

Leaving care support for migrant children and young people

This fact sheet provides information about leaving care support for young migrants in care. This fact sheet covers what leaving care support is, who is entitled to it and how immigration status affects it.

It is important to note that the Immigration Act 2016 proposed to make significant changes to leaving care support. However, these provisions under the 2016 Act are not in force.

What is leaving care support?

The accommodation and support of separated and unaccompanied asylum-seeking children is provided by the local authority under Section 20 of the Children Act 1989. The majority of separated young people will be entitled to leaving care services under the Children (Leaving Care) Act 2000.

This Act sought to improve support to care leavers in a number of ways, including ensuring that young people do not leave care until they are ready and that they receive more effective support once they have left.

The general aim of the leaving care duties is to provide a child or young person with the sort of parental guidance and support which most young people growing up in their own families can take for granted but which those who are separated or estranged from their families cannot. [1]

In general, there are four different categories of young people who are or have been 'looked after' and are entitled to some form of leaving care support. Which category a young person falls into determines the type of leaving care support to which they are entitled:

- **Eligible children** are 16 or 17 years old, have been 'looked after' under section 20 of the Children Act 1989 for at least 13 weeks since the age of 14 and are still looked after. [2]
- **Relevant children** are 16 or 17 years old, have been 'looked after' under section 20 of the Children Act 1989 for at least 13 weeks since

the age of 14 and have ceased to be looked after. [3]

- **Former relevant children** are 18 to 21 years old and have either been an eligible or relevant child or both. If, at 21, the young person is still being helped by responsible authorities with education or training, they remain a former relevant child to the end of the agreed programme of education or training, even if that takes them past the age of 21, up until the age of 25. [4]
- **Qualifying children** are young people aged under 21 (under 25 if in education/training) who have ceased to be looked after or accommodated, or privately fostered, after the age of 16 but while still a child.

Young people who arrive in the UK and first become 'looked after' within 13 weeks of their 18th birthday will not qualify for full leaving care services even if they have been provided with support under section 20 of the Children Act 1989 for the weeks leading up to their 18th birthday, as they will not have been 'looked after' for 13 weeks or more.

Upon turning 16, both **eligible** and **relevant children** should receive (if they have not done so already): an assessment of their needs – including information about education, health and development – carried out not more than three months after the child turns 16 or becomes an 'eligible child'; a pathway plan; and a personal adviser.

Former relevant children are entitled to:

- a personal adviser,
- a pathway plan,
- financial assistance with employment, education and training (including a higher education bursary if the young person is at university),

- assistance in general (this may include accommodation if the young person's welfare requires it),
- vacation accommodation for higher education if needed, and
- the responsible authority is under a duty to keep in touch with them.

Qualifying children, although not entitled to the main leaving care entitlements, are entitled to advice, assistance and befriending.

How long does leaving care support last?

Support from the leaving care service continues until at least the young person's 21st birthday.

If at age 21 a young person is still in education or training then leaving care support should continue until the programme of education or training which has been agreed in his or her pathway plan comes to an end, up to the age of 25.

The definition of 'education or training' must be interpreted broadly and could include a range of opportunities e.g.:

- Basic skills courses (e.g. numeracy and literacy skills)
- Vocational training and apprenticeships
- Courses in further education
- University courses
- Post graduate Qualifications

If at age 21 they not in education or training then support from leaving care will usually stop. However, the young person will now be entitled to a personal adviser up to the age of 25, whether or not they are in education or training. The local authority will also have to conduct an assessment to determine whether the young person needs advice and support to help them obtain local authority services. [5]

Pathway planning

As noted above, a local authority has a continuing obligation to support any child over the age of 16 who is, or has been, a 'looked after' child, until they are 21 (or 25 if pursuing a programme of education or training). A young person should be provided with support akin to that which a parent would normally provide. The young person's social worker must carry out an assessment of their needs in order to determine what advice, assistance and support they require, both whilst they are being looked after and also once they cease to be looked after. A detailed plan, called a 'pathway plan', should be prepared as soon as possible after the assessment.

Areas covered in the pathway plan include:

- accommodation,
- practical life skills,
- education and training,
- employment,
- financial support,
- specific support needs, and
- contingency plans for support if independent living breaks down.

The pathway plan must be recorded in writing and should be reviewed at least every six months. It should also be reviewed whenever the care leaver or their personal adviser asks for it to be. The young person should be actively involved in his or her assessment and planning, as should significant adults in the young person's life.

Triple planning

There may be uncertainty around a young person's immigration status, particularly if they have claimed asylum, have UASC leave or are awaiting a decision on an immigration application. It is impossible for anyone to predict in which way claims or applications will be resolved. As a result, social workers need to plan for three possible outcomes for those turning 18. This is known as triple planning and should be part of their regular statutory planning through the care plan,

pathway plan and review process. Planning for three possible outcomes after reaching 18 involves:

- equipping the young person to have a future in the UK if they receive some form of leave to remain in the UK past their 18th birthday,
- preparing a young person to be returned to their country of origin either if they are refused an extension to remain in the UK and are being returned, or if they decide to return of their own accord, and
- supporting young people who have been refused leave to remain in the UK and who have exhausted all appeals but are not removed.

Human rights assessments

Former unaccompanied children who qualify as care leavers and who have been granted leave to remain, or who have an outstanding asylum or other human rights claim or appeal, are entitled to the same level of care and support from the local authority as any other care leaver. [6]

Currently, if an individual with no leave to remain or outstanding application is receiving leaving care support, the local authority must carry out a human rights assessment in order to determine whether removing someone's leaving care support would breach their human rights.

There is very little guidance on how a local authority should conduct a human rights assessment. The aim of such an assessment is to consider whether withdrawing support from a young person would result in a breach of:

- **Article 3** of the ECHR: i.e. if support were refused or withdrawn would the individual/family be subject to treatment amounting to torture or to inhuman or degrading treatment or punishment? It has been found that destitution can amount to inhuman or degrading treatment when an applicant 'faces an imminent prospect of serious suffering caused or materially aggravated by

denial of shelter, food or the most basic necessities of life.' [7]

- **Article 8** of the ECHR: i.e. if the individual returned to country of origin, would the right to respect for private and family life be compromised.

Case law has made clear that the young person should not be moved by the local authority onto support under section 4 (soon to be section 95A) of the Immigration and Asylum Act 1999.

It is important that the local authority take into account any obstacles to the young person's departure from the UK. For example, the Home Office may not be removing anyone to their country of origin at that time, or there may be barriers to their obtaining the necessary travel documents.

Also, the young person may have a fresh claim for asylum or other immigration route to regularisation. If they do, they should continue to receive leaving care support until such time as that claim has been dealt with. It is not for the local authority to draw its own conclusions as to the merits of the claim. [8] The assessment must be individual in each case.

If a young person receives a decision removing their leaving care support they can challenge the decision. There is no right of appeal but they can follow the local authority complaints process, which should be publicised, followed by judicial review if necessary. A judicial review will need to be made within 3 months of the decision which is sought to be reviewed. Legal aid is available. See our fact sheets on legal aid and legal representatives for more information: www.childrenslegalcentre.com/resources.

Immigration Bail

In January 2018, the UK government made significant changes to the law regarding immigration bail and detention. 'Immigration bail' replaced several old kinds of status, including 'temporary admission' given to asylum seekers in the UK.

Although the name is confusing, 'immigration bail' does not just affect people who are asking to be let

out of immigration detention. The new immigration bail provisions affect any person who does not have leave to enter or remain but needs it to live in the UK.

One of the conditions of immigration bail that can be imposed on a young person is a 'no study' condition. The Home Office have recently updated their guidance to clarify when study conditions for children and young people should be applied. A 'no study' condition will not be imposed on children, asylum seekers or care leavers who are not appeal rights exhausted. Additionally, those care leavers who are still in receipt of leaving care support, even if they are appeal rights exhausted, should not be given a 'no study' condition.

Given the impact of being allowed to study on leaving care support beyond the age of 21, it is important that young people check any bail conditions imposed on them. **If they have a 'no study' condition, they will need urgent legal advice.** For further information, see our information page on immigration bail:

<https://www.childrenslegalcentre.com/resources/no-study-immigration-bail/>.

Proposed changes under the Immigration Act 2016

The Immigration Act 2016 had sought to make significant changes for care leavers who have not regularised their status.

This included excluding former looked after children without immigration status from receiving leaving care support and introducing new types of limited support dependant on immigration status.

The provisions in the Act are not the current law and the regulations that would govern such changes have neither been consulted on nor drafted. There is currently no indication that these provisions will come into force.

NOTES

- [1] *R (G) v Southwark LBC* [2009] UKHL 26, 20 May 2009; [2009] 1 WLR 1299
- [2] Schedule 2, Part 2 of the Children Act 1989
- [3] Section 23 of the Children Act
- [4] Section 23 of the Children Act
- [5] Children & Social Work Act 2017
http://www.legislation.gov.uk/ukpga/2017/16/pdfs/ukpga_20170016_en.pdf
- [6] Page 26, Care of unaccompanied migrant children and child victims of modern slavery: Statutory guidance for local authorities, November 2017
- [7] *Limbuella (R v SSHD ex p Adam, Limbuella and Tessam)* [2005] UKH: 66, para 8
- [8] *Birmingham City Council v Clue* [2010] EWCA Civ 390

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 mcpadvice@coramclc.org.uk or call 0207 636 8505.