditions in the UK served as useful background and context for the UASC hotel policy that was to come ([Humphris and Sigona 2019](#)).⁵ Some academics have written on this subject but with an exclusive focus on a particular right of asylum/refugee children based on other human rights conventions ([Whalen 2022](#)). Some literature analyses the 'hostile environment' towards asylum seekers generally ([Griffiths and Yeo 2021](#); [Reynolds et al. 2024](#)) or focuses on destitution in adult and family hotels rather than UASC hotels ([Ramachandran 2024](#)). Equally, there are several papers on the legality of specific areas that touch upon UAS children, such as child exploitation and trafficking ([Hynes 2022](#)), or look at UAS children's reception conditions from a non-law perspective such as medical ([Hock et al. 2024](#)), psychological ([Hoare et al. 2020](#); [Huemer and Vostanis 2010](#)) or social worker disciplines ([Larkin and Ross 2024](#)). However, there is a noticeable gap in published scholarship when it comes to the human rights obligations towards UAS children and their reception conditions in England, specifically focusing on the UASC hotel policy (2021–2024).

Other sources relied upon for this article included commentary from international bodies,⁶ independent state reports and national NGO/charity reports (e.g., [Beddoe 2021](#); [Firth and Bochenek 2023](#); [Helen Bamber Foundation et al. 2023](#); [Helen Bamber Foundation and Asylum Aid 2024](#)) and discourse from reputable academic blogs (e.g., [Ioffe 2023](#)) and news media (e.g., [Courea et al. 2025](#)). However, many such reports either limited their focus to a specific issue like trafficking or exploitation ([Ayeib-Karlsson et al. 2024](#)), focus more on narrative/lived experiences rather than ECHR arguments ([Firth and Bochenek 2023](#)), or (given that they were published while the policy was ongoing) could merely serve as 'snapshots in time' of this unfolding situation ([Beddoe 2021](#)). This paper seeks to fill a gap in the existing literature by conducting a retrospective analysis of the entire lifespan of the UASC hotel policy now that it has ended, with particular focus on the European rights of UAS children that were breached in the process.

It is beyond the scope of this paper to interrogate how domestic legislation on this subject interacts with international legal frameworks. This is because, although the domes-

² Joined cases of (i) *R(ECPAT UK) v Kent County Council and the SSHD* (Case No. CO/2136/2023); (ii) *R(Brighton & Hove City Council and the SSHD) v Kent County Council* (Case No. CO/2399/2023); and (iii) *Kent County Council v SSHD* (Case No. CO/2459/2023) [2023] EWHC 1953 (Admin), 27 July 2023.

³ *R(ECPAT UK)*, see note 2 above, [160], [187,188], [194,195].

⁴ For example, 'the Crown, acting through the Home Secretary, must have power to provide food, shelter and support, at least to the extent required to avoid a breach of Articles 2 and 3 ECHR', *R(ECPAT UK)*, see note 2 above, [194].

⁵ Pre-2021 scholarship includes [Grover \(2018\)](#) and [Drywood \(2010\)](#).

⁶ e.g., UN Office of the High Commissioner press releases.

tic law set out below does inform and contextualise the critical analysis, this paper's focus is more on whether the Home Office policy was compatible with the ECHR. Given that it has been established that general attitudes and treatment by local authorities can give rise to a breach of the ECHR,⁷ it is evident that a centrally directed government policy can similarly result in a breach. At times where the European Court of Human Rights (ECtHR) itself makes reference in its case law to other Conventions, such as the Refugee Convention or the UN Convention on the Rights of the Child (UNCRC),⁸ so too will this article take such an integrated approach. One primary reason for this exclusive focus is due to the enforceability of the ECHR in the domestic Courts, since its incorporation by way of the Human Rights Act 1998. In terms of justiciable rights in England, this remains, post-Brexit, as a robust legal mechanism for challenging breaches of human rights in this jurisdiction.

It is also beyond the scope of this paper to focus on the UASC accommodation all over the UK at this time. Rather, the focus will be on critically evaluating the state's approach in England only. The reasons for this are two-fold: first, it is only in England that the UASC hotels policy operated. Secondly, delivery or assessment of accommodation of UAS children falls within the jurisdiction of the devolved authorities and therefore differing legal frameworks apply in the other nations of the UK.⁹ Scotland and Wales have taken measures to make the UNCRC part of their legal landscape. The status of children's rights in Northern Ireland is also stronger than in England, given its ongoing relationship with other human rights frameworks which make specific provision for children's rights.¹⁰ Therefore, as the UK as a whole has not incorporated the text of the UNCRC into domestic law, and as England is the only nation within the UK that does not engage directly with child-focused human rights law, this justifies making England the focus of this paper.

The time scale that is the focus of our investigation (July 2021–June 2024) is justified for two reasons. First, even though the last UASC hotel closed in January 2024, one official inspection report had yet to be released by the then government. Once it was released in February 2024, an accurate picture of the inadequacy of these settings for UAS children was made clearer than ever, and media attention increased in the weeks that followed, after reports arose of some children having been inappropriately moved on to adult asylum hotels (Taylor 2023). Therefore, limiting the scope of this article to January 2024 would be premature in light of reliable information that subsequently came to light in the months that followed. Secondly, the General Election (June 2024) resulted in a change of government. The change of government presents a new chapter (for better or worse) in UK politics and policy. Despite the fact that the new Labour government had inherited these situations, from that point onwards any human rights breaches or concerns surrounding asylum seekers were on the Labour government's 'watch'.

The term 'asylum seeker' is not without its controversy. It does not appear in the Refugee Convention.¹¹ An 'asylum seeker' (a potential refugee whose status has not yet been recognised by a host state) is a term created and promulgated by states. As the sources

⁷ *Opuz v Turkey*, Application no. 33401/02 (ECtHR, 9 June 2009), [192].

⁸ *Nunez v Norway*, Application no. 55597/09 (ECtHR, 28 June 2011) re Article 8; *Kanagaratnam v Belgium*, Application no. 15297/09 (ECtHR, 13 December 2011) and *Mubilanzila Mayeka and Kaniki Mitunga v Belgium*, Application no. 13178/03 (ECtHR, 12 October 2006) re Article 3.

⁹ Social Services and Well-Being (Wales) Act 2014, Part 6; Children (Scotland) Act 1995, s. 25.

¹⁰ The Charter of Fundamental Rights of the European Union, 2012/OJ C 326/02, Article 22; see further The 'Windsor Framework', Joint Declaration No 1/2023 of the Union and the United Kingdom in the Joint Committee established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, 2023/OJ L 102/87; see also the The Belfast (Good Friday Agreement), signed on 10 April 1998, National Archives Catalogue ref: FO 93/171/33.

¹¹ For example, the UN Convention relating to the Status of Refugees, Geneva, 28 July 1951 and the Protocol relating to the Status of Refugees, New York, 31 January 1967, make no distinction between an 'asylum seeker' and a 'refugee'; nor do they refer to refugee status determinations.

(below) will bear out, the term is commonly used both in UK legislation, policy and case law as well as case law of the ECHR. Therefore, use of this term will not be avoided here, and it will be used in the sense of a refugee ‘in good faith’ (Yeo 2022, p. 224), as usage of the term shows no sign of waning in either political, media, or academic discourse.

The adjective ‘vulnerable’ is not an uncontentious one amongst some academics. Some scholars prefer to avoid using the term because it arguably undermines the subject’s agency and resilience, as well as encouraging selectivity. Heri, for one, argues that ‘vulnerability should [...] not be a way to cherry-pick those applicants whose claims are to be heard while blinkering the Court’s judges about wider issues’ (2021, p. 226). Regarding reception conditions in host states, the term ‘vulnerable’ can also take focus away from both the harsh conditions people unnecessarily endure and from the host state that is ultimately responsible for these conditions. There are a range of insightful publications on ‘vulnerability’ in relation to the ECHR (Morris 2023; Heri 2021, 2024), children (Herring 2012) and migrants (Hudson 2024; Baumgärtel and Ganty 2024). However, it is not the intention of this author to be drawn into those debates here; that is beyond the scope of this article. Nonetheless, there are noticeable forms of ‘intersectionality’ (Crenshaw 1989) at play here and ‘compounded vulnerability’ (Timmer 2013) when it comes to UAS children, which will be addressed further below. Therefore, the term ‘vulnerable’ will be referred to sparingly here, often in analysis of relevant case law and official reports. The European Court’s approach to vulnerability of UAS children is particularly relevant here, though as Heri pointed out ‘the Court is [...] not particularly consistent in applying vulnerability reasoning’ (2021, p. 35). For the purposes of this article, ‘vulnerability’ should be read as synonymous with the child being potentially in ‘at risk’ situations or in a ‘precarious position’ in the setting in which they find themselves placed by the state.

Section 2 provides a contextual background of events prior to the events in July 2021, which led to such an unplanned and sustained reaction by the Home Office; followed by a detailed timeline of events from July 2021 until June 2024. This time period not only saw the continued operation of this ‘temporary’ measure but also a finding by the High Court that the Home Secretary had acted unlawfully in persisting with UASC hotels (June 2023) and the decommissioning of the last UASC hotel (January 2024). Section 3 sets out the legal framework as applies to UAS children, both European and domestic, detailing the state’s legal obligations towards UAS children. Particular focus will be paid to judicial interpretation and developments, at both ECHR and domestic levels.¹² Finally, Section 4 scrutinises how specific issues can arguably have breached these children’s ECHR rights, namely Articles 3, 8 and 14.

2. Development of the UASC Hotel Policy

This part of the article plots the course of the UASC policy from beginning to end and is broken down into two sections: first, the circumstances prior to the policy and events that occurred which led to the UASC hotel policy being implemented; and second, setting out the chain of events that unfolded from the summer of 2021 to the General Election in June 2024.

2.1. Background (Pre-Summer of 2021)

Prior to the events of 2021 UAS children would be removed from their initial processing at Initial Accommodation Centres and put into the care of a local authority. All UAS children would then be placed with a local authority and be treated as a ‘looked after child’ whilst their asylum claim was being determined by the Home Office.

¹² The ECHR is incorporated into UK law by way of the Human Rights Act 1998.

UAS children are entitled to the same statutory protection, and eligible for the same support services, as provided to all children in care for as long as they are under 18.¹³ Accommodation was provided by local authorities, generally via foster care or residential children's homes, supervised by trained and DBS-cleared responsible staff or foster carers. Accommodation of 'looked after children' is subject to statutory oversight by way of Ofsted inspections.¹⁴ In terms of available resources, supports and facilities, as 'looked after children' UAS children are statutorily entitled to access to healthcare,¹⁵ full-time education,¹⁶ and to be assessed for potential further supports as needed (e.g., trauma counselling) determined by way of an individual care plan to ensure that each child's specific needs are being met.¹⁷ That said, not all local authorities were considered equal in terms of supply of and demand on their available resources. As noted by Lelliott (2022), the standard of the services provided varied between local authorities.¹⁸

The voluntary National Transfer Scheme (NTS) was piloted by the Home Office in 2016¹⁹ and expanded nationwide in 2018.²⁰ This scheme came about because of the increase in the number of UAS children arriving in the country, which placed more pressure on certain local authorities than others in terms of resources, staff, housing stock and infrastructure. The NTS enabled a local authority which had reached a set percentage of their 'general child population' to have an excess of UAS children transferred to another local authority by the Home Office.²¹ The scheme thereby aimed to secure a more equitable distribution of UAS children across all local authorities and, via a protocol, to enable the safe transfer of responsibility for a UAS child from one local authority to another. However, the actions of Kent County Council (Kent CC) in June 2021 highlighted the evident strains on the smooth running of the scheme.

In that month Kent CC announced that it would no longer accept UAS children into their care, due to especially high demand on them and lack of capacity to meet that demand at the time (Gower et al. 2023). This unprecedented act by the local authority, together with other contributing factors, led to the Home Office's solution that would become known as 'UASC hotels'. Other factors contributing to the position the Home Office found themselves in included a major asylum initial decision-making backlog;²² the need for timely throughput of UAS children from Initial Accommodation Centres because of their

¹³ Department of Education, Care of unaccompanied and trafficked children (Department of Education 2017, November).

¹⁴ The Office for Standards in Education, Children's Services and Skills (Ofsted) *inter alia* inspect and regulate services that care for children and young people, including children's homes and children's social care services; see <https://www.gov.uk/government/organisations/ofsted> (accessed on 13 March 2026).

¹⁵ This means free prescriptions for medicine; free dental care for teeth; free eyesight tests; glasses.

¹⁶ Including free school meals.

¹⁷ See further (Coram Children's Legal Centre 2017).

¹⁸ Though in practice they are funded through different arrangements to other children, and the standard of the services provided varied (and had been criticized) (Braverman 2022).

¹⁹ All local authorities in the UK with children's services were been directed to participate in the NTS, commonly referred to as a 'mandated NTS' (Home Office 2021); see also *R(Medway Council) v SSHD* [2023] EWHC 77 (Admin), where a local authority successfully challenged the Home Office's decision to force them to comply with the National Transfer Scheme (NTS).

²⁰ Extended to local authorities in Scotland, Wales and Northern Ireland in 2018; For the latest version of the NTS see https://assets.publishing.service.gov.uk/media/6843029ce5a089417c8060f5/National+Transfer+Scheme+_NTS_+Protocol+for+unaccompanied+asylum+seeking+children+_UASC_.pdf (last updated: 9 June 2025) (accessed on 1 July 2025).

²¹ See <https://www.gov.uk/government/news/government-launches-national-transfer-scheme-for-migrant-children> (accessed on 25 June 2025).

²² UK Government. 2024, *Statistics relating to Illegal Migration: data tables to 21 April 2024*, Official Statistics (gov.uk, 23 April 2024), IMB_02. <https://www.gov.uk/government/statistics/statistics-relating-to-the-illegal-migration-bill> (accessed on 17 March 2026).

unsuitability as accommodation for anything more than a few days;²³ and a deficit of public housing stock nationally.²⁴ Whilst no one of these factors made the UASC hotel policy an inevitability, when taken together those factors certainly narrowed the Home Office's range of options at the time. That said, the UASC hotel policy was not the only course of action available to the Home Office, as was later pointed out by Chamberlain J in *ECPAT*.²⁵ What follows is a brief summary of how the Home Office ultimately reacted to the Kent CC situation.

2.2. The 'Temporary Hotel Placement' Scheme AKA the 'UASC Hotels' Policy

The Home Office already had contracts with three providers to accommodate adult and family asylum seekers in hotels nationally,²⁶ and so 'standing up' further hotels (exclusively for children) with one of the pre-existing contractors was set in motion.²⁷ The UASC hotels arrangement, branded as a 'short-term interim' solution, was that UAS children would be placed in hotels whose staff were sourced by the contractors, until a placement became available for them with a local authority or upon turning 18. This was the then government's 'temporary solution' to alleviate the 'shortcomings of the [transfer scheme] and the broader child welfare system', to quote Ioffe (2023). However, these private contractors already had a questionable track record when it came to operating and staffing adult and family asylum hotels (Refugee Council 2021; Neal 2022a).²⁸ At its peak, the Home Office had a total of seven hotels in operation (Neal 2022a). The Home Office did not have an exit strategy for their 'temporary solution'.

From a scrutiny point of view the UASC hotels did not fall under the usual regulatory framework and Ofsted were not empowered to provide their usual scrutiny by way of inspections. Luckily, it was within the remit of the ICIBI to inspect these UASC hotels.²⁹ In the absence of Ofsted, the ICIBI in post at the time, David Neal,³⁰ embraced the opportunity to ensure much needed transparency was maintained on material reception conditions for these UAS children during this time, as well as scrutinise the Home Office's oversight of their contracted service providers. As early as March 2022, the ICIBI team were conducting inspections of the UASC hotels and raising concerns (Neal 2022a).

A legal challenge was then initiated by the charity Every Child Protected Against Trafficking (ECPAT) UK against Kent CC and the Home Office,³¹ though it would take until July 2023 for the substantive High Court judgment to be handed down,³² more specific details of which will be outlined in Sections 3.2.3 and 4 (below). On foot of the legal challenge the Home Office prioritised the decommissioning of the UASC hotels, having closed several by the time of the High Court hearing in July 2023, and ultimately closing the last one in January 2024. Subsequent to the *ECPAT* judgment,³³ further inspections

²³ In his independent report, where it was noted that many asylum seekers were being made to stay in IACs for several weeks, Neal also described the living conditions in Manston as 'wretched', and there were frequent disease outbreaks, see Neal (2022b, Q113).

²⁴ In London and southeast England especially.

²⁵ e.g., *R(ECPAT UK)*, see note 2 above, [207].

²⁶ Through the Asylum Accommodation and Support Contracts (AASC).

²⁷ Namely, Clearsprings Ready Homes; Set up was done in conjunction with the involvement of various Home Office (and external) teams (the 'Safeguarding Advice and Children's Champion' (SACC) and 'Asylum Safeguarding Hub') and operational documents ('Standard Operating Procedure' (SOP) and Guidance). The Hub had responsibility for overseeing safeguarding issues within the asylum system.

²⁸ See also Sturge and Gower (2020, para. 4).

²⁹ Ofsted was, however, in a position to assist and advise the ICIBI 'by sharing their expertise of the provision of children's services and child safeguarding', see Neal (2022a) [3.03]; Neal (2024) [1.1].

³⁰ In post from March 2021 to February 2024.

³¹ *R(ECPAT UK)*, see note 2 above.

³² *R(ECPAT UK)*, see note 2 above.

³³ *R(ECPAT UK)*, see note 2 above.

were carried out; by both the Children’s Commissioner Rachel de Souza and by the ICIBI (de Souza 2023; Neal 2024).³⁴

Contemporaneous and reliable statistical data during the operation of the UASC hotels policy was not published by the government on a regular basis. At the time, data was often only available by way of independent reports from either the Independent Chief Inspector of Borders and Immigration (ICIBI) Neal (2022a, 2024), the Children’s Commissioner Rachel de Souza (2023), parliamentary questions (e.g., Scriven 2023a, 2023b), or media reporting based on Freedom of Information Act (FoI) requests (e.g., Ure 2024). The lack of comprehensive data was a source of consternation and concern for both the ICIBI and the Children’s Commissioner alike (Neal 2022a, para. 5.58; 2024, pp. 4–6; de Souza 2023, pp. 8–11). The Children’s Commissioner’s report of November 2023 echoed many of the concerns previously raised by Neal (2022a), namely that:

[t]he quality of the data, and the amount of information missing [from Home Office records was] concerning. The information requested is the kind that any organisation looking after children should have readily available in order to monitor its safeguarding processes (p. 8) [...] and] a concerning lack of oversight and systematic approach to safeguarding these extremely vulnerable children [existed] (p. 9). ... Taking on responsibility for overseeing the care and safeguarding of acutely vulnerable children is not something that can be done by those without the necessary expertise or experience (p. 12).

The lack of reliable and up-to-date data extended even to the number of children in UASC hotels at the time, with some data only coming to light as a result of the *ECPAT* case, independent inspections or parliamentary questions. Evidence accepted by the High Court as of July 2023 indicated that ‘more than 5400 [unaccompanied] children [in total] had been accommodated in hotels, of whom 32% were under 16. Some 1700 were housed at [one hotel] in Hove’.³⁵ By February 2023, ‘the average length of UASC’s stay in hotels was 20.11 days. [...] the longest was 128 days’ (Jenrick 2023). De Souza confirmed, from data requested by way of her statutory powers, that for 855 children their stay was for more than a month, and over 200 had been there for 2–3 months (2023, p. 8). For the duration of the UASC hotels policy, data was provided by the state on an ad hoc basis.

Since the UASC hotels closed in January 2024, total figures have not been readily available from the government website. However, in March 2025, Angela Eagle, Minister for Border Security and Asylum, responded in writing to questions from the Joint Committee on Human Rights. When directly asked for an exact total, her response was that ‘6257 UASC were accommodated in dedicated UASC hotels between July 2021 to 31 January 2024, when the final hotel closed’ (Eagle 2025, p. 1). But even this figure was caveated by a footnote stating that the data ‘had been taken from live management information and [was] therefore subject to change’ (Eagle 2025, p. 2), 14 months after the last UASC hotel had closed.

A related and aggravating factor of this UASC hotels policy for these children was that their asylum claims did not proceed while they were accommodated under this policy; nor were they given access to legal advice for the duration of their stays in hotels. As with adult and family asylum hotels, it was as if being housed in these hotels placed them in an ‘asylum holding pattern’, until they were placed with a local authority again. This left a

³⁴ The re-inspection report was produced and submitted to government by the ICIBI in November 2023, though the government delayed its publication until February 2024. By the time of Neal’s re-inspection (Sep–Oct 2023) just two UASC hotels remained operational. By the time that Neal’s second report was allowed to enter the public domain (February 2024), all UASC hotels had been closed.

³⁵ Joined cases of (i) *R (ECPAT UK) v Kent County Council & SSHD* (Case No. CO/2136/2023); (ii) *R (Brighton & Hove City Council & SSHD) v Kent County Council* (Case No. CO/2399/2023); and (iii) *Kent County Council v SSHD* (Case No. CO/2459/2023), [2023] EWHC 1953 (Admin), [6]. *R(ECPAT UK)*, see note 2 above, [6].

child, while in a UASC hotel, without any prospect of being acknowledged as a refugee soon, or even of moving closer to that outcome. There is no child-centred justification for such a suspension; it was also not a necessity for the Home Office to pause the progress of their asylum claim, it was a choice. Those in this situation ‘found themselves in immigration limbo’ ([Right to Remain 2025](#)).

To summarise Section 2, the reactive and chaotic efforts by the Home Office to provide asylum accommodation for UAS children when Kent CC refused to accept any more in the summer of 2021, led to a ‘short-term’ ‘emergency’ measure which was to continue until January 2024, when the last UASC hotel closed. Section 3 (below) now describes the legal backdrop to the then government’s creation of the UASC hotel policy, and how, by July 2023, the Courts ultimately found that the government’s continued use this measure to be unlawful.

3. ECHR and Domestic Legal Frameworks

Until such time as the decision is made on an asylum seeker’s refugee application—being legally within the state as an asylum seeker—the claimant should be treated as if they were a refugee ([Costello 2017](#), para. 4.1.5). What follows is an overview of the legal framework as it applies to UAS children, both European and domestic, detailing the state’s legal obligations towards UAS children. The section below provides a synopsis of the ECHR and articles that are particularly relevant to reception conditions of UAS children. The subsequent section then proceeds to outline the relevant domestic legislation and case law pertaining to UAS children and this not-so-temporary state policy.

3.1. European Convention on Human Rights

The rights under the ECHR are legally binding on its member states, in that by ratifying the Convention, member states commit to legally enforcing these rights domestically and to respect them in all their public authorities’ actions. ECtHR judgments have binding force on the states that are party to proceedings,³⁶ though certain socio-economic rights or positive obligations in the ECHR are arguably realised progressively ([De Schutter 2019](#)). The Convention was ratified by the UK in 1951 and incorporated into domestic legislation through the Human Rights Act 1998. The UK has one reservation entered on Article 2 (right to education) of ECHR-OP1. The reservation accepts the principle of education in conformity with parent’s religious and philosophical convictions ‘only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure’.³⁷ The UK has no derogations to the ECHR at the time of writing.

The ECHR does not contain provisions expressly applicable to refugee or indeed asylum seeker children, but their treatment by the state may be considered under various provisions. Articles of the ECHR that often have application for child refugees and asylum seekers, and impose obligations on state parties, are the prohibition against torture or inhuman or degrading treatment or punishment (Article 3) and/or the right to respect for private and family life (Article 8). At times, in conjunction with these articles, the prohibition on discrimination (Article 14) may also be relevant. Note that while claims may also be made asserting a breach of a UAS child’s right to liberty and security (Article 5)³⁸ and lack of an effective remedy (Article 13), Articles 5 and 13 will not be the subject of focus here as they are not directly relevant to reception conditions per se and therefore

³⁶ Article 46 ECHR.

³⁷ Human Rights Act 1998, Schedule 3.

³⁸ When it comes to detention of minors, Article 5 may also be engaged, see further ([EU Agency for Fundamental Human Rights and European Court of Human Rights 2020](#)).

beyond the scope of this article.³⁹ Similarly, case law on the right to life (Article 2) has not to date concerned UAS children's reception conditions and has been limited to tragic deaths of asylum children in the contexts of border push-backs and border deaths.⁴⁰ Whether Article 2 would be breached by a state neglecting its positive obligations towards a UAS child, with the result that the child went missing and was in a life-threatening situation, has yet to be tested by the Courts. What follows below is an overview of Articles 3, 8 and 14 and how those rights have been interpreted by the ECtHR to date.

3.1.1. Article 3—Prohibition on Torture and Inhuman or Degrading Treatment or Punishment

Article 3 ECHR provides that '[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment'. It is an absolute right and state derogation is not possible.⁴¹ Article 3 was initially considered to be a negative obligation only. However, the ECtHR have found on occasion that the state had an 'inherent positive obligation [...] to protect children from ill-treatment' (i.e., safeguards),⁴² and the state cannot discharge its obligation by delegating the role to non-state actors.⁴³

MSS v Greece and Belgium was the first ECtHR judgment to affirm states' positive obligations to protect vulnerable asylum seekers regarding reception conditions. The ECtHR also confirmed '[the] existence of a broad consensus at the international and European level concerning the need for special protection of asylum seekers as a particularly underprivileged and vulnerable population group'.⁴⁴ The ECtHR in *MSS* held that reception conditions in Greece at the time amounted to 'inhuman and degrading treatment',⁴⁵ and therefore that there had been a breach of Article 3. However, the adult asylum seeker in *MSS* faced complete destitution and homelessness. Therefore, if a state provides some shelter or housing to asylum seekers, the ECtHR has not tended to interfere with member states' asylum seeker/migrant housing policies, with the exception of those applicants that the Court views as particularly vulnerable, such as children.⁴⁶

The form that 'destitution' can take has been developed by the ECtHR over time. Article 3 has also been engaged in respect of asylum seekers' reception conditions, where a breach could include severe social and health deprivations that were a foreseeable consequence of state measures, to the point of the claimant facing complete destitution.⁴⁷ Blake and Husain also find parallels between the ECtHR's interpretation of suffering with UK case law, in that '[s]uffering can be caused by deprivation of facilities as well as deliberate

³⁹ For an example of an Article 13 breach (in conjunction with Article 3 and 8), see *Darboe and Camara v Italy* Application no. 5797/17 (ECtHR, 21 July 2022). Note, however, that the UK did not directly incorporate the text of Article 13 into the Human Rights Act 1998.

⁴⁰ *MH and Others v Croatia*, nos. 15670/18 and 43115/18, (ECtHR, 18 November 2021); *Safi and Others v Greece*, no. 5418/15, (ECtHR, 7 July 2022); and *Alhowais v Hungary*, no. 59435/17, (ECtHR, 2 February 2023); see further [Lysenia \(2023\)](#).

⁴¹ Article 15(2).

⁴² *O'Keeffe v Ireland* Application no. 35810/09 (ECtHR, 28 January 2014) [168]. This case concerned the abuse of children in a school owned and managed by the Catholic Church, to which the state had failed to respond to complaints raised or to the risk of abuse; see also *Z v United Kingdom* Application no. 29392/95 (ECtHR, 10 May 2001) where it was held to the local authority to take adequate measures to secure the welfare of four children who were subjected to appalling levels of neglect in the family home; see also [O'Mahony \(2019\)](#).

⁴³ *O'Keeffe*, see note 42 above.

⁴⁴ *MSS v Belgium and Greece* Application no. 30696/09 (ECtHR, 21 January 2011), concurring opinion of Judge Rozakis, [90]; this case concerned an adult asylum seeker.

⁴⁵ The ECtHR rather referred to those minimum standards contained in the EU Reception Conditions Directive, *MSS*, see note 44 above, concurring opinion of Judge Rozakis [90].

⁴⁶ See further [\(Baumgärtel 2019\)](#).

⁴⁷ These were the circumstances in the case of *MSS* concerning an adult asylum seeker, *MSS*, see note 44 above.

harm’ (2003, p. 101).⁴⁸ Such destitution can be achieved by, for example, a state setting the amount of financial support for an asylum seeker at an unrealistically low level or by the withholding of appropriate facilities. Other ECtHR case law has since reaffirmed the MSS position, for example, *AEA v Greece*,⁴⁹ *Amadou v Greece* and *ALK v Greece*.⁵⁰ As Ippolito and González note, Article 3 ‘accumulates from the deprivation of status and other exceptional personal elements such as administrative detention; [...] age factors; the health of applicants—ranging from psychiatric illness to a fragile state of health, [...] mental or physical disabilities and services available in the destination country’ (2021, p. 146). Therefore, when the Court considers their Article 3 rights, any additional vulnerabilities a UAS child has must also be considered accumulatively. For children, Article 3 is applied with specific child-focused criteria taken into account, as they ‘have specific needs that are related in particular to their age and lack of independence’;⁵¹ these needs are greater for unaccompanied children.⁵² As was confirmed in *Popov*, ‘in all decisions concerning children, their best interests must be paramount’.⁵³

The ECtHR asylum case law has thus far often addressed Article 3 in relation to children held in detention, where such a setting was ‘ill-adapted to the presence of children’ and traumatic for the child.⁵⁴ Such judgments have concerned detained asylum seeker families⁵⁵ or unaccompanied minors in detention.⁵⁶ In detention situations, the ECtHR has made their position clear on several occasions. The fact that the individual is a child is not just a factor but rather a ‘decisive factor’. The ECtHR confirmed this in *Mubilanzila Mayeka and Kaniki Mitunga v Belgium* when the Court declared, with respect to an unaccompanied child placed in adult detention, that:

*[i]n view of the absolute nature of the protection afforded by Article 3, it is important to bear in mind that [the child’s extreme vulnerability] is the decisive factor and it takes precedence over considerations relating to the [child]’s status as an illegal immigrant’.*⁵⁷

The need for ‘special protection’, when it came to children being placed in inappropriate reception conditions with their parents in *Tarakhel*,⁵⁸ led the Court to find that the accommodation should be age-appropriate and not a ‘situation of stress and anxiety, with particularly

⁴⁸ Citing *Ahmed v Austria* Application no. 25964/94, (ECtHR, 1996-vi). Likewise in the UK case of *R(Husain) v Asylum support Adjudicator*, (5 October 2001), The Times Law Reports, 15 November 2001, Stanley Burnton J, it was held that ‘a total deprivation of social support for asylum seekers would violate Article 3’.

⁴⁹ *AEA v Greece*, Application no. 39034/12, (ECtHR, 15 March 2018). This adult asylum seeker was left destitute while unable to apply for asylum due to the deficiencies and delays in the state asylum procedure.

⁵⁰ *Amadou v Greece*, Application no. 37991/11 (ECtHR, 4 February 2016), *ALK v Greece*, Application no. 63542/11, (ECtHR, 11 March 2015). Both were adult asylum seekers left in destitution upon release from detention.

⁵¹ *Tarakhel v Switzerland* Application no. 29217/12 GC (ECtHR, 4 November 2014) [99]. See further Baumgärtel (2019).

⁵² *Mayeka and Mitunga*, see note 8 above, [55], in the context of detention of a child.

⁵³ *Affaire Popov v France*, Application nos. 39472/07 and 39474/07 (ECtHR, 19 January 2012) [140], citing *Rahimi v Greece*, Application no. 8687/08 (ECtHR, 5 April 2011), [80]; *Rahimi* Judgment currently only available in French, though see also ECtHR press release 5 April 2011, <https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22:%5B%22003-3496412-3940753%22%5D%7D> (accessed on 18 March 2026).

⁵⁴ *Affaire Popov*, see note 53 above, [95].

⁵⁵ For ECtHR judgments concerned with *inter alia* Article 3 and 8 violations for the immigration-related detention of a family with young children, see *AB and Others v France* Application no. 11593/12 (ECtHR, 12 July 2016); *AM and Others v France*, Application no. 24587/12 (ECtHR, 12 July 2016); *RC and VC v France*, Application no. 76491/14 (ECtHR, 12 July 2016); *RK and Others v France*, Application no. 68264/14 (ECtHR, 12 July 2016); *RM and Others v France*, Application no. 33201/11 (ECtHR, 12 July 2016); *Affaire Popov*, see note 54 above.

⁵⁶ For ECtHR judgments involving unaccompanied minors in detention, see *JB and Others v Malta*, Application no. 1766/23 (ECtHR, 22 October 2024); *Abdullah Elmi and Aweys Abubakar v Malta*, Application nos. 25794/13 and 28151/13 (ECtHR, 22 November 2016); *Kanagaratnam*, see note 8. above; *Rahimi*, see note 53 above; *Muskhadzhiyeva and Others v Belgium*, Application no. 41442/07 (ECtHR, 19 January 2010); *Mayeka and Mitunga*, see note 8 above.

⁵⁷ *Mayeka and Mitunga*, see note 8 above, [55]; see also *Muskhadzhiyeva and Others*, see note 56 above, [56–58]; *Affaire Popov*, see note 54 above, [91]; see further Turković (2021).

⁵⁸ *Tarakhel*, see note 51 above.

traumatic consequences'.⁵⁹ Therefore, the Court has made clear in its jurisprudence that accommodation for asylum children must be age-appropriate, regardless of whether they are accompanied or not and regardless of whether the setting is detention or reception conditions. It seems now quite settled that a UAS child's migration status should not be used by a state to mitigate against a breach of a child's Article 3 rights.⁶⁰ That said, some distinctions have been drawn by the Court between very young children and teenagers in detention,⁶¹ with a less strict approach to adolescents. However, as *Elmi and Abubakar v Malta* illustrates,⁶² the fact that the boys were teenagers still meant that the host state should have placed them in an age-appropriate setting and should not have accommodated them with adults. Regardless of the child's age, as Trad et al. note, 'even relatively short periods spent in severely inadequate [reception] conditions may reach the Article 3 threshold where vulnerability is acute' (2006, p. 46).⁶³

In terms of the level of state support an asylum child should expect from a host state, or conversely how poor a standard would amount to an Article 3 breach, the ECtHR, referencing in its judgment the UNCRC, observed approvingly that it encourages its member states to take the appropriate measures to ensure that a child who is seeking to obtain refugee status enjoys protection and humanitarian assistance, whether the child is alone or accompanied by his or her parents.⁶⁴ Outside of a detention context, ECtHR jurisprudence concerning adult asylum reception conditions and Article 3 were later applied to UAS children, initially in *Khan v France*⁶⁵ and later in *Darboe and Camara v Italy*⁶⁶ and *OR v Greece*.⁶⁷

Khan involved a 12-year-old unaccompanied boy who had been left without any shelter when the French authorities demolished the make-shift Calais Jungle. The Court held that, in view of his personal circumstances and young age, the authorities had breached Khan's Article 3 rights due to both the precarious living conditions in Calais and their failure to comply with pre-existing judicial orders to protect the applicant. Likewise, in *OR v Greece*,⁶⁸ because Greek authorities had left the asylum-seeking teenager to fend for himself, the minor remained homeless for nearly six months, without access to basic essentials and without an officially designated legal guardian.⁶⁹ In *Darboe and Camara* it was held that the authorities' treatment of a minor amounted to a violation of his Article 3 rights in a situation where he experienced degrading and inhuman reception conditions while inappropriately placed in an adult asylum reception centre over 4 months.⁷⁰ Therefore, once shelter or housing that the state provides to a UAS child is minimally adapted to their status as a child, the ECtHR has not tended to interfere with member states' asylum seeker housing policies. Equally, without solid evidence that the child met the severity threshold, the ECtHR will not find a breach of Article 3 based on a probable sequence of events. For example, in *AC v France* the Court rejected the applicant's Article 3 claim due to lack of

⁵⁹ *Tarakhel*, see note 51 above, [119] quoting *Affaire Popov*, see note 53 above, [102]; cf see *Mohammed Hussein and Others v Netherlands and Italy*, Application no. 27725/10 (ECtHR, 2 April 2013).

⁶⁰ *TK v Greece*, Application no. 16112/20 (ECtHR, 18 January 2024). Note that Article 13 was found to have been breached in conjunction with Articles 3 and 8.

⁶¹ *AB and Others*, see note 55 above.

⁶² *Elmi and Abubakar*, see note 56 above.

⁶³ Citing as examples *WS v Greece*, Application no. 65275/19, (ECtHR, 23 May 2024), *NN and Others v Greece*, Application no. 59319/19 (ECtHR, 19 December 2024), *AI v Greece*, Application no. 13958/16 (ECtHR, 18 January 2024) and *TK v Greece*, see note 60 above.

⁶⁴ See to this effect *Affaire Popov*, see note 53 above, [91].

⁶⁵ *Khan v France* Application no. 12267/16 (ECtHR, 28 February 2019).

⁶⁶ *Darboe and Camara*, see note 39 above.

⁶⁷ *OR v Greece* Application no. 24650/19 (ECtHR, 23 January 2024).

⁶⁸ *OR*, see note 67 above.

⁶⁹ *OR*, see note 67 above; see also *Rahimi*, see note 53 above.

⁷⁰ *Darboe and Camara*, see note 39 above.

evidence that treatment he received met the severity threshold required under Article 3 of the Convention, and the Court would not infer an Article 3 breach without solid evidence, even though the French authorities had refused him care as a child as a result of disputing his age as a minor.⁷¹

It is therefore considered settled now that not just destitution but also ‘structural deficiencies [like] overcrowding, inadequate sanitation, lack of medical care and insufficient protection for children and other vulnerable applicants’ can give rise to violations by a state of Article 3 (Ferré Trad et al. 2026, p. 33). Furthermore, for UAS children, states must put in place special safeguards for unaccompanied and separated children;⁷² a guardian and/or legal representative should also be appointed; and any failure or inaction by states to provide assistance and accommodation to a UAS child would amount to a breach of Article 3.⁷³ However, the ECtHR has been loath to lower the severity threshold of ‘destitution’ and so reception conditions that are minimally adapted to a child’s needs may not lead to a breach under Article 3.

3.1.2. Article 8—Right to Private and Family Life

Article 8(1) provides that ‘[e]veryone has the right to respect for his private and family life, his home and his correspondence’. It can impose a positive obligation on state parties. States found to have breached Article 8 may have done so by negatively impacting on the person’s right to respect their bodily and physical integrity as well as that of their family members. The ECtHR has a stronger track record of promoting the child’s best interests by way of successful Article 8 claims than by way of Article 3⁷⁴ and has made references endorsing the UNCRC.⁷⁵

However, as with all qualified rights, Article 8(2) provides that the ECtHR may apply a margin of appreciation if the state can satisfy the ECtHR that the breach was a proportionate exercise in pursuit of a legitimate aim. The margin is broadly interpreted by the Court, as it considers as legitimate a state’s aim of combating illegal immigration and controlling the entry and residence of foreigners within its territory, as the Court has often pointed out.⁷⁶ For example, states can detain non-nationals for the purpose of immigration control, despite Article 5 of the Convention guaranteeing the right to liberty and security. Similarly, ‘states’ margin of appreciation is wider in the socio-economic sphere’ (Da Lomba 2015, p. 54) and so state party arguments based on allocation of resources are taken into consideration by the Court.

Asylum reception conditions can potentially violate Article 8 as well as Article 3, if children are involved, though ‘family-specific’ claims under Article 8 tend to have less relevance for UAS children than ‘private-life-specific’ claims under Article 8.⁷⁷ ‘Private life’ claims typically focus more on whether there was disproportionate interference to a high degree with the individual’s bodily and psychological integrity, with a particular emphasis on the child’s right to privacy.⁷⁸ This has arisen periodically when a state or its agents

⁷¹ *AC v France* Application no. 15457/20 (ECtHR, 16 January 2025); AC Judgment currently available only in French, though see ECtHR press release 16.01.2025, <https://hudoc.echr.coe.int/fre-press#%7B%22itemid%22:%5B%22003-8132000-11390515%22%5D%7D> (accessed on 18 March 2026).

⁷² *Rahimi*, see note 53 above.

⁷³ *Rahimi*, see note 53 above; *Khan*, see note 65 above, [92–95]; see further (EU Agency for Fundamental Rights and Council of Europe 2020).

⁷⁴ *Nunez*, see note 8 above; *Kanagaratnam*, see note 8 above; *A.B. and Others v France* and *R.K. and Others v France*.

⁷⁵ *Nunez*, see note 8 above; *Muskhadzhiyeva and Others*, see note 56 above; *Mayeka and Mitunga*, see note 8 above, [83] re Article 3 UNCRC.

⁷⁶ *Abdulaziz and Others v United Kingdom*, Application no. 9214/80; 9473/81; 9474/81 (ECtHR, 28 May 1985); *Boulifa v France*, Application no. 122/1996/741/940 (ECtHR, 21 October 1997); *Nunez*, see note 8 above.

⁷⁷ For case law on accompanied children in reception conditions, see, e.g., *Tarakhel*, see note 51 above. For case law on accompanied children and reception conditions, see, e.g., *Tarakhel*, see note 51 above.

⁷⁸ *Darboe and Camara*, see note 39 above.

believed a child to be an adult and, in treating the child as an adult, breached the child's rights under Article 8, but a state party to the ECHR may not avoid its obligations simply by sub-contracting its responsibilities out to the private sector.⁷⁹

In *Darboe and Camara*,⁸⁰ it was held that the authorities' procedural shortcomings towards the boy as a minor, which resulted in him being prevented from making an asylum application as a child, amounted to a violation of his Article 8 rights. By subsequently placing him in adult reception conditions, they had deprived him of adequate procedural safeguards.⁸¹ In the case of *AC*,⁸² the Court held there had been a violation of Article 8 where the French authorities had wrongly found the applicant to be an adult following an incorrect age assessment. The authorities had not acted with reasonable diligence and had not complied with their positive obligation to ensure the applicant's right to respect for his private life.⁸³

3.1.3. Article 14—Prohibition of Discrimination

Article 14 deals with the prohibition of discrimination for everyone, not just for citizens. It prohibits discrimination in the enjoyment of the rights guaranteed under the ECHR, ensuring equal treatment on grounds such as sex, race, religion, or 'other status'. Though a parasitic article that may only be claimed in conjunction with another claimed ECHR breach, this negative obligation on state parties could be relevant to children in asylum, not least to UAS children. Though the wording 'other status' is often given a broad interpretation by the ECtHR (Blake and Husain 2003, p. 315), asylum seekers can often fall within this category, as persons that are legally within the state while their applications are being determined.

However, in terms of ECtHR jurisprudence, there is little asylum case law in which Article 14 is claimed in conjunction with Article 3 or 8 (Council of Europe 2025).⁸⁴ None of the cases referenced here made Article 14 submissions in conjunction with their other claimed breaches, i.e., where the facts involved an asylum seeker child's reception conditions. The ECtHR has made a point of distinguishing between asylum seekers and refugees in this respect, considering the former to amount to immigration status and entailing 'an element of choice',⁸⁵ as opposed to the latter which did not.⁸⁶ As clarified in *Bah v UK*, the nature of the status upon which differential treatment is based weighs heavily in determining the scope of the margin of appreciation to be accorded to Contracting States, hence why asylum seekers generally would find it much harder to bring a successful Article 14 claim than, say, a refugee. However, considering UAS children as a particularly vulnerable group, as the ECtHR has done,⁸⁷ could arguably overcome this barrier to a successful Article 14 claim, perhaps under an 'other status' ground. That said, whether such a discrimination claim

⁷⁹ *O'Keeffe*, see note 42 above.

⁸⁰ *Darboe and Camara*, see note 39 above.

⁸¹ *Darboe and Camara*, see note 39 above.

⁸² *AC*, see note 71 above.

⁸³ *AC*, see note 71 above.

⁸⁴ For example, *Hode and Abdi v the United Kingdom*, Application No. 22341/09 (ECtHR, 6 February 2013) involved two adults, one being a recognised refugee who had been granted limited leave but who could not be joined by his post-flight spouse. They successfully argued that this was a breach of their Article 14 rights in conjunction with Article 8.

⁸⁵ *cf Bah v United Kingdom*, Application no. 56328/07 (ECtHR, 27 September 2011), where the claim of a mother (an asylum seeker who had not been granted refugee status) and son (whose subsequent arrival was subject to immigration control) was unsuccessful in their claim that the UK had breached their Article 14 rights in conjunction with Article 8 as a result of the state denying them access to priority-need housing, the Court noting that the applicant was not left destitute as alternative housing was available.

⁸⁶ *Hode and Abdi*, see note 84, [47].

⁸⁷ As per *FB v Belgium*, Application no. 47836/21 (ECtHR, 3 June 2025), *OR*, see note 67 above, *TK*, see note 60 above, *WS*, see note 63 above, and *NN and Others*, see note 63 above.

under the ECHR could be successful for a UAS child as a ‘looked after child’, as occurred in the domestic *ECPAT* case, has yet be tested by the ECtHR.

To summarise, this section sought to provide an overview of the ECHR and articles that are particularly relevant to reception conditions of children in UASC hotels, in particular Article 3, Article 8 and Article 14. In terms of Article 3 asylum case law, reception conditions case law has expanded its consideration of what amounts to destitution in reception conditions from the context of single adults to the context of UAS children. The jurisprudence has developed over time beyond detention cases of minors accompanied by their families to make pronouncements on UAS children in detention. The ECtHR has clarified that the asylum seeker’s status as a child is a decisive factor. Nonetheless, the severity threshold remains difficult for applicants to overcome. In terms of Article 8, it was noted that claimed ‘private life’ breaches are more commonly argued for UAS children, while children accompanied by family may also make ‘family life’ claims. Though the cases’ facts contain a mixture of a child being placed in adult reception conditions or in detention, there were nonetheless some comparable features to be found between descriptions of those settings and that of UASC hotels. In terms of Article 14 the success of a claim often depends on an applicant’s ‘other status’, though a case such as *ECPAT* has yet to come before the ECtHR. What follows (below) is a synopsis of relevant domestic law, both to appreciate how the ECHR has been incorporated and interpreted in the UK and to outline relevant domestic legislation and case law pertaining both to UAS children and this not-so-temporary state policy.

3.2. Domestic Law

What follows is an overview of domestic law that applies to local authorities, followed by domestic law that applies to the Home Secretary. But first it is necessary to clarify some provisions of the Human Rights Act 1998. The UK ratified its membership of the ECHR in 1951 and incorporated the terms of the treaty into domestic law by way of the Human Rights Act 1998. Therefore, since 1998, ECHR rights have been justiciable before national courts. Section 6 of the HRA also provides that ‘[i]t is unlawful for a public authority to act in a way which is incompatible with a Convention right’. Therefore, in accordance with s. 6 it is not just legislation that should be read compatibly with the ECHR⁸⁸ but government policies must also be acted upon in an ECHR-compliant manner. Equally, for judicial review purposes, the Home Office and the Home Secretary meet the understanding of a ‘public authority’, as does a local authority.

3.2.1. Law That Applies to Local Authorities

Upon arrival in England (e.g., via the UK Border Force Agency) and registering their asylum application at an Asylum Immigration Centre (AIC)⁸⁹ a UAS child should, within days, be transferred to the responsibility of the relevant local authority. The reception conditions provided by the local authority to UAS children derive from either legislation or from non-statutory sources.⁹⁰

The Children Act 1989 places a ‘general duty [on] every local authority . . . to safeguard and promote the welfare of children within their area who are in need’,⁹¹ which includes unaccompanied children. Furthermore, s. 17(2) states that each local authority shall have specific duties and powers⁹² in order to discharge their general duty, for example, through

⁸⁸ S. 3 Human Rights Act.

⁸⁹ For equivalent adult asylum seekers (and their dependents) who cannot support themselves and who need accommodation and support, see the Immigration and Asylum Act 1999, Sections 4, 95, 96 and 98.

⁹⁰ e.g., (Home Office 2016), see note 1 above.

⁹¹ S. 17(1)(a), Children Act 1989.

⁹² Set out in Part 1 of Schedule 2, Children Act 1989.

assessment of the child's needs, prevention of neglect and abuse and provision of appropriate accommodation (Department of Education 2015, 2023; Department of Education and Home Office 2017). Section 20 imposes a specific duty on every local authority to provide accommodation for any child in need in their area, including UAS children. Therefore, once accommodation has been provided by the local authority the UASC is deemed a 'looked after child' within 24 h according to s. 22 of the Act.⁹³ Part 3 of the 1989 Act contains duties and powers to look after unaccompanied children. Section 17 of the 1989 Act (as amended) assigns responsibility to local authorities for child protection and safeguarding.

Under the Equality Act 2010 public authorities (including local authorities) have a responsibility to have due regard to the need to eliminate discrimination and promote equality of opportunity.⁹⁴ This applies to the process of undertaking assessment and identifying needs and to whomever is tasked with the care of the child.⁹⁵ As stated in the *Working Together* statutory guidance,

[n]o child or group of children must be treated any less favourably than others in being able to access effective services which meet their particular need [and . . . t]o comply with the Equality Act 2010, safeguarding partners must assess and where appropriate put in place measures [. . . to overcome] any barriers they may face due to a particular protected characteristic (Department of Education 2015, para. 17).

However, the term 'safeguarding partner' as defined under the Children Act 2004 (as amended) does not include the Home Secretary (Department of Education 2015, para. 37).

The Children and Social Work Act 2017 was created to improve welfare and safeguarding for looked after children. It states that, with reference to Section 20 of the 1989 Act, the local authorities should act as the child's 'corporate parent'.⁹⁶ In Section 1 it further clarifies that this includes the obligation to:

act in [their] best interests, and promote the physical and mental health and well-being, of those children and young people . . . (d) help them gain access to services [. . . and . . .] (f) have regard for those children and young people to be safe, and for stability in their home lives, relationships and education.

Furthermore, when in local authority care, the Care Planning, Placement and Case Review Regulations 2010 (as amended) direct local authorities to consider whether the child is unaccompanied and the specific needs they may have arising from that status.⁹⁷ Local authorities are required to provide the same level of care and support to UAS children as they do for any other 'looked after child'.

3.2.2. Law That Applies to the Home Secretary

Section 55 of the Borders, Citizenship and Immigration Act 2009 imposes a duty on the Secretary of State to make arrangements to ensure that functions, as listed in Section 55(2), are carried out having regard to the need to safeguard and promote the welfare of children in the UK. Section 55(1)(b) requires the Minister to make similar arrangements to ensure that other persons, including contractors, who carry out those functions also have regard to the need to safeguard and promote the welfare of children.⁹⁸

⁹³ S. 22, Children Act 1989.

⁹⁴ See, in particular, s. 149 of the Equality Act 2010.

⁹⁵ Department of Education, *Working Together to Safeguard Children*, Statutory Guidance (first published March 2015; last updated: March 2026) [17].

⁹⁶ S. 1 Children and Social Work Act 2017.

⁹⁷ The Care Planning and Care Leavers (Amendment) Regulations 2014 (S.I. 2014/1971).

⁹⁸ Explanatory Note, Borders, Citizenship and Immigration Act 2009—Explanatory Notes (accessed on 18 March 2026)

The Illegal Migration Act 2023 contained fresh provisions on the accommodation of unaccompanied children,⁹⁹ and though ‘hotels’ were not mentioned, the Act was silent as to the specifics of this ‘accommodation’. Many of the provisions relating to UAS children in this Act remained not in force, including Sections 16 and 17.¹⁰⁰ If commenced, Section 16 would have permitted the Home Secretary to ‘provide, or arrange for the provision of, accommodation in England for [UAS children]’. As such, this provision could have provided a legal basis for the Home Office to provide accommodation for unaccompanied asylum-seeking children. If commenced, Section 17 aimed to empower the Home Office to transfer UAS children to the care of English local authorities and vice versa.¹⁰¹ However, the government stressed at the time it was going through the legislative process that ‘the Bill [did] not change local authorities’ responsibilities under the Children Act 1989 and that it [did] not entail the Home Office taking on corporate parent responsibilities for unaccompanied children’ (Gower et al. 2023, p. 2). Though Sections 16–28 have since been repealed by the Border Security, Asylum and Immigration Act 2025, these provisions nonetheless illustrate the then government’s medium- to long-term plans for UASC accommodation, and if brought into force, would have left open the possibility of the continuance of the UASC hotels model.¹⁰²

The Home Office taking charge of UASC accommodation in 2021 would have been less problematic if they had also taken on corporate parental responsibility for these ‘looked after children’,¹⁰³ as the local authorities must do when exercising their duties under the Children Act 1989. At the time of passing the 2023 Act,¹⁰⁴ the government stressed that it did ‘not change local authorities’ responsibilities under the Children Act 1989 and that it does not entail the Home Office taking on corporate parent responsibilities for [UAS children]’ (Gower et al. 2023, p. 10).

3.2.3. The ECPAT Judgments

On the 27 July 2023, a significant judgment was handed down by Chamberlain J in the High Court. The applicant, ECPAT UK, commenced judicial review proceedings, with the Home Secretary and Kent CC as respondents. The subject matter of the case concerned *inter alia* the practice by the Home Office of accommodating newly arrived UAS children in hotels. The Court concluded that even if, in 2021, the measure was a reasonable reaction as an emergency measure for a few months the sustained reliance on the policy for years to come was untenable and unlawful.

Chamberlain J held that both Kent CC and the Home Secretary had—in their respective ways—acted unlawfully during the lengthy course of the UASC hotel policy. Kent County Council was found to have breached its statutory duty under the Children Act 1989 by refusing to accommodate more UAS children who had arrived in their area,¹⁰⁵ whereas the Home Secretary was found to have acted unlawfully by having normalised the routine denial of statutory protections to which those UAS children were entitled by placing them ‘systemically and routinely’ in these UASC hotels.¹⁰⁶ While the High Court recognised that

⁹⁹ S. 16 Illegal Migration Act 2023. However, at the time of writing this section is not yet in force.

¹⁰⁰ Neither s. 16 nor s. 17 are in force at Royal Assent, see s. 68(1).

¹⁰¹ S. 17 Illegal Migration Act 2023. However, at the time of writing this section is not yet in force.

¹⁰² See Part I, 1.2 above.

¹⁰³ For how the transfer scheme was problematic see Part III (below).

¹⁰⁴ The 2023 Act became law on the 20 July 2023, though not all sections of the Act were in force immediately.

¹⁰⁵ *R(ECPAT UK)*, see note 2 above, [213].

¹⁰⁶ *R(ECPAT UK)*, see note 2 above, [205].

the UASC hotels policy could be deemed lawful in an ‘emergency situation’,¹⁰⁷ children could not lawfully be accommodated in that way ‘systematically or routinely’.¹⁰⁸

In terms of what qualified as an ‘emergency situation’, the court clarified that, by analogy with the Supreme Court’s reasoning in *Re T (a child)*,¹⁰⁹ the facts in June 2021 did fit that criteria.¹¹⁰ Therefore, the Court held that the Home Secretary had emergency power at common law, or under s. 3(5) CA 1989, to act as they did¹¹¹ but that such power may only be used over very short periods in true emergency situations and where ‘stringent efforts are being made to enable the local authority promptly to resume the discharge of its duties’ towards these ‘looked after children’,¹¹² i.e., the body empowered by Section 1 of the Children Act 1989.

As to when the situation developed from an ‘emergency measure’ to ‘systemic or routine’, the Court held that the Home Secretary could plausibly have made the argument that the situation was an ‘emergency’ in June and July 2021.¹¹³ However, it was much more difficult to make that case from September 2021 onwards, once a protocol was formalised between the Home Office and Kent CC.¹¹⁴ In the Court’s judgement, ‘[b]y December 2021 at the latest, the Home Secretary’s provision of hotel accommodation for UAS children had exceeded the proper limits of her powers and become unlawful’.¹¹⁵

The Court therefore concluded that more than one arm of the state had acted unlawfully in how they had acted towards UAS children since 2021.¹¹⁶ This judgment was widely considered to have delivered a significant victory for children’s rights (Solomon 2023). The judgment thereby reaffirmed that all children, including separated children, are entitled to the full rights and protections accorded by the Children Act, regardless of their immigration status. The High Court ordered an end to the practice of UASC hotels,¹¹⁷ and so the Home Office prioritised the decommissioning of the last of the UASC hotels, ultimately closing the last UASC hotel in January 2024.

It is evident that the events that unfolded in the summer of 2021 had profound and long-lasting effects on how 6257 (at the last count) UAS children would be accommodated until January 2024 (Eagle 2025). Whilst the *ECPAT* judgments found the Home Office to have acted unlawfully, the Court would not be drawn on ECHR arguments. As Section 4 (below) will now demonstrate, many official inspections (Neal 2022a, 2024; de Souza 2023), charity/NGO reports, and media investigations highlighted evidence of inadequacies at these hotels. These have ranged from inadequate safeguarding or health and safety procedures unnecessarily exposing children to risk and danger, to inadequate access to healthcare, mental health support, or education while at the UASC hotels, and to inadequate

¹⁰⁷ *R(ECPAT UK)*, see note 2 above, [201].

¹⁰⁸ *R(ECPAT UK)*, see note 2 above, [202].

¹⁰⁹ *Re T (A Child)* [2021] UKSC 35.

¹¹⁰ *R(ECPAT UK)*, see note 2 above, [203].

¹¹¹ *R(ECPAT UK)*, see note 2 above, [213(e)].

¹¹² *R(ECPAT UK)*, see note 2 above, [202].

¹¹³ *R(ECPAT UK)*, see note 2 above, [204].

¹¹⁴ *R(ECPAT UK)*, see note 2 above, [204].

¹¹⁵ *R(ECPAT UK)*, see note 2 above, [205].

¹¹⁶ A subsequent (related) judgment also found the Home Secretary’s decision making in relation to the NTS scheme was unlawful between December 2021 to 27 July 2023 insofar as it failed to have regard to the facts that (i) she was (through her agreement to the Kent Protocol) partly responsible for Kent’s unlawful failure to discharge its function under s.20 of the 1989 Act in respect of every UAS child; and (ii) her use of hotels had by December 2022 become systematic, routine and therefore unlawful, see *R(Kent County Council) v SSHD v Brighton and Hove City Council, East Sussex County Council* (AC-2023-LON-002048; CO/2459/2023) [2023] EWHC 3030 (Admin), 28 November 2023.

¹¹⁷ By way of a combination of suspended Quashing Orders and later Mandating Order, see joined cases of *R(ECPAT) v Kent County Council v SSHD* (CO/2136/2023); *R(Kent County Council) v SSHD v Brighton and Hove City Council* (CO/2459/2023); *R(Brighton and Hove City Council) v SSHD v SSE, Kent County Council* (CO/2399/2023) [2023] EWHC 2199 (Admin) on 1 September 2023 [3–5].

departmental oversight over of UASC hotels' quality control or monitoring mechanisms. These inadequacies, compounded by other factors, further worsened the lived experience of UAS children while they were accommodated in these hotels. The concerns set out below are in stark contrast to the tabloids and the then Home Secretary's narratives of luxury in 'four-star hotels' (Braverman 2022, Col 647).

4. Concerns in the Context of ECHR Standards

The Home Office continued to run what Neal described as 'unregistered children's homes for [over] 2 years' (Neal 2022a, para. 5.126; 2024, foreword) totalling seven hotels as of May 2022. As Chamberlain J. put it, '[w]hile in these hotels, the [UAS] children [were] offered some support in addition to accommodation and food, but they [were] not 'looked after' and [had] no 'corporate parent''.¹¹⁸ Neither did the Home Office have an exit strategy from their 'temporary policy'. The use of these hotels to accommodate UAS children was a source of great concern and condemnation at the time by international organisations (UN Office of the High Commissioner for Human Rights 2023, 2024), charities, and some of the media, as will be elaborated on below.¹¹⁹

From a systemic and operational point of view the Home Office's inattention to comprehensive record keeping, transparency and accountability inevitably increased the risk to these children's safety. As interpreted in *Asy and others v Home Office*,¹²⁰ systems and operational duties form part of a state's positive obligations under Article 3 ECHR, so failing in those duties can amount to a breach in cases where it leads to inhuman and degrading treatment, which is probable here.¹²¹ However, throughout this process, the Home Office did not exercise sufficient departmental supervision over the for-profit contractors engaged to source and run the UASC hotels, in terms of record keeping, transparency and accountability. When asked in July 2023 about the number of UAS children who had been housed in UASC hotels in the past 18 months (Scriven 2023a), and the age of the youngest child so accommodated (Scriven 2023b), the Home Office could not answer. Its answer to both questions was 'the data requested cannot be provided as it comes from live operational databases that have not been quality assured' (Murray 2023). This non-answer is illustrative of how the Home Office was not on top of this situation.¹²²

The ICIBI's re-inspection of the UASC hotels reported that 'while some progress [were] made, improvements [were] not [...] delivered that could [have made] a significant difference to the experience of children in hotels' (Neal 2024, foreword).¹²³ The report revealed that UASC hotels continued to give rise to numerous concerns around all the staff working in hotels, specifically relating to DBS clearance, training, the process for raising a concern (including whistleblowing) in hotels, health and safety hazards and fire safety issues (Neal 2024, para. 7.30). Recommendations to the Home Office included that they strengthen their quality assurance and monitoring mechanisms to ensure it was satisfied that contractors were meeting their obligations and to review and improve operations leadership and supervision on the sites (Neal 2024, p. 8). What follows below, in line with the structure of Section 3.1 above, is an overview of problems that arose from UASC hotels

¹¹⁸ *R(ECPAT UK)*, see note 2 above, [6].

¹¹⁹ See 5.1 and 5.2. below.

¹²⁰ *Asy and Others v Home Office* [2024] EWCA Civ 373; see also *R(DXK) v SSHD* [2024] EWHC 579 (Admin) where the Home Secretary was in breach of his public sector equality duty under the Equality Act 2010 s. 149 because of their failure to conduct any statistical data monitoring on the provision of accommodation under the Immigration and Asylum Act 1999 to pregnant and new mother asylum seekers.

¹²¹ Especially when it comes to the UAS children that went missing during the policy, see further 5.1 (below).

¹²² See also Children's Commissioner (de Souza 2023, p. 8).

¹²³ Note the Home Secretary presented it to Parliament in February 2024.

(in order of their potential ECHR article breach) and a critical assessment of whether those concerns amounted to a breach of Articles 3, 8 and/or 14.

4.1. Article 3—Prohibition on Torture and Inhuman or Degrading Treatment or Punishment

As became apparent in Section 3.1 (above), the severity threshold makes it difficult for adult asylum applicants in poor reception conditions to succeed based on Article 3, unless they are made destitute at the hands of the state.¹²⁴ UASC hotels can reasonably be regarded as better than ‘destitution’ (i.e., having no access to food, sanitation or shelter) or being ‘denie[d] the most basic needs of any human being’ as was established in *Limbuela v SSHD*.¹²⁵ However, The UK Courts have similarly framed the state’s obligation to provide ‘adequate’ accommodation as a duty to ensure that accommodation reaches a ‘bare subsistence’ threshold. This tracks with the approach to the ECtHR’s approach to the severity threshold of Article 3 in cases like, in that anything short of destitution may not amount to an Article 3 breach. As was also made clear in *R(AMA) v SSHD*,¹²⁶ involving a mother and teenage son sharing a room in family asylum hotel accommodation, when referring to the quality of asylum hotel accommodation, ‘not satisfactory’ did not equate to ‘not adequate’ in the eyes of the High Court.¹²⁷

However, a child’s Article 3 claim has a wider scope for the Court to consider than for an adult’s, based on the jurisprudence to date.¹²⁸ What follows is a critical evaluation of whether, short of destitution, the UASC hotel policy could be deemed to have breached these children’s Article 3 rights. Many of the concerns surrounding the UASC hotels (itemised below) were verified by independent inspections of the ICIBI and the Children’s Commissioner and/or accepted as evidence in the High Court case of *ECPAT*.

The Home Office continued to run what independent inspection reports described as ‘unregistered children’s homes’ for the duration of this policy (Neal 2022a, para 5.126; 2024, foreword). While in the UASC hotels, children experienced inadequate living conditions, including little or no access to health professionals or medication, limited safeguarding and poor health and safety standards, placing them at various levels of risk, depending on their age, sex, or other circumstances.

Though nursing staff were provided on site to conduct initial health checks and to register UAS children with a GP, the reports nonetheless reported several healthcare and other concerns. These included gaps in the monitoring of health and safety assurance checks, care workers not recording health concerns on young people’s files, nurses not being permitted to prescribe medication or to issue even basic pain relief, and inconsistent access to healthcare professionals outside the UASC hotels, such as a GP (Neal 2022a; de Souza 2023, p. 9). The Home Office were unable to confirm to the Children’s Commissioner ‘that each child had actually been seen by a medical professional since arriving in the [ir UASC] hotel’ (de Souza 2023, p. 9) which is startling when one appreciates the number of asylum seeker children afflicted with infectious diseases or malnutrition on arrival (Maioli et al. 2023)¹²⁹ and in need of treatment and medication. On re-inspection in 2023, a staff comment was noted by Neal that the ‘Home Office had ‘been lucky not to have to go to court for approval for surgery on a child’, as the lack of clarity over legal responsibility for [...] the children would have [been] quite complex’ (2023, para. 6.35). In *Elmi and Abubakar*, in which the ECtHR found a breach of Article 3, the applicant claimed they could

¹²⁴ As in *MSS*, see note 44 above; *AEA*, see note 49 above; *Amadou*, see note 50 above; or *ALK*, see note 50 above.

¹²⁵ *R(Limbuela) v SSHD* [2005] UKHL 66, [7] (Lord Bingham). This case concerned an adult asylum seeker.

¹²⁶ *R(AMA) v SSHD* [2021] EWHC 2646 (Admin) [28].

¹²⁷ *R(AMA)*, see note 126 above. Note, however, that an Article 8 ECHR claim was not raised in this case.

¹²⁸ The ECtHR case law indicates that destitution could not but amount to an Article 3 breach for a child asylum seeker, see *Khan*, see note 65 above; see also *OR*, see note 67 above.

¹²⁹ See also de Souza (2023, p. 9).

not access a hospital appointment or fill their prescription from inside the detention centre. Therefore, without full and ready access to medical practitioners or medication while in UASC hotels, the state arguably disproportionately interfered with those children's bodily integrity under Article 3 ECHR, as was found in *Elmi and Abubakar*.¹³⁰

Given the different facilities and resources needed for children at different developmental stages, the UASC hotels were not adequate. As with any accommodation setting designed for adult use and adapted post hoc for children, it is fair to say that the UASC hotels were almost as 'ill-adapted to the presence of [a] child' as the detention centre's 'family-zone' was in *Popov*.¹³¹ In *Popov*, the ECtHR took a dim view of the fact that the setting had no facilities for leisure, no children's furniture and few toys and took this into consideration when finding a breach of the children's Article 3 rights. Similarly, an audit of the UASC hotels commented on issues related to the provision of stimulating activities for the children (Neal 2024, para. 6.15).

In terms of the UASC hotels arrangement providing for these children's educational needs, it was found lacking. These young people were not provided with any formal education while living in the UASC hotels, some for months on end (de Souza 2023, p. 11). Though it was acknowledged that the contractors did provide some 'basic, perfunctory informal English language sessions' (Neal 2022a, para 4.16; 2024, foreword), the children were denied a formal education in the months they were there, adding further to the time they had already lost being out of an education system as a result of their asylum journey from their country of origin. A salient factor taken into account in *Elmi and Abubakar* included that the teenage boys were provided with no counselling, educational assistance or other support from a qualified person for 8 months by the state.¹³² However, the fact that the setting was a detention centre, combined with feeling threatened and at risk in detention, may have been the more decisive factor for the ECtHR. It might therefore prove much harder for an under-age resident of a UASC hotel (reception conditions) to meet the Article 3 threshold in comparison to a detention case. That said, the younger the child, the more likely an inappropriate setting is to cause them stress, anxiety or trauma.¹³³

Furthermore, UAS children can potentially have their susceptibility to risks compounded by other personal circumstances (Timmer 2013). As identified by Maioli et al. and confirmed by inspections (Neal 2022a, para 4.8 and 5.15; de Souza 2023, p. 10) in health terms alone,

[u]naccompanied asylum seeking children are rendered vulnerable by their unaccompanied status and the traumatic experiences of a forced migratory journey, with health consequences such as depression, anxiety, post-traumatic stress disorder, infections, and nutritional deficiencies (2023, p 26).

If, for example, a UAS child is female and disabled, has learning disabilities or has mental health issues then these factors heighten the appropriate level of care and protection needed for that child (Bhugra et al. 2010; Ippolito and González 2021). Additionally, any pre-existing mental health issues that the child arrives in the host state with, such as symptoms of trauma, may be aggravated once the child is in the asylum system if the host state reception conditions deny that child the care and support they need, as seen in *Elmi*

¹³⁰ *Elmi and Abubakar*, see note 56 above; see also *RT v Greece*, Application no. 5124/11 (ECtHR, 11 February 2016) re impossibility of accessing doctors and psychological support for a minor asylum seeker in a detention setting; RT judgment only available in French and Greek, though see ECtHR press release, 11 February 2016, p. 3, [https://hudoc.echr.coe.int/eng-press#%7B%22fulltext%22:\[%225124/11%22\],%22itemid%22:\[%22003-5297954-6593047%22\]}](https://hudoc.echr.coe.int/eng-press#%7B%22fulltext%22:[%225124/11%22],%22itemid%22:[%22003-5297954-6593047%22]}) (accessed on 14 April 2026).

¹³¹ *Affaire Popov*, see note 53 above.

¹³² *Elmi and Abubakar*, see note 56 above, [111] and [113].

¹³³ Per *Affaire Popov*, see note 53 above, [102]; see also *Tarakhel*, see note 51 above, [119]; see further (Ippolito and González 2021, pp. 142–45).

and *Abubakar* and *RT*.¹³⁴ The deterioration of a UAS child's mental health would further be exacerbated by a lengthy asylum process plagued with delays.

Appropriate UASC accommodation should have been staffed by trained and vetted staff, as would be expected for 'looked after children'. Reports revealed that many aspects of the UASC hotels made them inappropriate as child accommodation and could even put children at risk, given the shortfalls in safeguarding by the service provider (*Neal 2022a*).¹³⁵ The fact that neither DBS checks of staff nor satisfactory risk assessments of the physical buildings and their environs were conducted with sufficient consistency was a source of concern for the ICIBI (*Neal 2022a*, para 5.56; 2024, para. 7.31–7.32). These were safeguarding steps that would be expected of a local authority with responsibility for a 'looked after child'. Neal recorded that at '2 hotels, numerous staff residing onsite who ha[d] not been Disclosure and Barring Service cleared' (2022a, para. 4.23), those individuals had access to master keys and continued to reside on site while the service providers waited weeks for their DBS clearance to be confirmed (2022a, para. 5.107–5.108). However, such failures by the providers continued to be a cause for serious concern for both the Children's Commissioner (*de Souza 2023*) and *Neal (2024)*. The unvetted staff having access to the children in that setting potentially placed them at risk of abuse or exploitation.¹³⁶ Far from promoting their welfare, rather the UASC hotel procedures jeopardised the children's safety and were potentially detrimental to their welfare. The Home Office confirmed they did expect the private contractors to conduct risk assessments of the UAS children in these hotel settings, but Neal reported that the Home Office's oversight was a matter of concern (2022a, para. 4.21–4.24). Whether the risk of harm alone is sufficient to amount to an Article 3 breach is unclear, though it stands to reason that the younger the child the more likely they are to be susceptible to risk at the hands of some adults in whose care they are placed, or older teens. Whether it could be demonstrated that being put indefinitely in such a setting did cause a child 'stress and anxiety [or] traumatic consequences' (*Neal 2022a*)¹³⁷ amounting to a strong Article 3 claim would depend on the individual's case.

UASC accommodation should also have been secured, maintained and repaired to the same health and safety standards that a local authority childcare facility would. The UASC hotels were inconsistent and often unsuitable from a risk assessment/risk management point of view (*Neal 2022a*, para. 5.13–5.36; *de Souza 2023*, para. 1.1–1.2). Neither the sites nor buildings were consistently adequate to safeguard children (*Neal 2022a*, para. 5.8 and para. 5.98). That said, as sub-standard as the UASC hotels may have been in comparison to the care these children would have received as 'looked after children', it is questionable whether the circumstances would have amounted to 'destitution' and therefore a breach of Article 3. In terms of concerns that arose within the UASC hotels during the period, the strengths or weaknesses of such a child's Article 3 claim would be highly fact-dependent. Much of the ECtHR case law provides clarity in the context of either placing unaccompanied children in detention (*Elmi and Abubakar, Mayeka and Mitunga, Rahimi*), or else leaving them in destitution and living on the streets (*OR, Khan, Rahimi*), but these cases are not an 'easy fit' with the UASC hotels situations. Article 3, given the severity threshold and the case law to date, may not have high chances of success on this ground.

However, *Simpson et al. (2023, p. 481)* argue convincingly that, in light of *Limbuela v SSHD*, 'failure on the part of the state to provide support to a destitute individual or

¹³⁴ *Elmi and Abubakar*, see note 56 above; *RT*, see note 144 above.

¹³⁵ For the Home Office response, see <https://www.gov.uk/government/publications/response-to-a-report-on-the-use-of-hotels-for-housing-unaccompanied-asylum-seeking-children/response-to-a-report-on-the-use-of-hotels-for-housing-unaccompanied-asylum-seeking-children>, 29 February 2024 (accessed on 1 May 2025); see also *R(ECPAT UK)*, see note 2 above.

¹³⁶ As in *Darboe and Camara*, see note 39 above.

¹³⁷ As in *Tarakhel*, see note 51 above, quoting *Affaire Popov*, see note 53 above.

class of people cannot always be regarded as mere inaction, but constitutes ‘treatment’ if support would be available to other classes of person in similar destitute circumstances’.¹³⁸ Therefore, if one considers UAS children to be a ‘class of vulnerable people’, as a class of ‘looked after children’, and that the state failed to provide the same level of support or protection to them as was made available to other ‘looked after children’, then an Article 3 claim such as this, that might otherwise not meet the severity threshold, could arguably be strengthened.

The strength of an Article 3 claim is markedly different when children in the care of the state go missing. This concern was yet another consequence of these flawed practices and procedures overseen by the Home Office. Hundreds of UAS children went missing in this period.¹³⁹ Their disappearances occurred both from the UASC hotels or while children were in transit to/from or between UASC hotels and local authorities. This issue was highlighted with concern in the *ECPAT* judgment,¹⁴⁰ and the numbers of missing children increased further following the judgment ([Hansen 2024](#)). As the High Court observed at the time,¹⁴¹ this spike in disappearances from UASC hotels occurred at a time when the local Safeguarding Partnership had already reported to the Home Secretary that they had identified serious safeguarding issues there—this happened on the Home Office’s watch. The latest government figures available are that during the lifetime of the UASC hotel policy ‘there were 472 episodes where a UAS child went missing which related to 464 different individuals’, the vast majority of whom were between 14 and 17, but some being 13 or younger ([Eagle 2025](#)). Clarifying how many of them were still missing, the Minister for Border Security and Asylum acknowledged to the Joint Committee on Human Rights that, as of February 2025, 78 minors remained unrecovered, 23 of whom were between the ages of 12 and 16.

In terms of how these children going missing could have amounted to an ECHR breach, the Home Office’s policy failings resulted in them neglecting to have the necessary and secure systems in place to protect these UAS children from going missing ([UN Office of the High Commissioner for Human Rights 2023](#)). Any missing children who did end up being trafficked and/or exploited, due to the state’s policy indifference to protecting UAS children appropriately, had their rights breached through the failings of the state. Though it would be speculative to assert that the state breached these children’s Article 2 rights, it is more persuasive to assert that the state certainly failed in their positive obligations to these children under Article 3. The ECtHR, in cases such as *Khan*, *OR* and *Rahimi*, has made clear that it takes a dim view of member states that do not protect a child from harm. The facts admittedly differ somewhat: *Rahimi* and *OR* involved UAS minors being released from detention on to the streets of Greece and *Khan* concerned the French authorities making a 12-year-old UAS boy homeless when they demolished his shelter in the Calais Jungle.¹⁴² However, there are similarities to be found between these cases and the missing UAS children when one traces the causal link between the state’s flawed procedures leading to a lack of safeguarding for a child and to the predation that a child in need may encounter once they go missing. Therefore, if such a case came before the ECtHR, it is more plausible than possible that a state would be found to have failed in their Article 3 positive obligations towards the child, especially given the absolute nature of Article 3.

¹³⁸ Emphasis added.

¹³⁹ See also [Ayeb-Ayeb-Karlsson et al. \(2024\)](#), when 440 missing episodes were reported at the time.

¹⁴⁰ See also *R(ECPAT UK)*, see note 2 above, [8]; see further [Hynes \(2022\)](#).

¹⁴¹ *R(ECPAT UK)*, see note 2 above, [155].

¹⁴² *Khan*, see note 65 above.

4.2. Article 8—Right to Private and Family Life

Article 8 breaches arguably arose as a consequence of children in UASC hotels not receiving the care that a ‘looked after child’ should receive, particularly relating to general health, mental health, and not promoting the child’s best interests.¹⁴³ Furthermore, whenever a UAS child arrived with special needs or disabilities, as several did over the years (de Souza 2023, pp. 9–10), the insufficient support they received to meet their specific needs while there arguably interfered with the child’s physical and psychological integrity under Article 8 ECHR¹⁴⁴ and perhaps Article 3, depending on whether the circumstances or impact met the severity threshold.

Institutional living such as in UASC hotels can take its toll on the already undermined mental health of a UAS child or compound pre-existing mental health issues from both being unaccompanied and ‘hav[ing] faced sequential stressful life events in the past (war, obstacles of flight) before arriving in a country, where they are confronted with [...] new hurdles of legislative and social systems’ (Huemmer and Vostanis 2010, p. 230). For example, increased levels of stress, anxiety and depression when housed indefinitely in an institutional setting are commonplace, and child asylum seekers are no exception (Helen Bamber Foundation and Asylum Aid 2024) and, for UAS children, Huemmer et al. (2009) found that unaccompanied refugee children revealed higher levels of PTSD symptoms in comparison to accompanied refugee children or to the general population. Issues arose during the UASC hotels policy both in terms of failures by staff to identify mental health concerns on the children’s files (Neal 2022a, para. 5.37) and in the way those concerns were not addressed while at these hotels. By 2023 ‘access to mental health support remained a concern across the contracted agency staff’ (Neal 2024, para. 6.34), as were reports of mental health concerns, self-harm and suicidal ideation.¹⁴⁵ As the Children’s Commissioner noted:

*the extreme vulnerability of the children who are placed in the hotels comes through in the vulnerability notes . . . , where present. Of the 2031 children with recorded vulnerability notes, alarmingly 9% of the notes refer to suicide, self-harm and mental illness (de Souza 2023, p. 9).*¹⁴⁶

And yet access to mental health support was not forthcoming while they were in UASC hotels. Both the ICIBI and the Children’s Commissioner noted that they were denied access to mental health support for the trauma they had experienced as a result of their journey and prior experiences (de Souza 2023, p. 10; Neal 2022a, para. 5.15). While in UASC hotels, these children in need of mental health support were denied access to it, which they would have been statutorily entitled to had they been in local authority care all along. It is therefore small wonder that UASC hotels had a negative impact on their mental health (Barnswell et al. 2025).¹⁴⁷ Without full access to mental health assessment and supports while in UASC hotels the state arguably disproportionately interfered with these individuals’ psychological integrity under Article 8 ECHR. As Heri rightly points out, the ECtHR has recognised ‘that young children [in detention] are particularly impressionable and may suffer trauma as a result of experiences that would be considered bearable for

¹⁴³ Nunez, see note 8 above; Kanagaratnam, see note 8 above; AB and Others, see note 55 above; and RK and Others, see note 55 above.

¹⁴⁴ Per the Children Act 1989; see also *R(TMX) v Croydon LBC* [2024] EWHC 129 (Admin). Note that case concerned an adult asylum seeker with disabilities.

¹⁴⁵ For a contemporaneous media report, see Wolfe-Robinson and Taylor (2021).

¹⁴⁶ Emphasis added. What was meant by ‘where present’ was later clarified (de Souza 2023): *Of the 5298 children in the data return, the Home Office only provided vulnerability notes for 38% (2030) of the children. The Home Office told us that if there were no notes, that meant there were no known vulnerabilities. This suggests that the Home Office believes 62% of children who [had] fled their home countries and arrived alone in this country [had] no vulnerabilities (p. 9).*

¹⁴⁷ See further Huemmer and Vostanis (2010) and Huemmer et al. (2009).

adolescents' (2021, p. 55).¹⁴⁸ Younger children are more easily intimidated, threatened or traumatised by, for example, older teens or by other aspects of UASC hotels. This also finds favour with scholarship in the spheres of social and medical assistance, where Blake and Husain maintain that this form of discrimination 'would be likely to engage Article 14 when combined with the concept of physical and bodily integrity under Article 8' (2003, p. 334). It is conceivable by analogy to see how, under certain circumstances, a child in a UASC hotel could have an arguable claim under these articles, especially if they were denied access to medical treatment of any kind, as in *Elmi and Abubakar*.¹⁴⁹

4.3. Article 14—Prohibition of Discrimination

One of the predominant concerns for children put in UASC hotels was that they were no longer treated as 'looked after children' from a child protection and safeguarding perspective. These children were prevented from accessing the relevant safeguards their status afforded under the Children Act 1989, such as being allocated an Independent Reviewing Officer and the development of a care plan of the child's needs. The local authorities no longer had the role of taking care of these minors as 'looked after children' but at the same time the Home Office was failing to take on the equivalent responsibilities for them. This situation left some child asylum seekers falling between two state agencies, local authorities and the Home Office, as 'no agency or government department has statutory responsibility for these children. The Home Office [had] not assumed this statutory responsibility and [was] not operating as the 'corporate parent' (Neal 2022a, p. 49).

These UAS children would have had as much of the necessary care and support available to them as other 'looked after children' had the government wished to maintain the status quo. The High Court in *ECPAT* found that only Kent CC had acted unlawfully by discriminating between English and UAS 'looked after children'.¹⁵⁰ This was contrary to Section 17 of the Children Act which states that statutory duties on local authorities are owed to all children equally, on the basis of need, not on the basis of immigration status.¹⁵¹ The local authority, as an arm of the state, did not make these children's best interests their paramount consideration at this time in accordance with Section 1 of the Children Act. However, the manner in which the SSHD chose to respond to this situation was also highly questionable, given how problematic the UASC hotels policy was and given the alternative courses of action.

The UASC hotels policy could have been less problematic if the Home Office had taken on corporate parental responsibility for these children in the absence of a local authority, as the local authorities must do when exercising their Children Act duties. That would have made the statutory duties and standards owed by the Home Office to these 'looked after children' clearer, as well as made any problems with the arrangement more open to scrutiny by Ofsted. Alternatively, the Home Office could have applied the funds that went to contractors and instead distributed them to other local authorities who could have in turn proportionately absorbed the increased number of UAS children to their area as a result of Kent CC's actions, enabling the other local authorities to cope with the increased demand on their children's services' resources and staff. A 'middle ground' option could have been for the Home Office to arrange for the supply of the hotel sites with the contractors but to assign additional funding to local authorities in the relevant areas in order that local authorities could source appropriately trained staff to run those settings for looked after children. This way, though not accommodated in traditional local authority settings, they

¹⁴⁸ Citing *AB and Others*, see note 55 above.

¹⁴⁹ *Elmi and Abubakar*, see note 56 above.

¹⁵⁰ *R(ECPAT UK)*, see note 2 above, [123(a)].

¹⁵¹ *R(ECPAT UK)*, see note 2 above, [24].

could have been cared for by appropriately trained and vetted staff and not been as isolated from local services and supports.¹⁵² However, this third option may not necessarily have resolved structural, maintenance or repair issues with the accommodation, which were also highlighted in reports (Neal 2024, para. 7.30–7.32).

The High Court also considered that there were other options open to the Home Office at the time, including:

[a] directing Kent [CC] to comply with its statutory duty under s. 84 CA 1989 (a power which can be exercised by the Education Secretary); [b] increasing the funding made available to Kent CC with a view to lifting the cap on the number of UAS children the [Reception and Safe Care Service] can accept; increasing the financial incentives available to other local authorities to encourage them to accept transfers from the RSCS more timeously; [c] making more robust the arrangements for dispute resolution in the NTS Protocol (for example, by introducing a binding adjudication mechanism); and [d] bringing judicial review proceedings to enforce the terms of the NTS.¹⁵³

Such alternative options, had they been pursued by the government at the time, would have (at the least) reduced the length of time the Home Office needed to rely on their UASC ‘emergency’ measure or (at most) removed the need for the UASC hotels measure entirely. Instead, the Home Office chose to add UAS children to the pre-existing flawed contingency asylum hotel model on an indefinite basis.¹⁵⁴

The state’s failure to provide all that a ‘looked after child’ is statutorily entitled to at the time discriminated against UAS children (compared to English ‘looked after children’) and arguably amounts to a breach their Article 14 ECHR (non-discrimination) rights. As has already been argued above (Blake and Husain 2003), depending on the circumstances of an individual case, there is certainly scope here for adding an Article 14 claim to a claim under 3 or 8 (above), though this has not yet been tested at the ECtHR level.

To summarise, Part 3 provided an overview of problems that arose from UASC hotels (in order of their potential ECHR article breaches) and a critical assessment of whether those concerns amount to breaches of Articles 3, 8 and/or 14. In terms of Article 3, the existing case law suggests that only the most destitute of reception conditions will amount to a successful claim, and the ECtHR tends to apply a broad margin of appreciation to member states. However, when it comes to child asylum seekers (accompanied or otherwise) the ECtHR has maintained an expectation that the accommodation be appropriate for the needs of the relevant child to be met. The argument of an Article 3 breach is further strengthened in circumstances where it can be established that children went missing from these UASC hotels as a result of structural/systemic problems in the UASC policy. In terms of Article 8, there is ample evidence that the UASC hotels were not fit for purpose in terms of adequately or consistently looking after these UAS children’s general health and mental health or promoting their best interests, which arguably amounted to a disproportionate interference with the individual’s bodily and psychological integrity. In terms of Article 14, success is often dependent on the applicants’ refugee status and is rarely claimed in asylum cases. However, the High Court’s finding in *ECPAT* that these UAS children had been discriminated against as ‘looked after children’ raises the interesting question of whether, if a similar case came before the ECtHR, they might be persuaded by the argument that UAS children are a particularly ‘vulnerable group’ under the ‘other status’ of Article 14. Overall, from the above we can deduce that dependency, marginalisation and isolation are important concepts when discussing the reception conditions in which UAS children were

¹⁵² For other alternative options identified by the Court, see *R(ECPAT UK)*, see note 2 above, [207].

¹⁵³ *R(ECPAT UK)*, see note 2 above, [207].

¹⁵⁴ *R(ECPAT UK)*, see note 2 above, [207].

placed. We can also recognise that treating UAS children differently than other ‘looked after children’ led to thousands of children collectively experiencing marginalisation and exclusion while in UASC hotels, arguably leading to breaches of their Article 3 and/or 8 rights, perhaps in conjunction with Article 14.

5. Conclusions

The hotels policy was seriously flawed and inappropriate for UAS children from its inception and continued to be so with every passing month and year of its operation. By the end of 2021 it was insincere for the Conservative government to maintain for years that it was a temporary solution in response to an emergency. They continued with this rhetoric and defended the measure, without an exit plan, for years.

This paper, through contextualising the background and evolution of this policy against the backdrop of the ECHR and domestic legal obligations, has argued that, by depriving these UAS children of facilities, services and supports which they were entitled to receive as ‘looked after children’, a range of their human rights were breached. The severity of these breaches and the subsequent negative impacts on children ranged from delaying their access to education to issues affecting their health and even their safety, thus compounding their vulnerability further. By choosing to respond to the crisis by availing of private contractors who already did not have a good track record regarding adult and family asylum hotels, and then by neglecting their responsibility to ensure that the private contractors consistently acted in the best interests of these children (in their systems, operations and record keeping), the then Home Secretary was responsible for breaching children’s ECHR rights.

This Conservative government’s policy dealing with children was indicative of a much more invidious and pervasive hostile attitude towards asylum seekers generally. While asylum hotels and other contingency accommodation are still a reality for many, for UAS children at least the *ECPAT* judgment was a welcome pronouncement establishing when and how various arms of the state had acted unlawfully towards these children during this period. Whilst lessons can be learned from this judgment by local authorities, the Home Office and the Minister in respect of complying with their statutory duties under domestic law, this article provided further disincentives for such measures being taken by governments in the future, at the risk of being found to have breached these children’s ECHR rights. Hopefully the current government, and future governments, will not repeat mistakes of the past when it comes to respecting asylum seeker children’s rights.

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