

# **REUK's response to the Nationality and Borders Bill**

July 2021

# Contents

<b>Foreword from REUK's Chief Executive</b>	<b>2</b>
<b>How we use terms in this report</b>	<b>3</b>
<b>1. Introduction</b>	<b>5</b>
<b>2. Key concerns about the proposed asylum system reforms</b>	<b>6</b>
2.1. Excluding children and young people who cannot access 'safe and legal routes'	6
2.2. Overlooking young refugees' lived experiences and child rights	7
2.3. Eroding meaningful integration	8
2.4. Increasing the risk of wrong age assessments	9
2.5. Failing to adopt a trauma-informed approach	10
<b>3. Key recommendations</b>	<b>12</b>
The Home Office must ensure safe and legal routes are accessible to all refugee children and young people	12
The Home Office must prioritise children's rights and change their representation of UASC	12
The Home Office must provide for meaningful integration	12
The Home Office must create a compassionate, culturally-sensitive age assessment process	13
The Home Office must adopt a trauma-informed approach	13

# Foreword from REUK's Chief Executive

Refugee Education UK (REUK, formerly Refugee Support Network) has worked to support the education and wellbeing of refugee and asylum-seeking children and young people across the UK for the last ten years.

Our response to the Nationality and Borders Bill draws on both our on the ground experience providing direct educational support to over 500 young refugees and asylum seekers, and numerous schools, colleges and universities each year, and on our extensive research into the education, integration and wellbeing of young refugees and asylum seekers, often conducted in partnership with UN agencies.

In summary, we are extremely concerned that, should this plan be implemented, the unforeseen (and potentially unintended) consequences for refugee children and young people, and for the UK as a whole, will be devastating.

**We must have an asylum system that offers the chance of safety to Celestine, who fled to the UK aged 16 from the most conflict-affected region of the Democratic Republic of Congo, just as much as Abbas, the 17 year old boy from Syria who came with his family via a resettlement programme. Both of these ultimately received refugee status in the UK, and have been supported by REUK - and yet Celestine, who is now studying medicine at university, and the numerous others like her with circumstances outside of 'safe and legal routes', would, under the proposed system, no longer find protection in the UK.**

The commitment to resettlement and to expanding safe and legal routes is welcomed - however, it must be clear that this can not replace a fair and functioning asylum system for those who have a genuine need of protection and who have no alternative to coming to the UK under their own steam.

Our hope as this Bill progresses through parliament is that these concerns, which are shared by many, will be addressed - and that we will emerge a nation that is still able to extend sanctuary to those in need.



Catherine Gladwell

# How we use terms in this report

<b>Asylum seekers</b>	Individuals going through the asylum system and who are awaiting a decision on their claim to asylum from the Home Office. Seeking asylum is a human right.
<b>Children</b>	Individuals under the age of 18.
<b>Illegal routes</b>	The Refugee Convention recognises that people may need to enter a country unlawfully without prior authorisation. Article 31 of the Convention commits states not to impose penalties on refugees if they enter in this way. However, the Nationality and Borders Bill contravenes the Refugee Convention and seeks to criminalise certain routes to the UK, including crossing the channel by boat.
<b>Nationality and Borders Bill (the Bill)</b>	A proposal for a new law addressing immigration, asylum and nationality issues. The Bill is referred to by the Home Office as the “cornerstone of the Government’s New Plan for Immigration” <sup>1</sup> , and is progressing through Parliament.
<b>New Plan for Immigration (NPI)</b>	A policy published in March 2021 by the Home Office setting out reforms to the UK asylum system. In order to implement the NPI, the Home Office began progressing the Nationality and Border Bill through Parliament in July 2021.
<b>Refugees</b>	Individuals who have been through the asylum system and have received a decision on their asylum claim. They may have a range of immigration statuses, including but not limited to refugee status and humanitarian protection.
<b>The 1951 Refugee Convention and its 1967 Protocol (Refugee Convention)</b>	Key international legal documents that enshrine the rights of refugees at the international level, and spell out the obligations of States to provide asylum to refugees who have reached their territory. Article 1 of the Refugee Convention defines a refugee as someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.
<b>Unaccompanied asylum-seeking children (UASC)</b>	Children, under the age of 18, who arrive in the UK without a parent or guardian who by law or custom is responsible for their care.
<b>UASC Leave</b>	A time-limited status given to a child who is under the age of 17½, who has applied for asylum but has been refused refugee status and humanitarian protection. These children will be granted a form of limited leave if there are no adequate reception

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<https://www.gov.uk/government/publications/the-nationality-and-borders-bill-factsheet/nationality-and-borders-bill-factsheet>

	arrangements in the country to which they would be returned. UASC leave is granted for a period of 30 months or until the child turns 17 ½ years old, whichever is shorter.
<b>United Nations Convention on the Rights of the Child (UNCRC)</b>	The most widely ratified international legal document that outlines the universal rights of all children under the age of 18. Article 22 of the UNCRC makes clear the obligations of States to guarantee protection and humanitarian assistance to refugee children, as well as to assist with family reunification.
<b>Well-founded fear of persecution test</b>	The way in which the UK government determines whether an individual is a refugee, as defined by Article 1 of the Refugee Convention. The test determines whether an individual is at risk of being persecuted if returned to their country of origin.
<b>Young people</b>	Individuals between the ages of 18 and 25.

# 1. Introduction

In March 2021, the Home Office published the New Plan for Immigration (hereafter referred to as the NPI), a policy setting out, in the Home Secretary's words, "the most significant overhaul of [the UK] asylum system in decades". The aim of the NPI is to create a 'firm but fair' asylum system through three key objectives:

- to increase the fairness and efficacy of our system so that we can better protect and support those in genuine need of asylum;
- to deter illegal entry into the UK, thereby breaking the business model of criminal trafficking networks and protecting the lives of those they endanger;
- to remove more easily from the UK those with no right to be here.<sup>2</sup>

To accompany the NPI, the Home Office launched a six week consultation between March and May 2021 to gather feedback from and the views of the public. In July 2021, the Home Office began the process to implement the NPI by bringing the Nationality and Borders Bill (hereafter referred to as the Bill) to Parliament.

At REUK, we celebrate the UK's long history of welcoming refugees and are grateful that, as a country, we are working out what our ongoing commitment to the Refugee Convention and to protecting refugees and asylum seekers should look like in today's world. However, we remain seriously concerned that the proposed asylum system would move away from offering protection to those who most need it. To provide our feedback on the proposals, we participated in the government consultation in May. This report sets out the key areas that we highlighted through the consultation.

REUK's response draws on our ten years of experience supporting and researching refugee education and wellbeing. We work with over 550 young refugees and asylum seekers each year, in addition to numerous schools, colleges, universities and NGOs (find out more on our website here: [www.reuk.org](http://www.reuk.org)). Our response focused on two of the NPI's chapters: Chapter 2, Protecting those Fleeing Persecution, Oppression and Tyranny, and Chapter 4, Disrupting Criminal Networks and Reforming the Asylum System.

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<sup>2</sup> Home Office. 2021. New Plan for Immigration: policy statement. UK Government, [online]. Available at: <https://www.gov.uk/government/consultations/new-plan-for-immigration>.

## 2. Key concerns about the proposed asylum system reforms

### 2.1. Excluding children and young people who cannot access 'safe and legal routes'

There are serious concerns that the proposed reforms to the asylum system will only extend the option of protection to a small minority of children and young people in specific geographic areas. The proposed changes to the asylum system rest on the notion that asylum seekers have a choice about when and how they flee their countries of origin to seek safety in the UK, and focuses on international crisis contexts. In doing so, it overlooks the many nuanced and complex circumstances that force children and young people to flee, sometimes without parents or guardians<sup>3</sup>

Children and young people's need to flee life-threatening situations can be urgent and immediate. They sometimes flee from adults who, by law or custom, are responsible for their care. Many are left with no option but to enter the UK through irregular routes – such as by crossing the channel on boats – which the Bill is seeking to criminalise in contravention of the Refugee Convention. They are likely to have little or no knowledge of the consequences before they make these journeys. And without additional safe and legal routes for all children and young people in genuine need of protection, dangerous journeys and the use of irregular routes will continue.

REUK is particularly concerned that unaccompanied asylum-seeking children (UASC) will lack the ability, knowledge and resources to access formal routes to resettlement. Over the last ten years, REUK has supported significant numbers of children and young people who came to the UK through irregular routes, but who were indeed found by the UK government to have a 'genuine need for protection'. Currently, we estimate that 80 percent of the children and young people receiving REUK support fall under this category.

#### Children and young people fleeing life-threatening situations

REUK provides support to young people who fled a range of life-threatening situations but were not located in a region of conflict or instability. This includes young people fleeing:

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<sup>3</sup> Chase, E. and Allsopp, J., 2021. Youth migration and the politics of wellbeing: stories of life in transition. Bristol: Bristol University Press; Crawley, H., 2011. "Apolitical, asexual beings": the interpretation of children's experiences and identities in the UK asylum system. *Journal of Ethnic and Migration Studies*, 37(8), pp. 1171–84; Allsopp, J. and Chase, E., 2017. Best interests, durable solutions and belonging: policy discourses shaping the futures of unaccompanied migrant and refugee minors coming of age in Europe. *Journal of Ethnic and Migration Studies*, 45(2), pp.293-311.

- enforced military conscription
- family-related violence, including blood feuds
- sexual violence, including forced genital mutilation
- the risk of trafficking by their parents or guardians
- persecution as a result of their sexual orientation and gender identity

A significant majority of these young people did not have access to formal resettlement routes, and had no option but to flee on their own, and find their own way to the UK.

## 2.2. Overlooking young refugees' lived experiences and child rights

Refugee and asylum-seeking children, including those who arrive in the UK on their own, are not adequately considered by the Bill; they are treated as an afterthought.

Because of this lack of clarity, REUK is gravely concerned that children will be penalised for decisions they have not taken or only partially understand. Children travelling across continents – either alone or with family – are confused, scared and desperate. They are very likely to have little or no understanding of international or UK law or the idea of a safe country. Many will either be unaware they are heading to the UK or will be doing so because they have family members in the UK or have the ability to speak English. They are likely to have no choice but to travel to the UK through routes that the Bill is seeking to criminalise.

The UK has a long history of treating children as children first, migrant second. For example, in cases where a child's asylum claim is not granted, their rights as a child are recognised above this and they are granted UASC leave. This approach is present in the joint Home Office and Department for Education safeguarding strategy for UASC.<sup>4</sup> However, the Bill leaves serious questions about whether asylum-seeking children's rights as children will be maintained and upheld.

REUK is also concerned that, within the NPI, references to UASC were focused only on age assessments, specifically on adults supposedly 'posing' as children (for more, see section 2.4 on age assessments). We are worried that this depiction is rooted in long-standing, pre-existing patterns and discrimination against UASC: because they are teenage boys – often between the ages of 14 and 17 – who might not 'look' or 'behave' as children as expected by Western standards.<sup>5</sup> At REUK, we have seen the devastating impacts of such depictions on these teenage boys' lives: such narratives fuel fear, discrimination, and hostility towards them.

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<sup>4</sup> Department for Education and Home Office. 2017. Safeguarding strategy, unaccompanied asylum-seeking and refugee children. UK Government, [online]. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/656425/UASC\\_Safeguarding\\_Strategy\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/656425/UASC_Safeguarding_Strategy_2017.pdf)

<sup>5</sup> McLaughlin, C., 2017b. 'They don't look like children': child asylum-seekers, the Dubs amendment and the politics of childhood. *Journal of Ethnic and Migration Studies*, 44(11), pp. 1757-1773



The fact is that they are teenagers who have fled their homes without their family and have made dangerous and frightening journeys on their own. They are resilient and determined, and have arrived in the UK seeking to build a hopeful future. But they are, instead, treated with hostility and suspicion from the moment they arrive here, which compounds the hardships they have already endured. The proposals will only embed the adversity UASC experience even further, creating a system that contravenes the UNCRC.

## 2.3. Eroding meaningful integration

REUK welcomes the proposals to strengthen integration – including the proposed focus on employment, language, wellbeing and social bonds support in refugee integration packages. Unfortunately, however, the detail of what is proposed is more likely to hinder rather than support the process of integration for a significant number of children and young people.

Specifically, the plan to give constantly reviewed temporary protection – a status that will offer individuals “less generous entitlements”<sup>6</sup> to life in the UK and will allow them to be returned to countries of origin at short notice – will have significant unintended harmful consequences. Our experience of working with hundreds of young people with applications for extensions to their UASC leave pending shows that temporary protection creates a severe lack of certainty and stability. This profoundly undermines children and young people’s mental health and wellbeing and forces them to live in a state of precarity.<sup>7</sup> If passed, the Bill will extend this dangerous limbo to a much larger group of young refugees.

Trauma and mental health issues are widespread among asylum-seeking children and young people – including depression, anxiety, post-traumatic stress disorder and suicidal ideation<sup>8</sup> – and are barriers to their integration. The proposals will undoubtedly exacerbate trauma and mental health challenges. And yet the proposed asylum system reforms make no mention of the importance of psychosocial and mental health support.

Similarly, education, which is essential for integration, is not a priority within the proposed asylum system reforms – and yet the consequences for access to post-compulsory education will be dire. Young people we work with who have temporary and time-limited status already face significant challenges enrolling in further or higher education courses when their leave to remain expires part way through the course, even if said status gives them the right to study.<sup>9</sup> We expect that even if recipients of temporary protection have the right to study on paper, they will not be accepted onto courses that run beyond the expiry date of their protection. They will effectively be excluded from higher education,

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<sup>6</sup> Home Office. 2021. New Plan for Immigration: policy statement. UK Government, [online], p.18.

<sup>7</sup> Chase, E. and Allsopp, J., 2021. Youth migration and the politics of wellbeing: stories of life in transition. Bristol: Bristol University Press.

<sup>8</sup> Betancourt, T.S., Meyers-Ohki, S.E., Charrow, A.P. and Tol, W.A., 2013. Interventions for Children Affected by War: An Ecological Perspective on Psychosocial Support and Mental Health Care. *Harv Rev Psychiatry*, 21, pp.70–91; Fazel, M., Wheeler, J., and Danesh, J., 2005. Prevalence of serious mental disorder in 7,000 refugees resettled in Western countries: A systematic review. *The Lancet*, 365, pp.1309–1314; Fazel, M., 2018. Psychological and psychosocial interventions for refugee children resettled in high-income countries. *Epidemiology and Psychiatric Sciences*, 27, pp.117–123.

<sup>9</sup> Ashlee, A. and Gladwell, C. 2020. Education transitions for refugee and asylum-seeking young people in the UK: Exploring the journey to further and higher education. London: Unicef UK.

and to an extent, further education, in the UK, and denied the tools they need to successfully integrate.

REUK is concerned about the proposals to prioritise those who are resettled to the UK based on their ability to integrate, over their need for protection. This contradicts, if not the letter, the spirit of the Refugee Convention. We have supported children and young people who may have, on paper, appeared difficult to integrate, but in reality have excelled and adapted to life in the UK.

### **Case study: young people's ability to overcome obstacles and integrate in the UK**

When M first arrived in the UK, they were unable to speak any English and their first language was sign language from their country of origin. Language and other barriers prevented M from accessing asylum support, and at one point they experienced homelessness. But, five years later, M is about to start university to study a humanities subject, is fluent in English and passionate about improving the lives of others. M would have appeared to be unlikely to 'integrate' on paper, and would not have been prioritised for resettlement under the proposed asylum system; but this could not be further from the case in reality.

## **2.4. Increasing the risk of wrong age assessments**

The Bill includes a 'placeholder' for the Home Secretary to make provisions with regards to age assessments (clause 58). While the Bill leaves uncertainty about what these provisions would entail, the NPI includes plans to use scientific methods to assess age, allow immigration officers to carry out age assessments, and reduce the age that an individual's physical appearance and demeanour reflects from over 25 to over 18 in order for that individual to be assumed an adult.

The proposals have been denounced by social workers as "deeply worrying" and likely to increase the number of children wrongly age assessed as adults.<sup>10</sup> It is widely agreed by paediatricians that the age assessment process is subjective, and that physical appearance and demeanour cannot prove an individual's age. The Royal College of Paediatrics and Children's Health stated in 1999 that there is a five-year margin of error for estimating age, and that "assessments of age measure maturity not chronological age."

The asylum reform plans, however, do not include any culturally appropriate and child-specific considerations. It instead focuses on safeguarding against adults pretending to be children. While the NPI states that "since 2015, the UK has received, on average, more than 3,000 unaccompanied asylum-seeking children per year. Where age was disputed and resolved from 2016-2020, 54% were found to be adults"<sup>11</sup>, it does not

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<sup>10</sup> Blackwell, A., and Samuels, M., 2021. 'Deeply worrying' age assessment changes will increase risks to child asylum seekers, warn charities. Community Care, [blog] 26 March. Available at: <https://www.communitycare.co.uk/2021/03/26/deeply-worrying-age-assessment-changes-will-increase-risks-to-child-asylum-seekers-warn-charities/>

<sup>11</sup> Home Office. 2021. New Plan for Immigration: policy statement. UK Government, [online], p.22.

recognise, nor respond, to the fact that nearly half – 46 percent – of those individuals subjected to age disputes were, in fact, children. It also does not consider the large numbers of likely wrong age assessments within the 54 percent. This disregards the risk of wrongly assessing an asylum seeker as older than they are and placing an already vulnerable child in potentially unsafe and inappropriate spaces.

The detrimental impacts of wrong age assessments on UASC's lives are not considered. Children who are incorrectly age assessed as adults may be placed in inappropriate accommodation with adults with low levels of support, or even confined to detention centres.<sup>12</sup> Additionally, while undergoing the age assessment process, children are likely to miss out on age-appropriate education and are forced to live in a state of limbo with devastating impacts on their lives.

### **Case study: the devastating impacts of wrong age assessments on children's lives**

R was incorrectly age assessed as an adult when they arrived in the UK aged 15. R was denied age-appropriate, full-time education at secondary level, and placed in a part-time, adult ESOL provision for 19+ learners of just six hours per week. This denied R the opportunity to learn English and explore gaining GCSEs and other core qualifications that otherwise could have been worked towards as a child.

During this time, R was required to share a room with an unknown adult, and in a space that was triggering for R's trauma and mental health difficulties. After REUK and other support agencies raised safeguarding concerns about R's accommodation arrangements, their age was re-assessed by the local authority. R was successfully assessed as their stated age, and finally moved into age-appropriate accommodation with full-time support of a key worker. R was finally able to start progressing in age-appropriate education, having missed on critical, valuable time in education.

## **2.5. Failing to adopt a trauma-informed approach**

REUK is also concerned that the Home Office has failed to adopt a trauma-informed approach, specifically with regards to altering the well-founded fear of persecution test and the focus on rapidly identifying legitimate claims of trafficking. Both of these proposals rest on the notion that asylum seekers can provide comprehensive and accurate evidence at the earliest opportunity. However, from REUK's ten years' of experience working with children and young people, we know that this is simply not possible, and there are valid reasons why children and young people are not able to do this, including the lasting impacts of trauma. The proposals also disregard well-recognised international and national standards of practice for working with and support victims of violence, including trafficking.

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<sup>12</sup> Blackwell, A., and Samuels, M., 2021. 'Deeply worrying' age assessment changes will increase risks to child asylum seekers, warn charities. Community Care, [blog] 26 March. Available at: <https://www.communitycare.co.uk/2021/03/26/deeply-worrying-age-assessment-changes-will-increase-risks-to-child-asylum-seekers-warn-charities/>

REUK is concerned that the more rigorous standards for assessing well-founded fear of persecution will overlook the contextual factors that could lead to a child or young person's story evolving over time. This includes, but is not limited to: experiencing trauma and PTSD (from experiences in countries of origin and their dangerous journeys), dissociation during the interviews, the triggering of intrusive memories.<sup>13</sup> Additionally, REUK has seen how fear and lack of trust in the system, reliance on wrong information provided by smugglers or others, and reliance on an interpreter can all affect the accounts that children and young people provide.

Through our work with survivors of trafficking, we have seen how piecing together a story is a long process, and becomes even more complex when working with children and young people. The proposals overlook the psychological trauma that children and young people will have experienced, and that they may not yet be fully aware of. Recent research Data strongly suggests that the initial account given will not be accurate and coherent enough to make a quick decision.<sup>14</sup>

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<sup>13</sup> Herlihy, J., 2013. Fair Judgments: Reasons for inconsistent accounts in UK asylum applications. Protocol.

<sup>14</sup> After Exploitation. 2021. New data: Majority of trafficking claims found to be 'positive' after reconsideration. <https://afterexploitation.com/2021/07/02/new-data-majority-of-trafficking-claims-later-found-to-be-positive-after-reconsideration/>

## 3. Key recommendations

Overall, REUK is deeply concerned about the significant and potentially unintended harmful consequences that the proposals have on the lives and rights of asylum-seeking children and young people, and the UK as a whole.

### **The Home Office must ensure safe and legal routes are accessible to all refugee children and young people**

The following key recommendations are made:

- It is critical that children are not penalised for the manner in which they enter the country, and that their best interests are prioritised. The Home Office must recognise that many UASC will be unable to access formal safe and legal routes, and will have no option but to flee through routes deemed to be illegal.
- Thoroughly consider a young person's actual circumstances before deciding if they could have feasibly accessed a 'safe and legal' route to safety.
- Further develop plans to identify countries or situations that merit a formal resettlement route, ensuring these reach children and young people not situated in international crisis contexts. This should be advised by a group of independent experts, including academics, third sector organisations, and the refugee and asylum-seeking community themselves.

### **The Home Office must prioritise children's rights and change their representation of UASC**

The following key recommendations are made:

- Urgently consider the extreme harm that will be caused should these proposals lead to the creation of a system that infringes on and contravenes the UNCRC.
- Urgently clarify how UASC leave will be affected under the new scheme. REUK is gravely concerned that the protections afforded to UASC will be eroded.
- Alter the representation of UASC within the Bill and all accompanying policies, recognising that the harmful narrative it includes – that is, associating UASC only with adults posing as children – fuels discrimination, racism and hostility towards children.

### **The Home Office must provide for meaningful integration**

The following key recommendations are made:

- The granting of refugee protection should in no way be influenced by children and

young people's ability to integrate. English language ability, previous qualifications, or previous employment should not be factored into the asylum claim process.

- The integration package should provide holistic support for refugee and asylum-seeking children and young people, including education support and full entitlements and mental health and psychosocial wellbeing support interventions.
- UASC need to be prioritised and addressed separately. With appropriate support, children of all ages are well able to integrate into British culture whatever their background.

## **The Home Office must create a compassionate, culturally-sensitive age assessment process**

The following key recommendations are made:

- The assessment age should remain at 'over 25'.
- There must be a holistic and culturally-sensitive approach to age assessment. It must take into account the different life experiences of children arriving to the UK, which will often lead to them having more mature behaviours and demeanours from most UK peers (such as experiencing trauma, or different cultural norms around age in their country of origin).
- The Home Office should extend educational entitlements to those waiting for the outcomes of age assessments, including through additional ESOL learning opportunities (such as through group learning, 1:1 sessions and mentoring).
- ESOL entitlements for 19+ students should be expanded to the same level as under 18's, recognising that asylum seekers who have undergone age assessment processes will have missed out on chunks of their education and be significantly behind their British peers.

## **The Home Office must adopt a trauma-informed approach**

The following key recommendations are made:

- There must be space for children and young people to work closely with mental health support workers and consistent caseworkers to develop their statement and express what has happened to them.
- Ensure that each child and young person seeking asylum receives comprehensive information in a language and format that they can understand, prior to and throughout the 'well-founded fear of persecution' test.
- Ensure that children and young people having to relay their experiences to officials during interviews receive comprehensive and culturally-sensitive assistance and support for their mental health needs, recognising the painful process of having to tell their story of persecution. This must be present as young people prepare for interviews, as well as after, as the interview process can compound existing trauma.



## Refugee Education UK

Refugee Education UK is a charity registered in England & Wales under charity number 1132509 and company number 06879651 at 1st Floor, 32 Manor Park Road, London NW10 4JJ.