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Children's Legal Centre

IMMIGRATION BILL 2015 – House of Commons, Committee Stage
Coram Children's Legal Centre's briefing on new Clause 17 and new Schedule 3: Availability of Local Authority Support

1. Summary

The Immigration Minister has tabled amendments to the Immigration Bill which are set to reform the provision of local authority support to care leavers with no regular immigration status (NC19 and NS3).[1] Schedule 3 of the Nationality, Immigration and Asylum Act 2002 excludes various categories of migrants from local authority support provisions such as those under the Children Act 1989. These amendments to Schedule 3 carve out further groups from these safety net provisions. They seek to remove looked after children who do not have leave and are not asylum seekers from leaving care provisions, as well as restrict the support that may be provided by local authorities to families with children.

Coram Children's Legal Centre is extremely concerned that these amendments introduce significant changes to child welfare legislation through immigration legislation, with little consideration of the impact on children, undermining the UK's legal obligations to children under domestic legislation and the UN Convention on the Rights of the Child. It opposes the introduction of the new Schedule and recommends that it should not stand part of the Bill.

2. Leaving care support removed from specific groups of children leaving care

Under these proposals, former looked after children, who require leave to enter or remain when they turn 18 but do not have it and are not asylum seekers, will be excluded from receiving accommodation, financial support, maintaining contact, a personal adviser, a pathway plan, funding for education or training, 'staying put' with foster carers and any other assistance under sections 23C,23CA, 23CZA, 23D, 24A or 24B of the Children Act 1989 (leaving care provisions).[2]

Care leavers with no immigration status (including those who arrived as children and sought asylum and were granted 'UASC leave' and those who came to the UK at a very young age but were never helped to regularise their status) will only be able to access accommodation and/or financial assistance (in kind, or cash or vouchers to pay for subsistence)and only in the following circumstances:

- If the young person is destitute and has been refused asylum and is eligible for the general support provided by the Home Office to refused asylum seekers when there is a 'genuine obstacle to leaving the UK.' This will be under section 95A Immigration and Asylum Act 1999;

- If the young person is destitute and has a pending non-asylum immigration application or appeal they will be eligible for support under paragraph 10B(2) and (3) of Schedule 3 Nationality Immigration and Asylum Act 2002.; or

[1] http://www.publications.parliament.uk/pa/bills/cbill/2015-2016/0074/amend/pbc0741211a.pdf
[2] This would be set out in paragraphs 1(g) and (ga), and 3B and 3C of Schedule 3 Nationality Immigration and Asylum Act 2002.

- If the young person's appeal rights are exhausted there will be regulations setting out limited circumstances when they can receive support, under paragraph 10B(4) of Schedule 3 Nationality Immigration and Asylum Act 2002.

Undermining child welfare legislation and discriminating against young migrants

The Children Act 1989 is the seminal piece of domestic child welfare legislation. It has made specific provision for *all* children leaving care in recognition of their additional vulnerabilities and need for additional support to have the same chances as other young people entering adulthood. This Amendment would fundamentally limit who is entitled to leaving care support and the government should reconsider the suitability of tabling an amendment of this kind, which has such a far-reaching impact on the core definitions and duties of the Children Act 1989, in an immigration bill.

Section 23(4)(c) of the Children Act 1989 places a duty on local authorities to give care leavers assistance to the extent that their welfare requires it. While the young person was a looked after child the local authority was their corporate parent, this duty recognises the legacy of this parental role and allows the local authority to step in and protect a care leaver in crisis. The government's 'Staying Put' initiative explicitly recognises the need for care leavers to have 'stable and secure homes' and to be given 'sufficient time to prepare for life after care'. The Department for Education's Care Leaver's Charter outlines key principles to 'remain constant through any changes in Legislation, Regulation and Guidance', including the provision of advice, practical, financial and emotional support. [3] These initiatives are entirely undermined by these amendments.

Migrant children in care often face additional difficulties to British children: they are particularly likely to have faced trauma, they may experience language and cultural barriers and they are less likely to have any contact with biological family members. Care leavers often need their personal advisor or advocate to help identify and even instruct their immigration lawyer (CCLC clients usually come to appointments with their personal advisor or advocate) and the local authority to pay for their representation or evidence (including subject access requests and doctor's letters). Not only is is it discriminatory to remove support from young people leaving care on the basis of their immigration status, in order to enter adulthood successfully it is vital that migrant care leavers can access a care plan under the Children Act 1989: they are very young adults who often have no-one else to turn to.

These amendments aim to remove *all* possible support usually provided to care-leavers (including a personal adviser, a pathway plan, funding for education or training), other than basic accommodation and financial assistance for certain groups. It is not clear from the proposed amendment whether it is envisaged that local authorities or the Home Office will be responsible for providing the support set out in the proposed paragraph 10B. **While we oppose these changes as a whole, it is Coram Children's Legal Centre's view that at the very least local authorities should be responsible for providing this support and that this should be stated on the face of the Bill.**

[3] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264694/Care_leavers__charter.pdf

An unnecessary amendment

The Home Office letter dated 12 November 2015 sent to the National Asylum Stakeholders Forum explains that the amendment has been proposed because the leaving care provisions are 'not appropriate to the support needs, pending their departure from the UK, of adult migrants who the courts have agreed have no right to remain here'. Currently, under paragraph 7 of Schedule 3, support can be withdrawn from care leavers if they are unlawfully present in the UK. Schedule 3 of the Nationality, Assistance and Immigration Act 2002 therefore already provides for local authorities to withhold or withdraw leaving care support from care leavers unless doing so would breach their human rights. In practice local authorities will generally withdraw their leaving care support unless a young person is pursuing their immigration case or unless there are exceptional circumstances (for example if a young person is at high risk of suicide or a young person is from a country with no safe route of return). The current position allows local authorities to undertake individual assessments and young people are entitled to help from an independent advocate to explain their situation. In this context **the present amendment is not only harmful but unnecessary**. In addition to those with 'no right to remain' it will also remove support from young people who have extremely urgent support needs and those who are working on establishing a right to reside in the United Kingdom.

Negative impact on the treatment of migrant children

CCLC works with a very high number of care leaver cases where it is not the young person's fault that their status has not been properly regularised while they were still a child. For example, this year CCLC has worked with young people who arrived in the UK at age nine or younger who were never assisted to regularise their status before turning 18 - they should not be punished for the decisions and failures of their parents, social workers or foster carers, particularly if they are taking steps to regularise their status as care leavers. It makes no sense to take a young person with a meritorious immigration application, for example, away from their foster carer or pathway adviser and remove all assessment and provision for their welfare and education needs while their case is pending. Automatically removing *all* leaving care support from former relevant children subject to immigration control is likely to disincentivise local authorities from addressing looked after children's immigration status, making this existing problem worse.

Furthermore, these changes would capture cases where a child has made an application for leave but it has not been decided by the Home Office before a child reaches 18. This would in effect punish a child for the administrative delay of the Home Office by forcing their pathway adviser to close their case and end their access to advice and welfare support.

Increased risk to young people

Care leavers have entered adulthood with the British state as their corporate parent: it is the state which is responsible for them being brought up properly and entering adulthood successfully. The additional vulnerabilities and additional needs of care leavers are well documented and accepted by the government. In this context it will be distressing to have a category of care leavers (of former relevant children who still fall within the legal definition in the Children Act 1989) who are specifically blocked from support – forced out of their homes and education and at risk of being

unable to access health care or falling through the gaps into total destitution – on their 18th birthday. The impact of destitution on young people has severe consequences and raises serious safeguarding concerns. It can leave young people vulnerable to abuse of many forms, including sexual exploitation and labour exploitation. Furthermore, withdrawing support from former asylum seeking children increases the risks of their absconding and decreases the likelihood that they will return to their country of origin.

Case studies

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.

Under these proposals R would have been made homeless and destitute at 18, he would not have been able to access legal advice and he would not have been able to pursue his education. Even if R had found a way to pay for legal advice, under the proposed scheme he would likely face dispersal from his community support networks and his college, which would have been extremely disruptive and distressing for him.

K, a Kurdish Iranian, arrived in the UK as a child, but his asylum claim was unsuccessful. He was looked after by the local authority under section 20 of the Children Act 1989 and when he turned 18 was eligible for leaving care support. However, once 18 he became 'appeal rights exhausted'. K had taken steps to return but was refused a visa to return to Iran by the Iranian Consulate because he had no documentation to prove he was Iranian. At the same time he was informed by the UK office of the Kurdish Regional Government in Iraq that they would not be able to take him either for the same reason. A Coram Children's Legal Centre advisor informed the local authority that as a 'stateless' young person, K was unable to take steps to return, and as such should continue to be supported under leaving care provisions. K's personal adviser was then able to refer K to an immigration solicitor who was able to assist him in making a statelessness application.

Under these proposals, K would have been made homeless and destitute immediately upon turning 18, he would not be able to access the proposed paragraph 10B scheme and he would not have been able to receive support to regularise his immigration case.

S, a Syrian national, arrived in the United Kingdom aged 16 and claimed asylum. She was looked after by the local authority and placed in foster care because she is HIV positive and suffers from severe PTSD . Her asylum claim was refused and her relationship broke down with her solicitor, who she believed had mishandled her case. She became appeal rights exhausted. Her foster family contacted Coram Children's Legal Centre who helped the family find a new solicitor. S lodged a fresh

claim and aged 19 she won her case on appeal on both Article 8 and asylum grounds. The Judge found that she had developed a family life with her foster family after becoming separated from her own family.

Under these proposals S could not have remained living with her foster family after the age of 18, despite her extreme vulnerability. Without this stability and the support from an adult she trusted she would not have found a new solicitor to take her case. She did not take steps to return to Syria when she was refused asylum, because she was a genuine refugee and so she would not have been entitled to support. Even if she had made an application which qualified her for support, support under the proposed scheme would likely take her away from her foster family, with whom she had developed a family life, and disrupt her specialised medical treatment.

Support for destitute migrant families with no immigration status

The proposals will mean that destitute migrant families, where the parents require leave to enter or remain but do not have it, will no longer be able to access accommodation and/or financial assistance under section 17 Children Act 1989. Such assistance can only be provided under paragraph 10A of Schedule 3 of the Nationality Immigration and Asylum Act 2002.

A family will qualify for accommodation and/or financial assistance if they are destitute, have a dependant child, are not eligible for Home Office support provided to refused asylum seekers under 95A of the Immigration and Asylum Act 1999 (as introduced by the Immigration Bill) and one of the following applies:

- they have made an application[4] to the Home Office which has not yet been determined,
- they have an appeal pending,
- they are appeal rights exhausted and are cooperating with arrangements to depart from the UK, or
- the provision of support is necessary to safeguard and promote the welfare of a dependant child.

Destitution will be assessed under the definition that is currently set out in section 95 of the Immigration and Asylum Act 1999. Support may be provided in the form of accommodation, subsistence in kind, cash or vouchers.

Inadequate assessment of children's needs

It is concerning for immigration legislation to prevent social workers assessing and meeting children's needs, which is what this amendment aims to do. If the accommodation/subsistence is to be provided by immigration authorities this will not include an assessment of particular children's needs and will not result in a care plan. It will also likely involve dispersal, depriving children of stability and existing community and support networks, access to schooling etc, and will not include the case work and advocacy support that a social worker can provide to families in crisis. Where a child is old enough social workers will also be able to consult with the child and ascertain their wishes and feelings. This is a vital step in a child in need assessment and care plan and one that cannot be replicated by a Home Office worker based in a distant office.

[4] Regulations will specify: what type of application must have been made, when a person is treated as having made an application although has not made one, and when this provision will not apply because the Home Office is satisfied that the application is vexatious or wholly without merit.

The majority of CCLC's cases involving section 17 referrals to a local authority raise a number of needs in addition to accommodation/subsistence, including cases where families are fleeing domestic violence or trafficking, where there is a need to address the long term impacts of child poverty, where parents or children have mental health concerns or where parenting support for disabled parents is needed. Social workers are best placed to undertake a multi-agency assessment, liaising with school, health and other professionals to identify the child's welfare needs and make an appropriate care plan. There is detailed statutory guidance setting out the welfare considerations for a holistic, responsive assessment and social workers are child welfare professionals. It is difficult to see how any other system could properly 'safeguard and promote the welfare'. Findings on welfare affect a child's entire care plan, including in relation to accommodation (type, location etc) and financial support (travel needs, school uniform costs, etc). Basic care and housing are just the starting point in a welfare assessment, see for example the assessment framework from Volume 2 of the Children Act 1989 care planning statutory guidance:

2.25 The Assessment Framework provides a structure for the assessment of need across three domains – the child's developmental needs, parenting capacity and family and environmental factors. The seven dimensions of developmental need (see **Figure 1** below) will feature prominently in care planning, placement and review. They will underpin the care plan and it will be important for planned outcomes to be specified in each one. **Annex 3** provides an overview of the dimensions – health, education, emotional and behavioural development, identity, family and social relationships and self care skills – with specific reference to care planning considerations.

Figure 1: The Assessment Framework

Children's Legal Centre (CCLC), part of the Coram group of charities, works in the UK and globally to protect and promote the rights of children through the provision of direct legal services; the publication of free legal information; research and policy work; law reform; training; and international consultancy on child rights. CCLC's Legal Practice Unit specialises in child and family law, education law, community care law and immigration and asylum law. CCLC operates the Child Law Advice Service (CLAS), providing free advice on family and education law, and the Migrant Children's Project, a centre of specialist expertise on the rights of refugee and migrant children. CCLC has undertaken amicus curiae interventions in a number of significant cases, including in the Supreme Court and the Court of Appeal, providing assistance to the court on matters of children's rights and best interests.

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