

CHILDREN AND SOCIAL WORK BILL 2016 – House of Lords, Second Reading
Coram Children's Legal Centre briefing, June 2016

The Children and Social Work Bill sets out to improve decision making and support provided by the local authority for looked after and previously looked after children. It is important to consider all those children who are looked after by local authorities in England and Wales, **particularly those who may be more vulnerable as a result of their immigration status, the status of their parents, or the route by which they came to the UK.**

Coram Children's Legal Centre (CCLC) believes that this Bill offers an opportunity to set out in primary legislation that **local authorities have a duty to take proactive steps to regularise the immigration status of children in their care through seeking immigration advice**; a duty which would offer the best safeguard and promote the welfare of a very vulnerable group of children.

Uncertain status and vulnerability

There are many children and young people in the care system whose immigration status is uncertain, precarious or non-existent. Many of these children and young people may believe themselves to be British. Currently, Statutory Guidance makes provision for social workers to access specialist legal advice for children.¹ However, in our experience this guidance is not always applied, especially with regard to children who are neither victims of trafficking nor claiming asylum. 16% of calls to the Coram Children's Legal Centre Migrant Children's Advice Line relate to separated children in local authority care. In many cases it is not until these children are at the point of turning 18 and are considering work, training or tertiary education that their precarious status comes to light – by which time many routes to regularisation will be closed or severely restricted.

In January 2016, a local authority was fined for failing to help a young woman regularise her immigration status whilst a child in their care. It was recommended that to avoid future injustice the local authority should:

- devise an action plan to ensure it gives full and proper consideration to its duties to all its 'looked after children' who may be in need of legal advice, to meet its obligations as their corporate parent to safeguard and promote their welfare.
- In particular to those 'looked after children' with complex immigration problems who may need suitable and timely legal advice regarding their immigration status.²

This Bill offers the opportunity to prevent any such future injustices across the country. It is also an opportunity to clarify local authority obligations and ensure better information is held with regards to this group of children.

¹ Care of Unaccompanied and Trafficked Children, Department for Education, July 2014
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330787/Care_of_unaccompanied_and_trafficked_children.pdf

² Royal Borough of Greenwich <http://www.lgo.org.uk/decisions/children-s-care-services/looked-after-children/13-019-106>

CCLC advocates that **where there is any uncertainty regarding a child's immigration status, they should be given assistance in relation to their immigration status as soon as possible**. It is absolutely in their best interests and enables them to fully benefit from the corporate parenting principles and the care-leavers covenant. The Bill aims to overlay the existing obligations a local authority owes to a child in care with a framework of what it means to be a good parent.³ **This should at a minimum include access to independent legal advice for all children who have uncertain immigration status** and are supported by the local authority under the Children Act.

Knock-on effects of the Immigration Act 2016

The need to be proactive in securing legal advice for children and young people subject to immigration control is particularly pressing given the changes made to the provision of care leaver support by the Immigration Act 2016.⁴ Although the detailed regulations have not yet been laid, we know that some young people leaving care will be excluded from receiving: accommodation, financial support, a personal adviser, a pathway plan, funding for education or training, 'staying put' with foster carers, and any other assistance under Children's Act 1989.⁵

As such, **it is vitally important that the local authority ensure timely access to immigration advice so that young people do not find themselves turning 18 and leaving care without support**. It is clearly in a child's best interests that they are given an opportunity to regularise, including applying for British citizenship where they are so entitled, and thereby ensure that they have access to the same services and opportunities as their peers.

Case study:

R, a Kenyan national, arrived in the United Kingdom aged 9 as a dependent on his father's student visa. He was taken into care following domestic violence at home but the local authority did not take steps to regularise his immigration status until he was 16, when he was granted one year's discretionary leave to remain. At 17 he could not find a solicitor to help him apply for further leave to remain, because there was no legal aid for this, and his leave lapsed. At 18 he was referred to Coram Children's Legal Centre who helped R persuade the local authority to pay for him to see a solicitor. He was then able to make an application and received leave to remain on a pathway to settlement. He received three As at AS level and is currently applying to study at Oxford or UCL.

Without the local authority sourcing legal advice with a view to establishing permanence and security, R would be made homeless and destitute at 18 and would not be able to pursue his education. In this case, it was only after he had become an adult that the local authority were persuaded to assist him in accessing advice. As an 'undocumented' care leaver he would also most likely face dispersal from his community support networks and his college, and would be subject to detention and removal.

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³ Explanatory Notes to the Children & Social Work Bill 2016, May 2016

⁴ Immigration Act 2016, Schedule 12

⁵ Sections 23C, 23CA, 23CZA, 23D, 24A or 24B of the Children Act 1989