

Local authority support for unaccompanied asylum-seeking children

This fact sheet provides information about local authority support for unaccompanied asylum-seeking children.

If you have any questions about the issues raised in this fact sheet, please call our Migrant Children's Project advice line on 0207 636 8505 or email mcp@coramclc.org.uk.

Support under the Children Act 1989

Section 17 of the Children Act 1989 imposes a general duty on local authorities to safeguard and promote the welfare of children within their area who are in need.

Children seeking asylum who have no responsible adult to care for them are separated or 'unaccompanied', and are therefore 'in need'. The relevant local authority children's social services department has a gateway duty to assess such children under section 17, and then, almost always, to accommodate them under section 20 of the Children Act 1989.

A child asylum seeker's first encounter with the Home Office can be the point at which a welfare referral involves the relevant children's services. [1]

National Transfer Scheme

In July 2016 the national transfer scheme was introduced for unaccompanied asylum-seeking children arriving in the UK, so that children are no longer necessarily cared for in the local authority in which they first present, but instead may be transferred to an authority with greater capacity on a voluntary basis. The Home Office published an interim national transfer protocol and flowchart to govern this scheme. [2]

Accommodation under section 20

The law is very clear that local authorities cannot label accommodation 'section 17 accommodation' if

accommodation is properly to be provided to a child under section 20. [3]

For unaccompanied asylum-seeking children in the UK with no parent or carer able and willing to provide accommodation the presumption is that they fall within the scope of section 20, [4] unless the needs assessment results in another response being considered more appropriate (for example if a trafficked child is at risk and it is appropriate to initiate care proceedings under section 31 of the Children Act 1989).

'Looked after' status and entitlements

A child who is accommodated by the children's services department of a local authority under section 20 of the Children Act 1989 for 24 hours falls within the definition of a 'looked after' child.

Section 22 of the 1989 Act sets out the general duty of the local authority looking after a child to safeguard and promote the welfare of that child. This duty underpins and should inform all subsequent activity by the local authority in relation to the child. [5] Where a child is 'looked after' by the local authority the local authority acts as the child's 'corporate parent'. There are a series of duties that local authorities owe to 'looked after' children. [6]

There are seven dimensions to a child's developmental needs, to which the local authority must have regard and for which they must plan:

- (i) health
- (ii) education and training ("the personal education plan")
- (iii) emotional and behavioural development
- (iv) identity, with particular regard to religious persuasion, racial origin and cultural and linguistic background
- (v) family and social relationships,
- (vi) social presentation, and
- (vii) self-care skills.

Guidance on care planning for looked after children is set out in detail in The Care Planning, Placement and Case Review (England) Regulations 2010. [7]

The planning duties owed to looked after children apply equally to unaccompanied asylum seeking children, but there are additionally specific issues for this group. Statutory guidance published by the Department of Education in July 2014 (currently under revision, following consultation) for the care of unaccompanied and trafficked children covers topics more likely to arise for asylum seeking children, such as age determination, trafficking and the need for specialist legal advice on immigration matters. [8]

It is important that an unaccompanied child who has been refused asylum, who may be engaged in an appeal against that refusal, or who has limited 'UASC' leave for the present, does not suffer from short-termism in care planning, especially in education. Every looked after child should have a personal education plan. The difficulties that are posed by an uncertain future immigration status should not put everything on 'hold'. This may necessitate some 'parallel' or even 'triple' planning by social workers and personal advisers.

In addition, under the Children (Leaving Care) Act 2000 the local authority will also owe a 'looked after' child longer-term duties as they progress into adulthood. If a child is looked after for at least 13 weeks between the ages of 14 and 18, at least one day of which is after the child's 16th birthday, they become entitled to leaving care support, until at least the age of 21, and potentially up to the age of 25. [9] For more information on leaving care support, see the fact sheets on this issue at www.coramchildrenslegalcentre.com/resources.

Type of accommodation

No definition of accommodation is provided in the legislation and no specific category of 'section 20 accommodation' exists. Instead, different types of accommodation can be provided. However, accommodation must be 'suitable'; it must, as far as practicable, meet the needs of the particular child, and take their wishes and feelings into account. Some forms of accommodation – including B&Bs and

hostels – are accepted as being unsuitable for any child in need.

Children under the age of 16 are often placed in foster care and 16- and 17-year-olds are frequently placed in semi-independent accommodation with more limited support or supported lodgings. It is important to note, however, that some older children require more intensive support and there is nothing that prevents a local authority from placing an older child in foster care or keeping them in a foster placement.

The location of accommodation should not unduly disrupt the child accessing education or their support network.

It is very important to ascertain the wishes and feelings of the child about the type of accommodation, and for the child to be listened to if the placement is not working out. Local authorities must give children's wishes and feelings due consideration in the type of accommodation to be provided. [10]

Older children need to be very wary of 'choosing' not be 'looked after' under section 20, unless this really is their properly informed decision based on a full understanding of their entitlements and the consequences of this choice for their eligibility for leaving care support.

Financial support

The local authority children's services department is responsible for providing financial support to 'looked after' children. An assessment of the child's financial needs should be part of the general assessment and the amount of support depends on need, for example for educational resources or travel expenses, and should not be based on any standard policy. It will take into account whether they work. The amount of support children receive may vary from local authority to local authority.

It should be made clear to the child how they will receive their financial support, whether through their foster carer, their accommodation provider, directly from the local authority children's services department, or via another agency contracted by the local authority.

Advocacy

Local authorities have a duty to provide information about advocacy services and offer to help find an advocate for a looked after child. **[11]**

Legal representation

Securing a child's immigration status is very important and should be addressed in a child's care plan. Where there is a need for legal representation, the local authority, in accordance with its corporate parenting duty, should provide practical assistance in securing appropriate representation, for example from an immigration solicitor. If no legal aid is available, and no other source of appropriate legal representation exists, the local authority may have to pay for private legal services. For more information, see our fact sheet on legal representatives at www.coramchildrenslegalcentre.com/resources.

Challenging inadequate support

Under the Children Act 1989 Under the Children Act 1989 local authorities are required to have a system for considering complaints about the way they discharge their functions in relation to children in need. **[12]** All children receiving services from a local authority can use complaints procedures.

Complaints can be made orally or in writing. **[13]** The complaint must be made within one year from when the grounds for complaint arose, unless it would not be reasonable to expect the complaint to have been made within this limit and it is still possible to consider the complaint effectively and fairly. **[14]** When someone makes a complaint, the local authority must provide them with details of its procedure for considering complaints and, where relevant, information about advocacy services, offering assistance on following the procedure or advice on how to get such assistance, as well as offering help to obtain an advocate. **[15]**

There is a three-stage process for the consideration of a complaint. First, unless the person making the complaint and the local authority do not consent, the complaint is considered through 'local resolution',

which means the local authority trying to resolve the issue. This can be done internally, for example by the manager of the local authority service in question. This must be done within 10 working days. **[16]**

Where there is no consent to this, or where the person making the complaint is not satisfied with the outcome, the second stage is an 'investigation', which involves the appointment of an independent person. The local authority and the independent person must consider the complaint and send their response to the person making the complaint and, where there is one, the advocate, within 25 working days. **[17]**

If the outcome is still unsatisfactory to the person making the complaint, they can request (within 20 working days of receiving the response) that a three-member independent review panel is appointed to consider the complaint, who will meet within 30 working days and produce a written report with recommendations, which must be sent to those concerned within 5 working days of the meeting. **[18]** The local authority must, together with the independent person, consider the panel's recommendations and tell the person making the complaint how it is going to respond to the recommendations within 15 working days. **[19]**

Other options are making a complaint to the local government ombudsman, which conducts independent investigations of complaints about the failures in administration and service delivery by local authorities. Normally, the ombudsman expects complaints to be made to the local authority first to give them the chance to resolve the issue. The ombudsman will acknowledge receipt of the complaint, make further investigations and make recommendations. The ombudsman has no legal power to force to local authority to follow the recommendations, but local authorities almost always do.

Judicial review may be appropriate in certain circumstances but normally alternative remedies must have been exhausted or deemed inadequate or inappropriate. In general, a judicial review must be brought within three months of the action under challenge. If the courts find that there has been unlawful action by the local authority, there will normally be either a quashing order (quashing the

decision and setting out that a new decision be made) or mandatory order (stating the local authority must take, or stop, a particular action.

In matters of urgency, an application can be made to the court of urgent consideration of judicial review and interim relief can be requested. For further information on judicial review and legal representation, please see our fact sheets at www.coramchildrenslegalcentre.com/resources.

Discrimination

Under the Equality Act 2010, public authorities have a responsibility to have due regard to the need to eliminate discrimination and promote equality of opportunity. This applies across the board, including in the process of undertaking assessment and identifying needs. As stated in the statutory guidance, 'No child or group of children must be treated any less favourably than others in being able to access effective services which meet their particular needs'.

[20]

If you think a child or group of children is receiving discriminatory treatment, you could consider asking them whether they would want to be referred to a lawyer who can advise them on a potential discrimination challenge.

NOTES

[1] Home office, processing children's asylum claims, July 2016, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537010/Processing-children_s-asylum-claims-v1.pdf

[2] UK Visas and Immigration, Unaccompanied asylum seeking children: interim national transfer scheme See gov.uk website, July 2016, at <https://www.gov.uk/government/publications/unaccompanied-asylum-seeking-children-interim-national-transfer-scheme>

[3] *R (G) v Southwark* [2009] UKHL 26, paragraph 28

[4] See *Behre and others v Hillingdon* [2003] EWHC 2075 (Admin)

[5] Section 22(3), Children Act 1989

[6] Section 22, section 23ZB, Children Act 1989

[7] The Care Planning, Placement and Case Review (England) Regulations 2010 (Regulation 5), at <http://www.legislation.gov.uk/uk/si/2010/959/contents/made>

[8] Department for Education, Care of unaccompanied and trafficked children: Statutory guidance for local authorities

on the care of unaccompanied asylum-seeking and trafficked children, July 2014, at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330787/Care_of_unaccompanied_and_trafficked_children.pdf

[9] Sections 23A-23C and Schedule 2, Children Act 1989; Children (Leaving Care) Act 2000; and Children (Leaving Care) (England) Regulations 2001

[10] Section 20(6), Children Act 1989

[11] Advocacy Services and Representations Procedure (Children) (Amendment) Regulations 2004

[12] Section 26, Children Act 1989 and the Children Act 1989 Representations Procedure (England) Regulations 2006 No. 1738

[13] Children Act 1989 Representations Procedure (England) Regulations 2006 No. 1738, regulation 6

[14] Children Act 1989 Representations Procedure (England) Regulations 2006 No. 1738, regulation 9

[15] Children Act 1989 Representations Procedure (England) Regulations 2006 No. 1738, regulation 11

[16] Children Act 1989 Representations Procedure (England) Regulations 2006 No. 1738, regulation 14

[17] Children Act 1989 Representations Procedure (England) Regulations 2006 No. 1738, regulation 17

[18] Children Act 1989 Representations Procedure (England) Regulations 2006 No. 1738, regulations 18-20

[19] Children Act 1989 Representations Procedure (England) Regulations 2006 No. 1738, regulation 20

[20] 'Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children', paragraph 15

This fact sheet should not be used to give legal advice and is for information and guidance only. For advice on individual cases, assistance should be sought from an independent regulated legal adviser.

For further assistance contact our advice line. Email mcp@coramclc.org.uk or call 0207 636 8505.