

Seeking Support

a guide to the rights and entitlements of
separated children



Fifth Edition 2017

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List of abbreviations

ARC	Application Registration Card	ILR	Indefinite leave to remain
ARE	Appeal rights exhausted	IRO	Independent reviewing officer
AVR	Assisted voluntary return	JR	Judicial Review
BRP	Biometric residence permit	LAC	Looked after child
CAMHS	Child and adolescent mental health services	LASPO	Legal Aid, Sentencing and Punishment of Offenders Act 2012
CCG	Clinical commissioning group	LGO	Local government ombudsman
CPS	Crown Prosecution Service	LOTR	Leave outside the rules
CTD	Convention travel document	NHS	National Health Service
CLR	Controlled legal representation	NINO	National Insurance number
DL	Discretionary leave	NRM	National Referral Mechanism
DWP	The Department for Work and Pensions	OISC	Office of the Immigration Services Commissioner
ECF	Exceptional case funding	SEF	Statement of evidence form
ECAT	Council of Europe Convention on Action against Trafficking in Human Beings	SEN	Special educational needs
ECHR	European Convention on Human Rights	SRA	Solicitors' Regulation Authority
ECS	Employer checking service	UASC	Unaccompanied asylum-seeking child
EEA	European Economic Area	UKVI	UK Visas and Immigration
ESOL	English for speakers of other languages	UN	United Nations
FGM	Female genital mutilation	UNCRC	United Nations Convention on the Rights of the Child
GP	General Practitioner	UNHCR	United Nations High Commissioner for Refugees
HMCTS	Her Majesty's Courts and Tribunals Service		
HMRC	Her Majesty's Revenue and Customs		

what is this guide about?

This guide is about the rights and entitlements of separated children in England. It aims to provide guidance to professionals on how to support children and young people in accessing those entitlements. Separated children are children under 18 years of age who are outside their country of origin and separated from both parents or their legal or customary primary care-giver (definition from UNHCR and Save the Children Separated Children in Europe Programme, *Statement of Good Practice*). The majority of separated children come to the UK on their own, but in some cases they may be accompanied by an adult who is not their parent or legal or customary carer. Some children also become separated in the UK after the breakdown of informal foster arrangements or through care proceedings. In all cases, separated children are, by definition, children who have been deprived of their family environment.

Separated children can include the following groups:

- Children who have been trafficked
- Children who are seeking asylum in their own right
- Children who become separated from their parents or primary caregiver in transit
- Children who are being privately fostered
- Children who have been orphaned
- Children who are seeking relief from poverty, deprivation and hardship
- Children who are taken into care and become looked-after and accommodated.

In this guide, immigration status is only included when the type of status, for example refugee, asylum seeker or undocumented migrant, affects a right or entitlement; otherwise references are to separated children and/or young people.

In the UK, separated children who have applied for asylum are commonly referred to as 'unaccompanied asylum-seeking children' (UASC) and this term will often be used in the guide when specifically discussing government policy and legislation relating to these children. The term 'separated children' includes unaccompanied asylum-seeking children.

This guide specifically covers the rights and entitlements of separated children and young people in England. As immigration and asylum policy is non-devolved, the law described in this guide is also applicable in Scotland, Wales and Northern Ireland. However, the provision of support services to separated children (including social services, health, education and housing) is devolved, and therefore different in Scotland, Wales and Northern Ireland.

This guide is aimed at professionals working with separated children and young people, including:

- teachers and other professionals working in schools and colleges
- social workers
- career advisers
- youth workers
- mentors
- voluntary agency and refugee community organisation staff
- foster carers
- residential and hostel workers
- health workers – including outreach health workers and mental health professionals

This guide does not cover the rights and entitlements of children who are accompanied by an adult who is their parent or legal or customary care-giver. These children's rights and entitlements often differ from those of separated children - for example, support from social services under the Children Act 1989 is more limited. However, accompanied children have equal rights to an assessment of need and, with this in mind, any concerns or difficulties around support, healthcare and education and should be referred to the local authority or relevant agency.

The fifth edition of this guide has been comprehensively updated and expanded from the first, second, third and fourth editions published in 2003, 2005, 2009 and 2012 respectively.

How to use this guide

Please note also that much of the terminology used in this guide is explained in the **glossary**.

National contact details of agencies that can support separated children are provided at the end of the guide.

As legislation and policy are subject to frequent change, readers are advised to refer to the online version of this guide, which will be updated regularly. The online version is available at www.coramchildrenslegalcentre.com/seekingsupport. Please check www.coramchildrenslegalcentre.com to see if there have been any changes in law and policy. If you would like to be notified of updates, please sign up to the Migrant Children's Project newsletter at www.coramchildrenslegalcentre.com/newsletter.

introduction

The exact number of separated migrant children in the UK is unknown. There are statistics available for a specific group of separated children – unaccompanied asylum-seeking children – but these provide the number of asylum claims in a year, rather than the total number of UASCs currently living in the UK. In 2015 there were 3043 asylum applications by unaccompanied asylum-seeking children. This was higher than 2014 (1945) but lower than the peak, in 2008, of 4285.

But what of those children who have not sought asylum? There are many circumstances under which separated children could be subject to immigration control. Some separated children may have been trafficked for purposes of sexual or labour exploitation, or for benefit fraud, while others may be taken into care following abandonment or neglect. There are at present no reliable means of counting them. One report has estimated that there are around 120,000 undocumented children in the UK,¹ but this estimate includes children who are not separated (for example living with their family).

Once in the UK, separated children face many difficulties, which often include the following interrelated problems:

- poor housing
- emotional or mental health problems, such as loneliness or depression
- social isolation
- little or no English
- separation from family and friends
- personal bereavement
- discrimination and racism
- difficulties in accessing mainstream services, such as GPs, appropriate local authority support, and school and college places, and a lack of understanding about how 'the system' works
- difficulties in accessing high quality legal advice
- changes in circumstances, for example, a change in a young person's status or age – particularly when they turn 18 – can result in having to move from one support system to another, causing major disruption and confusion
- having their age disputed and being treated as an adult, which in some instances results in a young person being held in immigration detention
- living with the anxiety of potentially being removed from the country
- confusing asylum, immigration and appeals procedures.

No matter what their personal circumstances are, separated children have little control over many areas of their lives. Regardless of their status, these children are often very vulnerable and in need of support.

There is a statutory duty upon agencies, including local authorities and the Home Office, to safeguard and promote the welfare of *all* children,² yet access to support and care is often determined by a child's immigration status. By law, separated migrant children in England have the same entitlements as citizen children, including the right to education and the rights enshrined in the Children Act 1989 and the Children (Leaving Care) Act 2000, but they are not always able to access the services that they need.

One of the most important actions is regularising status for separated children and dealing with immigration issues upfront. This is relevant whether the child is claiming asylum, taken into care or abandoned. The effects of not dealing with a child's immigration status urgently can have a devastating impact on a separated child's future.

There are limited advocacy services available to separated children, particularly those located outside London and other urban centres, and this guide is intended to go some way to equipping individuals with the knowledge and skills that they need. It is important to recognise, however, that there are limitations to the advice and support that any individual can provide, and that this will depend on their skills, qualifications and professional role. For example, there are strict guidelines about who can provide legal advice, of any kind, on asylum and immigration. In fact, it is a criminal offence to provide immigration advice if you are not regulated to do so (see the **legal representation** chapter for more information about asylum and immigration advice).

That said, professionals working with these children are increasingly well-informed, and it is hoped that this guide will continue to amplify awareness of the rights and entitlements of separated children and help those advocating on their behalf to ensure that these rights and entitlements are realised.

endnotes

1. Centre on Migration, Policy and Society, *No Way Out, No Way In. Irregular Migrant Children and Families in the UK*, 2012, available at: <https://www.compas.ox.ac.uk/project/undocumented-migrant-children-in-the-uk/>.
2. Under section 11 of the Children Act 2004 and section 55 of the Borders, Citizenship and Immigration Act 2009

types of immigration status

If a child or young person is not a British or European Economic Area (EEA) citizen, they will be 'subject to immigration control' and will require leave to enter or remain in the UK – in other words, permission to stay in the country.¹ The immigration status of separated children can sometimes affect their rights and entitlements.

Separated and unaccompanied non-UK-citizen children in the UK could have many kinds of immigration status or no status at all. Some may have arrived on their own and be seeking leave to remain or challenging removal in their own right. Some children may have been born here; some may have been brought into the UK and abandoned, or have been part of a private fostering arrangement that has broken down. Others may have been trafficked for the purposes of exploitation, or may have fled to the UK for safety and freedom from persecution or for other reasons.

Asylum seekers

Asylum seekers are people who flee their home country, often due to major conflicts or because of serious human rights abuses, and who seek refuge in another country by lodging an asylum application. They are referred to as asylum seekers whilst their application is being determined.

Children who are unaccompanied and have claimed asylum are often referred to as 'unaccompanied asylum-seeking children' (UASCs). The Home Office is responsible for making the initial decisions on asylum applications but local authorities are responsible for their care, including accommodation and financial support. For further information, see the chapter on **asylum**.

In May 2016 the Government that unaccompanied children registered in Greece, Italy or France before 20 March 2016 may be eligible for resettlement, although these children currently still have to go through the asylum process on arrival in the UK.² This relocation was included in section 67 of the Immigration Act 2016, and requires the agreement of local authorities to accommodate children. Guidance on the transfer of children from France is available on the Government website.³

Refugees

A person who has claimed asylum is recognised as a refugee when the government in the country of their claim decides that they meet the definition of refugee under the United Nations Refugee Convention.⁴ Under the Refugee Convention, a refugee is a person who has a **well-founded fear of persecution** for one or more of the reasons set out,

namely their **race, religion, nationality, political opinion** or because they fall within a **particular social group** (examples of this include people who have a well-founded fear of being persecuted because of their gender, sexual orientation, being a victim of trafficking or the fact that they are a child).

A person granted leave as a refugee will be given leave for five years, subject to review at the expiry. A person's refugee status can also be reviewed during those five years if there is a trigger factor – for example a significant and non-temporary change in the country of origin or evidence that they have returned to their country. The burden of showing that a person is no longer a refugee falls on the Home Office.⁵ Just before their five-year leave runs out, people with refugee status can apply to stay permanently in the UK. Permanent status is called indefinite leave to remain (ILR) or settlement.

In 2015 around 23% of unaccompanied children who applied for asylum and were under 18 at the time of decision were granted refugee status in the first instance by the Home Office. That number drops to 17% for unaccompanied children who were aged 18 or over by the time of decision.⁶

Humanitarian protection

Humanitarian protection may be granted where an asylum seeker is refused refugee status because the Home Office does not accept that the person meets the criteria laid down in the Refugee Convention, but still decides that it is too dangerous to return them back to their country of origin because they face a real risk of serious harm. This would be for one of the following reasons: the death penalty; unlawful killing; torture; inhuman or degrading treatment or punishment; or serious and individual threat to a civilian's life or person by reason of indiscriminate violence (the latter would cover, for example, armed conflict or civil war). Returning people to face such treatment is contrary to the UK's obligations under Articles 2 and 3 of the European Convention on Human Rights and Article 15(c) of the EU Qualification Directive.

Persons who are granted humanitarian protection will normally be granted leave for five years. At the end of the five years, the individual can apply for indefinite leave to remain (ILR) before their leave expires. As with refugee status, humanitarian protection can be reviewed during the five-year period (see above).

Very few unaccompanied asylum-seeking children are currently granted humanitarian protection. This form of leave constituted less than 1% of initial decisions in 2015 (18 out of a total of 1930 decisions made on applications made by

unaccompanied children).⁷ However, this form of leave is likely to become more relevant in the coming years as those who are resettled in the UK through the Syrian Vulnerable Person Resettlement Programme are granted humanitarian protection. The government subsequently announced that it would be resettling vulnerable children (up to 3000 until 2020) from the Middle East and North Africa and it is likely that these children will also be granted humanitarian protection.⁸

Limited leave as an unaccompanied asylum-seeking child (UASC leave)

If an unaccompanied child claims asylum and the Home Office does not accept that the child should be granted either refugee status or humanitarian protection then limited leave to remain is usually granted. This kind of leave is granted where it is not possible to send them back to their country of origin because safe and adequate reception arrangements are not available there.

Unaccompanied children used to be granted discretionary leave to remain for three years or until they turned 17½, whichever was the shorter period. This was outside the Immigration Rules. Since April 2013, the policy on granting limited to unaccompanied asylum-seeking children has been incorporated into the Immigration Rules.⁹ Now they are granted what is known as UASC leave for a period of 30 months or until the child turns 17½ years old, whichever is shorter.

A significant number of children seeking asylum are granted this limited leave form of leave; in 2015 it constituted 42% of all decisions made on applications from unaccompanied children, positive or negative, and 66% of all grants of leave.¹⁰ It is very important that a child who is given this type of leave obtains legal advice about immediately appealing the asylum and humanitarian protection refusal.

Before a child's limited leave is due to expire, it is important that they apply for further leave. If they apply within the currency of their existing leave, the conditions of their leave remain the same while the application is pending, including throughout any appeals.¹¹

Discretionary leave (DL) and Leave Outside the Rules (LOTR)

Unaccompanied children whose asylum claims were refused used to be granted discretionary leave, and so there may still be some young people with this form of status (three-

year grant of discretionary leave on a six-year route to settlement).¹²

Under current policy, children may be granted discretionary leave or leave outside the rules for 30 months or other period if their case falls within the limited categories outlined by the Home Office. This includes exceptional compassionate circumstances or other compelling reasons. Medical cases may lead to a grant of discretionary leave or leave to remain outside of the rules, although the threshold for being granted leave for medical reasons is very high.¹³

Discretionary leave may also be granted in cases of modern slavery or trafficking. For further information please see the chapter on **trafficking**.

Leave outside the rules is usually granted on the basis of Article 8 of the European Convention on Human Rights (family life or private life grounds) outside the Immigration Rules.

In most cases, those with discretionary leave or leave outside the rules will be on a ten-year route to settlement, unless the initial grant of leave to remain was prior to 9 July 2012 (see above and endnote 12).

Limited leave to remain on family or private life grounds

A child or young person may be granted limited leave to remain in the UK under the Immigration Rules or on the basis of their right to respect for private and family life under Article 8 of the European Convention on Human Rights. Children and young people who have been in the UK for many years, in particular, may have developed such ties in the UK that they would face difficulties adjusting to life abroad, so leave is granted on the basis that it would be right and fair that the child or young person is allowed to stay in the country.

If granted limited leave, this will be for a maximum of 30 months (2½ years). Before the expiry of their leave, they will need to apply for further leave. If they apply within the currency of their existing leave, the conditions of their leave remain the same while the application is pending, including throughout any appeals. After ten years of limited leave, the child or young person will be eligible to apply for indefinite leave to remain.

Settled status

Where a child or young person is described as settled, they will have been granted indefinite leave to remain (i.e. they

types of immigration status

have permission to stay in the UK with no time restrictions) or have permanent residence under EU regulations. Short of British citizenship, this is the most secure and stable status a child or young person can have. There are some circumstances where it can be revoked, particularly due to serious criminal offences resulting in becoming liable to deportation, or if status was obtained by deception.

EU migrants

A child has European Union nationality if he or she is a citizen of one of the 28 countries belonging to the European Union. EU children are free to travel to the UK without restriction. Where an EU child is under 18 and 'in need' they should receive the same support as any other child. Where a young EU national has decided to claim benefits and/or housing there are some common hurdles to overcome in the way in which they might be categorised, for example, whether they are '**habitually resident**' or whether have the '**right to reside**'. For more information on EU migrants please see <http://www.airecentre.org/pages/get-advice.html>.

Undocumented or irregular migrant

A child may be living in the UK without any regular immigration status, and may be referred to as 'undocumented' or 'irregular'. There are many routes to becoming undocumented:

1. Entering the UK unlawfully, either unaccompanied or with family, and never acquiring any form of regular immigration status (some in this situation may never have come to the attention of the authorities, others may have made an application to regularise their status but had this refused).
2. Coming to the UK on a form of visa (for example, as a visitor or student), whether alone or as dependants of a parent or carer, and remaining in the UK beyond the date at which that leave expires (individuals in this situation are often referred to as 'overstayers').
3. Making an asylum claim which is unsuccessful and exhausting all possible appeals (often known as 'appeal rights exhausted').
4. Being born in the UK to parents with irregular immigration status. A child born in the UK does not automatically acquire British citizenship so there are a significant number of undocumented children who were born in the UK. For more information on citizenship see the chapter on **citizenship**.

Local authorities are under a duty to safeguard and promote the welfare of all children in their care,¹⁴ and this includes ensuring that they realise any rights to secure their immigration status. For more information see the chapter on **children's services support**.

endnotes

1. Section 3, Immigration Act 1971.
2. UK Government, Press Release: Unaccompanied asylum-seeking children to be resettled from Europe, May 2016, available at: <https://www.gov.uk/government/news/unaccompanied-asylum-seeking-children-to-be-resettled-from-europe>.
3. Home Office, Implementation of section 67 of the Immigration Act 2016 in France, November 2016, available at: <https://www.gov.uk/government/publications/implementation-of-section-67-of-the-immigration-act-2016-in-france>
4. United Nations Convention relating to the Status of Refugees (1951) (amended by the 1967 protocol).
5. Home Office, Asylum Policy Instruction: Revocation of refugee status, January 2016, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/493318/revocation_of_refugee_status_v4_0_EXT.pdf.
6. Home Office, National Statistics: Asylum, August 2016, available at: <https://www.gov.uk/government/publications/immigration-statistics-april-to-june-2016/asylum#data-tables>.
7. Home Office, National Statistics: Asylum, August 2016, available at: <https://www.gov.uk/government/publications/immigration-statistics-april-to-june-2016/asylum#data-tables>.
8. UK Government, Press Release: New scheme launched to resettle children at risk, April 2016, available at: <https://www.gov.uk/government/news/new-scheme-launched-to-resettle-children-at-risk>.
9. Rule 352ZC, Part 11, Immigration Rules.
10. Home Office, National Statistics: Asylum, August 2016, available at: <https://www.gov.uk/government/publications/immigration-statistics-april-to-june-2016/asylum#data-tables>.
11. Section 3C, Immigration Act 1971.
12. Home Office, Asylum Policy Instruction: Discretionary Leave, August 2015, available at: <https://www.gov.uk/government/publications/granting-discretionary-leave>.
13. For further information, see Home Office, Asylum Policy Instruction: Discretionary Leave, August 2015, available at: <https://www.gov.uk/government/publications/granting-discretionary-leave>; Home Office, Human rights claims on medical grounds, May 2014, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/488179/Human_rights_on_med_grounds_v6_0_EXT_clean.pdf; Home Office, Section 14: leave outside the rules, December 2013, available at: <https://www.gov.uk/government/publications/chapter-1-section-14-leave-outside-the-immigration-rules>.
14. Section 11, Children Act 2004.

asylum process

Asylum procedures are complex and over the years have been further complicated by the regularity of changes to the legislation. There have been a number of pieces of asylum and immigration legislation since 1999, the most recent being the Immigration Act 2016, most of the provisions of which are, at the time of writing, yet to come in force. Other recent legislation includes the Immigration Act 2014, Immigration (European Economic Area) (Amendment) Regulations 2012 and the Borders, Immigration and Citizenship Act 2009. Section 55 of the 2009 Act requires all immigration staff to safeguard and promote the welfare of

children who are in the UK. As outlined in the introduction, please refer to the Coram Children's Legal Centre website and online version of the guide for the most up to date information, and the chapter on **further reading** for more detailed information.

Professionals working with separated children need to be aware of the importance of ensuring that each child receives appropriate legal advice and is supported through the asylum process. It is essential that professionals involved with children work together in order to facilitate this support.

*Please note that unless you are a person who is regulated by a designated professional body or you are registered or exempted by the Office of the Immigration Services Commissioner (OISC)¹ to provide immigration advice you **must not** advise an individual on asylum, immigration, citizenship and nationality matters. The following information is meant as general information only, and individual queries should be directed to an immigration adviser or solicitor.*

Applying for asylum

UK Visas & Immigration (UKVI) is the body within the government that is responsible for dealing with applications for asylum, leave to enter or leave to remain in the United Kingdom.² UKVI is a part of the Home Office, and for ease of reference, we have used 'Home Office' when referring to UKVI. The Home Office is a department of the UK government. A claim for asylum or another form of protection in the UK is normally decided by the Home Office.

In July 2016 the Home Office published guidance entitled 'Processing children's asylum claims.'³ The flowchart on the next page is based on an understanding of current practice within the Home Office.

Unaccompanied children, like adults, may apply for asylum in two ways: at ports of entry, such as airports, or after entry. Applications made after entry are referred to as 'in-country', and are usually made at the national intake unit in Croydon or in other immigration centres depending on the location of the child. Some children may be arrested or detained before they claim asylum.

The national transfer scheme

As outlined in the chapter on **children's services support**, in July 2016 a major change was introduced to the way unaccompanied asylum-seeking children are cared for. The Immigration Act 2016 introduced a national transfer scheme 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.⁴ The Home Office published an interim national transfer protocol and flowchart to govern this scheme and both are available at:

<https://www.gov.uk/government/publications/unaccompanied-asylum-seeking-children-interim-national-transfer-scheme>.

In line with the new transfer scheme and after the welfare interview, a referral will now also be made to the national asylum allocation unit for a child's case to be allocated to a case working team.⁵

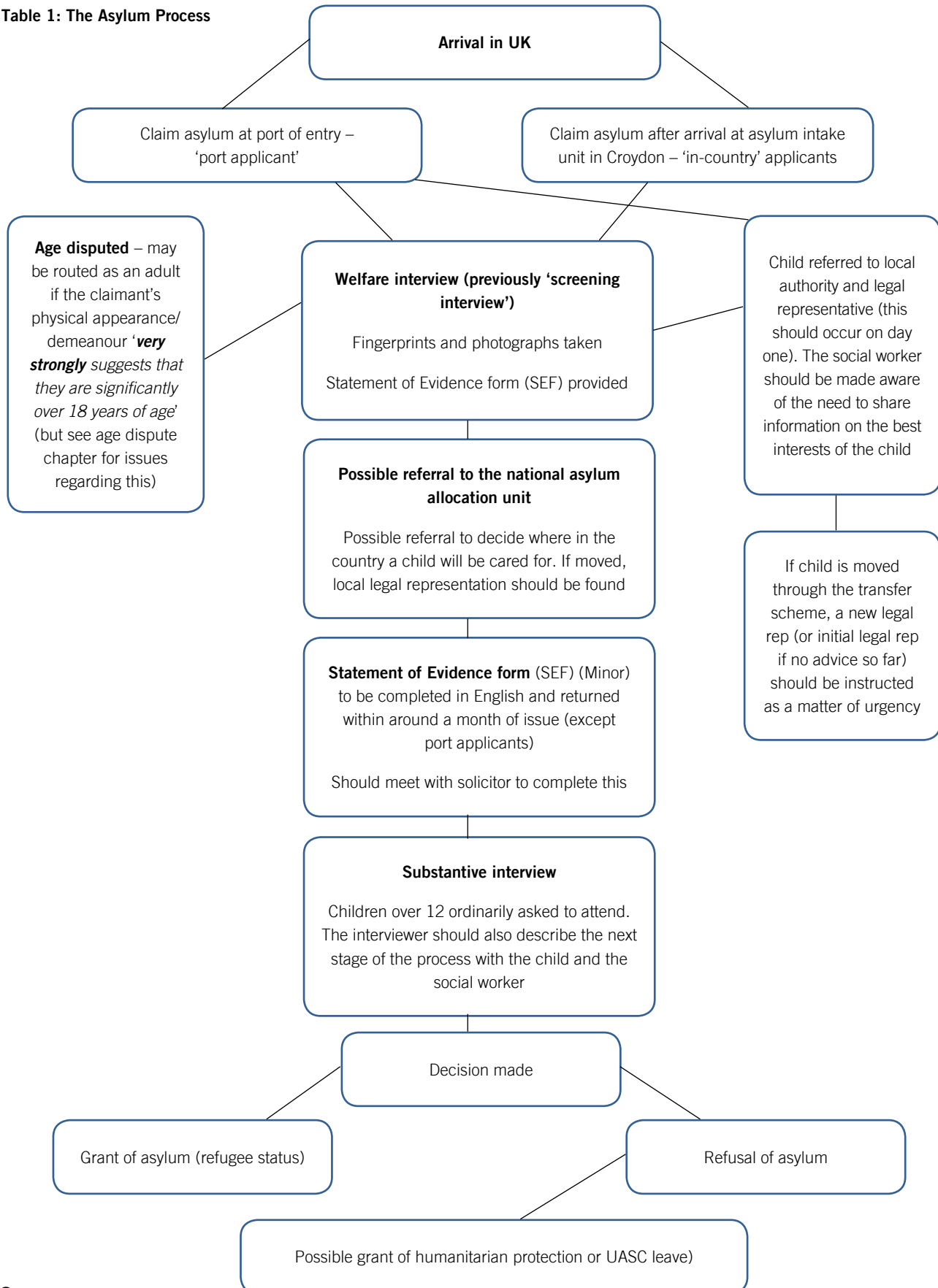
Welfare interview

When applying for asylum, a child will undergo a **welfare interview** and a **series of checks** (formerly called a **screening interview**). The process includes being finger-printed unless they are under five⁶ (if the child is under 16, there must be a responsible adult present when they are being fingerprinted - please see **page 18** for more information on the role of a responsible adult). The child is also photographed and asked questions about how they travelled to the UK, details of their family history and (very briefly) about why they have come to the UK. A responsible adult is not required to be present during this interview, but it is best practice to ensure that a responsible adult is present with the child. A solicitor can also attend the welfare interview. This meeting is not the place to explore the claim for asylum, and immigration officers should not ask for detailed reasons why a young person is seeking asylum at this point.⁷

During the fingerprinting process the child's prints will be checked on an EU database called Eurodac, which makes it possible to compare their fingerprints against those in

asylum process

Table 1: The Asylum Process



the central database to determine whether the individual had previously lodged an asylum application in another EU country. If that is found to have occurred, a referral will be made to the third country unit (see page 13). A referral will also be made if the child states that they have family or relatives present in other EU member states under provisions in the Dublin III regulations.⁸

During the welfare process, the young person should receive immigration identification papers, including an Application Registration Card (ARC), a credit card-sized plastic card which includes the asylum claimant's photo and personal details. The ARC confirms that the person has formally applied for asylum, or submitted a claim under Article 3 of the European Convention on Human Rights (ECHR). In practice, children do not always receive their ARC and instead later receive a letter inviting them to an immigration reporting centre in order to have their ARC processed. A standard acknowledgement letter is used to acknowledge a claim for asylum in circumstances where it is not possible to issue an ARC within three days of the claim being lodged. This is a double-sided A4 document printed on special security paper and containing a unique number. It is normally valid for two months, to enable arrangements to be made for the claimant to be issued with an ARC. The child should also receive an IS96, which grants temporary admission to the UK.⁹

All children will receive a blank statement of evidence form (SEF), which is the asylum application form that should be filled in with the support of a legal representative and submitted to the Home Office within the timeframe set out on the SEF, usually 28 days. If there is any uncertainty as to the date the SEF needs to be returned, this should be checked with the Home Office. If the SEF is not returned in time, the

claim may be refused on non-compliance grounds, unless valid reasons can be given for the delay. It is possible for a legal representative to request an extension for returning the SEF, but this must be done in writing and the Home Office can reject such an application.

The Refugee Council's Panel of Advisers must be informed of an unaccompanied child's application within 24 hours of the application being made.¹⁰

Legal representation

A young person will need a legal representative to assist them to make their case for asylum to the Home Office. Under the UK Immigration Rules the Home Office is required to ensure that a child has legal representation¹¹ and it is recommended that this be done before applying for asylum. If the child does not have suitable legal representation, the Home Office must notify the Refugee Children's Panel, who will try to find representation for the child. A legal representative supporting separated children should, along with having a thorough knowledge of asylum law and policy, have a special understanding of policies and procedures applying to separated children, and skills in communicating with children and young people.

Legal representatives can be any one of the following: solicitors, barristers, caseworkers and immigration advisors in specialist law centres or other organisations. Solicitors and barristers are regulated by their own professional bodies. Other legal representatives are legally bound to register with (or obtain an exemption from having to register with) the Office of the Immigration Services Commissioner (OISC),

The Panel of Advisors

The Refugee Council provides services to separated children through the Children's Panel of Advisers – around 20 advisers work across the country to support separated children. Their primary role is to assist the child in accessing quality legal representation and guide them through the complexities of the asylum procedures, as well as building a support network for the child. However, due to the limited capacity of the panel, it is not guaranteed that a young person will see an adviser. In 2009, Home Office funding for the Panel was cut and severely limited the work that most of the team is able to do on age disputes (for more information see the chapter on **age disputes**).

All unaccompanied children should be referred to the Panel by the Home Office. However, the details provided are often insufficient for the Panel to make contact with the child and therefore other agencies are encouraged to refer young people to the Panel as well. If a request for help is urgent or the young person is particularly vulnerable, then the panel recommends that this be made clear when the young person is being referred in order to help them prioritise cases (see **contact details**).

The Children's Panel can be contacted on 020 7346 1134, or at children@refugeecouncil.org.uk. Clients can contact the panel on a freephone number: 0808 808 0500.¹²

asylum process

which is responsible for ensuring that immigration advisers fulfil the requirements of good practice (see page 39 on what should be expected of a legal representative).

Once a legal representative has been appointed, he or she will apply for legal aid to cover the costs of the asylum application up to the decision on the claim. The legal representative will prepare the application on behalf of the separated child, take down the child's instructions by filling in the SEF and, in almost all cases, prepare with a child a separate statement to support the application. When that is finalised, it should be submitted to the Home Office by the legal representative by the date given on the form – normally within 28 days of the welfare interview. If the child is 12 or over they may be interviewed about the substance of their asylum claim. A legal representative will be funded to attend the welfare and substantive interviews with a child (a legal representative will not be funded to attend an interview with an adult). However, if a child is not being treated as a child by the Home Office, the Legal Aid Agency will not fund the attendance of the solicitor.¹³

For further information on legal representation, please see the chapter on **legal representation**.

Legal funding

In England and Wales the legal aid fund is administered by the Legal Aid Agency under the Ministry of Justice. Free assistance is available throughout the asylum process (except at the appeals stage, which is covered below) for asylum seekers who have a very low, or no, income. The Legal Aid Agency will only fund advisers with whom it has a contract to provide specialist immigration advice. The legal adviser does the work, and the Legal Aid Agency pays the legal adviser for that work.

Until April 2013, unaccompanied migrant children were entitled to receive publically-funded legal aid for any application for protection such as asylum and any appeal against the refusal of such applications, if proven that they met the means and merits test. However, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), which came into force in April 2013, removed entitlement to free legal aid for applications and appeals relating to Article 8 of the European Convention of Human Rights. Therefore, if an unaccompanied child was granted limited leave to remain to avoid a breach of private life rights under Article 8 but refused asylum or humanitarian protection, they are no longer entitled to legal aid to apply to extend their leave under Article 8 (although legal aid remains for asylum arguments to be made). Legal aid is also still available for conducting a judicial review. Furthermore, the local authority should in some cases pay for representation if an unaccompanied migrant child remains in their care as part

of their statutory duties to safeguard and promote the welfare of the child.

Eligibility for funding

Access to public funding is generally subject to a means and a merits test. It should be noted that for a looked-after child it is considered that it would be inequitable for foster carers' income and capital to be aggregated with that of the child.¹⁴ As such, if a child is supported and accommodated by a local authority (see chapter on **children's services support**) then they will generally automatically be eligible for legal aid. It is important that evidence of this can be provided to a legal representative in order for the child to qualify for legal aid. A letter from a social worker confirming that the child is looked-after and the level of support the child receives will normally be sufficient for these purposes. The merits test is set at a very low level at this stage and it is rare that an asylum claimant, adult or child, will be refused funding because they are unable to pass this test, as the benefit to the client will be freedom from persecution, ill treatment or similar.

Not all legal advisers do legal aid work and, in recent years, many have stopped or reduced their legal aid work because of restrictions in funding. Instead advisers will charge clients privately and the client will be expected to pay for the legal advice. However, most asylum claimants will be eligible for free legal advice and should NOT be expected to pay privately for legal advice.

In addition, some cases require specialist expertise, and in some parts of the country there may be none or too little of this expertise available, even though there may be legal advisers doing legal aid work. Asylum claims by separated children are one example of where specialist expertise is often required. It may be necessary for a child to travel a long distance to attend an appointment with a suitable legal representative – if he or she is being financially supported by social services, their travel expenses can be covered as a 'disbursement' under legal aid.¹⁵

It should be noted that legal aid is also available to assist children and young people to apply for an extension of their UASC leave. It is important that legal advice and representation is sought in these circumstances as the application will need to address the continued need for protection, particularly when the child is approaching adulthood. However, as noted above, legal aid is now not available for Article 8 cases and therefore there will only be legal aid available for the asylum aspects of the case. In those cases, if a child is looked after and accommodated by the local authority, it would be expected that the local authority would pay for the legal services provided. Another option would be to apply for exceptional case funding – the provision of legal aid in exceptional cases where failing

to provide funding would risk a breach of someone's human rights or a breach of EU law.¹⁶

Interviewing children

All children aged 12 or over will normally be interviewed about the substance of their asylum application.¹⁷ A child under 12 can be interviewed if they are willing and deemed to be mature enough. The purpose of the asylum interview is to establish whether or not the claimant is at risk of persecution (for one of the five reasons outlined in the Refugee Convention) and/or serious harm or ill treatment that breaches Article 3 of the European Convention on Human Rights. Interviewing children is difficult and most children will not clearly understand the purpose of the interview, or be able to relate events in the same way as an adult. Children invited to attend an asylum interview must be interviewed by a specially trained member of staff, and must be accompanied by a responsible adult. If needed, an interpreter must be present. If the child is tired or distressed, the interviewer should consider suspending and rescheduling the interview through discussions with the responsible adult.¹⁸

A responsible adult should be someone who the child trusts, and not a police officer, immigration officer, or an officer of the Secretary of State. It will usually be a social worker, or another member of staff of a local authority or voluntary sector organisation, a legal guardian or a foster carer. Their role is primarily to ensure that the welfare of the child is paramount in the process. It is crucial that a legal representative is present to advocate on behalf of and represent the child and for the responsible adult to safeguard and promote the welfare of the child during the interview. The presence of both a legal representative AND a separate responsible adult is necessary as their roles are different. A legal representative should not take the role of responsible adult in a substantive interview.

Interviews are mandatory, and unless there is a serious reason for not being able to attend – examples given include certified sickness or serious transport disruption – the Home Office may refuse an asylum application on 'non-compliance' grounds. Every effort should be made to avoid that by communicating with the Home Office at the earliest opportunity when a difficulty is identified. The Home Office interviewer is required to have regard to the best interests of the child when making any decision on the child's asylum claim or process as a whole as encapsulated under section 55 the Borders, Immigration and Citizenship Act 2009.

The asylum decision

The Home Office's current stated aim is to resolve initial asylum claims made by children within six months of an

asylum claim being made. The interviewer and decision maker must be trained to deal with children's claims. When a claim has been decided, the decision maker must notify the claimant, local authority (where they have been notified of the case) and legal representative of the decision to the child. This will normally be done through a decision sent to the child's legal representative in writing. The child's legal representative should communicate the decision. If an advocate or social worker of the child is aware of a decision they must contact the legal representative in case the legal representative has not received the decision. The child, the legal representative, and the local authority should all be notified of the decision by the decision maker but in practice this does not seem to occur.¹⁹

The outcome will be one of the following:

- grant of asylum (refugee status)
- refusal of asylum but grant of humanitarian protection
- refusal of asylum, humanitarian protection, unaccompanied minor leave but grant of leave for other reason (i.e. trafficking, family or private life)
- refusal of asylum and humanitarian protection but grant of UASC (unaccompanied asylum-seeking child) leave (two and a half years or until 17 and a half, whichever is shorter)
- refusal of any leave.

The appeals process

Where an asylum claim has been unsuccessful, the claimant may be entitled to appeal against the decision. The Immigration Act 2014 brought about a number of changes with regards to the appeals process and reduced the circumstances in which an individual can bring an appeal. However, the Act preserves the rights of appeal for those relying on the Refugee Convention or human rights, therefore a right of appeal arises when a child receives a decision from the Home Office that:

- i) Refuses a human rights claim;
- ii) Refuses a protection claim, namely a claim for refugee or humanitarian protection status;
- iii) Revokes protection status, namely refugee or humanitarian protection status.

This includes the right to appeal against a decision where a limited form of leave to remain is granted after refusal or refugee status or other humanitarian protection status. This is sometimes referred to as an upgrade appeal. Young people

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whose asylum applications are refused outright also have the right to appeal. An appeal must be made within 14 days of the decision being sent.

The appeals process is complex and it is advisable to get expert legal advice if you need to understand it in detail (see **contact details** for organisations that provide this advice). Legal aid is available for asylum appeals. The solicitor or immigration adviser will need to carry out a merits assessment at this stage. This is a higher test than at the initial asylum claim stage; to qualify the solicitor must believe that the child has a fifty per cent chance of being successful on appeal. A brief summary of the current appeals process is as follows:

- Appeals are dealt with in a tribunal system, with different parts dealing with different types of appeal. It is a two-tier system.
- If an asylum claim is refused and the claimant has a right of appeal, the appeal will go to the First-tier Tribunal.
- If the appeal is dismissed, the claimant may be able to apply for permission to appeal to the Upper Tribunal.
- If this permission is refused, the only option is to apply for judicial review.
- If permission is allowed but the appeal is dismissed again, the claimant can seek permission to appeal to higher courts on the basis of an error of law.
- If permission is allowed and the appeal allowed, the claimant may be granted status or the appeal may be sent back to the First-tier Tribunal for reconsideration.

It should be noted that if the decision is in favour of the claimant, the Home Office has the same appeal rights. The time limits on lodging an appeal remain the same: within 14 days of being sent the decision. Late appeals may be allowed to proceed in special circumstances but it is always recommended to make an in-time application.

Outright refusal of an asylum claim

Young people may be refused asylum, and even if they are granted humanitarian protection, limited leave or UASC leave it should be noted that this is still a refusal of their asylum claim, and they will usually have the right to appeal this decision.

Common reasons given for outright refusal include:

- non-compliance with the asylum process, for example, not submitting an asylum application on time or not attending an interview

- lack of credibility of the asylum application
- no objective risk of persecution (possibly because the situation has changed in the person's country of origin)

The appeal of the outright refusal of an asylum application may be pursued in the UK, except where the asylum claim has been certified as 'clearly unfounded' in which case an appeal can be only be made from outside of the UK. In those cases it is likely that a judicial review would need to be lodged against the decision to remove the individual from the UK.

UASC leave – the right to appeal and extension applications

A grant of UASC leave will be for a period of 30 months (two and a half years) or until the young person turns 17 and a half, whichever is shorter. A young person who is granted UASC leave has the right to apply for an extension of leave, but that must be done before the expiry of the leave. Young people in this situation also have a right to appeal a refusal of extension. Further leave to remain can be, and sometimes is, granted.

Young people who are granted UASC leave (currently the majority of separated young people) have the right to appeal if it is felt that they should have been recognised as a refugee.

Failure to apply for an extension 'in time' (i.e. before the current leave expires) means that the young person becomes an 'overstayer'. There are cases where 'out of time' applications for an extension of leave (i.e. applications made after expiry of leave) may be accepted if there are justified and extenuating circumstances. However, it is particularly important to note that if an extension is applied for 'in time', the applicant retains the rights they had from their previous leave until a decision on their extension is made or the applicant becomes appeal rights exhausted (ARE). Out of time applicants do not enjoy such protection and would therefore have restrictions on their rights to work or claim benefits.

Young people who are granted humanitarian protection also have the right to appeal if it is felt that they should have been recognised as a refugee under the UN Convention relating to the Status of Refugees (1951). Grants of humanitarian protection are normally for five years, after which the child can apply for settlement. Grants of humanitarian protection have only accounted for around one per cent of all types of grants for separated children in recent years. However, humanitarian protection has been granted to those families resettled in the UK under the Syrian Resettlement Scheme.

If a child is refused UASC leave because they are an age dispute case, the First-tier Tribunal can arrive at a finding of age during the appeal, which may result in a more favourable approach being taken to their asylum claim, or in the young person being granted UASC leave because there are no adequate reception arrangements in their country of origin.

Legal funding for Appeals

Legal aid is available for asylum appeals. As noted above, the merits test at appeal stage is much more stringent than for the initial application stage, but unaccompanied asylum-seeking children will almost always meet the criteria.

Please note that a former unaccompanied asylum-seeking child (i.e. someone now over 18) who is appealing against a refusal of extension of UASC leave may be refused representation under the legal aid scheme as an adult where they could have obtained it as a child.

If the appeal is dismissed by the First-tier Tribunal, the legal representative will need to consider the merits for a challenge of the First-tier tribunal decision to the Upper Tribunal. The decision can only be appealed if the immigration judge has made a material error of law in their decision. This may lead to separated young people (over 18) having even more difficulty in obtaining legal representation.

If there are decisions made by the Home Office which do not have a right of appeal, the only way to challenge a decision will be by way of judicial review.

Judicial review

Judicial review is the process by which public bodies are held accountable and involves asking the court to determine whether a public body or tribunal has acted or is acting unlawfully or unreasonably.

Judicial review is a two stage process. The first stage involves applying to the High Court for permission to judicially review the relevant public body. The judge will look at whether there is an arguable case. If the judge feels that there is an arguable case, he or she will make an order granting permission and may also grant what is called interim relief pending the outcome of the substantive judicial review claim. The second stage of a judicial review is the substantive hearing of the claim. A case only proceeds to this stage if permission is granted. In practice, the majority of cases settle if permission is granted. In order to make an application for judicial review that is funded under legal aid, it is necessary to apply to the Legal Aid Agency for a public funding certificate

(unless the judicial review proceedings are to be privately paid or pro bono). Such an application will be subject to a means and merits test.

Since October 2012, there has been a procedure for judicial review of decision by the Upper Tribunal to refuse permission to appeal, often referred to as a 'Cart JR'. The deadline for making such an application is 16 days and the legal test is set out in the Civil Procedure Rules as follows:

- (1) Is there an arguable case which has a reasonable prospect of success?
- (2a) Does the appeal raise an important point of principle?
- (2b) Is there some other compelling reason to allow the appeal to proceed?²⁰

Travel costs

It is arguable that travel costs to visit a legal representative can be reimbursed if the client's case is supported through legal aid, although this does not happen routinely and the Legal Aid Agency is currently disputing that this is covered. If a separated young person is not getting their travel costs reimbursed through their legal representative then the local authority which is supporting them should cover those costs and travel costs to asylum interviews and appeals.

If a young person is receiving asylum support then travel will be arranged or expenses reimbursed by the Home Office for substantial interviews, appeal and bail hearings and appointments at Freedom from Torture. Expenses for visiting legal representatives are not usually covered.²¹

'Safe third country'/Dublin III Cases

If a person comes through what is described as an European Union (EU) 'safe third country' (the EU states are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the UK) en route to the UK then, under EU law, the country that permitted the person to enter the EU, whether legally or by failing to prevent their illegal entry, may be required to take responsibility for their asylum claim. In such instances, the individual in question would be returned to that country. Within the Home Office, such cases are considered by the third country unit, which also considers other countries such as the USA, Canada and Switzerland to be safe third countries.

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The Dublin Regulation sets out the various duties and rules relating to safe third country and EU cases. The Regulation has changed over the years and was most recently recast in 2013; the latest version - Dublin III - became applicable in January 2014. The United Kingdom opted into the Dublin III Regulation. There are further proposals to amend the Dublin Regulation in the future but Dublin III remains the applicable law at the time of writing.²²

Dublin III sets out that, for an unaccompanied minor who has no family members or relatives in a member state, the country that should determine his or her asylum claim is the state in which he or she is located and where his or her asylum claim was most recently lodged. The latter of these provisions means that children who claim asylum in the UK and are accepted by the Home Office to be children should not be returned to a different country under Dublin III. If there are family members or relatives in other EU states then there is a hierarchy of considerations. For further information on this, please see our fact sheet on Dublin III at http://www.childrenslegalcentre.com/index.php?page=mcp_factsheets_asylum,_immigration,_nationality. The best interests of the child are at the heart of decisions relating to Dublin III and any reunion with family members should only occur if it is in the child's best interests.

The Home Office must write to the child and/or their representative informing them that enquires are being made to a safe third country regarding which country is responsible for processing their asylum claim. This is most likely to occur in cases where the Home Office or the local authority is disputing the child's age. For example, the Home Office may ask social services to consider a child's age if they have received data from EURODAC that has a different name or age for the child against their fingerprints. The letter to the child/representative should offer the child the opportunity to state any reasons why they should not be returned.

The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 makes it possible for the Home Office to add other countries, in addition to those in the European Economic Area, to the safe third country list.²³

There have been a number of legal challenges against the return of adults and children to Greece, and more recently Italy and Hungary, because of the poor reception arrangements and conditions in place for children pending the assessment of an asylum claim. There have been successful court challenges regarding returns to Greece but challenges of returns to Italy have been less successful, except in cases where there are additional exceptional vulnerabilities that can be evidenced. If you are working with

a child who is age-disputed and at risk of being returned to an EU country, it is recommended that they receive expert legal advice urgently.

Age disputes and asylum

Children and young people's ages are regularly disputed either by the Home Office or a local authority. Without ID documents, or with false ones, assessing a person's age can be extremely difficult. Please see the chapter on **age disputes** for further information on age assessments.

Some important information to note with regard to age disputes and how they can affect the asylum process includes:

- **If there are any issues regarding age, the child should be referred to a community care solicitor for advice and representation**
- A young person whose age is being disputed by immigration will be issued with a document providing reasons for the age dispute.
- The Home Office treats an age-disputed child as an adult for the purposes of asylum where '*the applicant's physical appearance/demeanour very strongly suggests that they are **significantly** over the age of 18*'. [emphasis added]
- In this scenario, a referral is rarely made to a local authority and the applicant is supported by the Home Office, which is responsible for supporting asylum-seeking adults and families and will follow the adult asylum procedures.
- In cases where the Home Office is disputing age but not stating the child is significantly over the age of 18 (see above), the child is safeguarded by the child asylum process until a local authority age assessment is completed. For example, they are allocated a child-trained interviewer and decision maker.

For legal funding, there is often confusion about whether an age dispute case should be charged as an adult case or child's case (different funding rules apply, depending). In an age dispute case the legal representative does not have an obligation to follow decisions on age made by the Home Office and/or the local authority. There is a separate client and professional relationship. The legal representative will act on the applicant's instructions, as their client, and if they instruct that they are a child then the case will continue to be funded as if for a child. If an age dispute applicant is supported by the Home Office then they too will be automatically eligible for legal aid. The legal representative in such a case will assist the applicant

with advice and exploration of evidence to support the age maintained by the applicant. However, the legal representative will not be able to attend the substantive interview.

Fast-track cases

A system for fast-tracking applications for asylum by detaining the applicant and radically shortening timeframes for processing their claim was in place until the summer of 2015. However, in June 2015 the High Court in the case of *The Lord Chancellor v Detention Action* declared the Fast-Track system unlawful and ruled that it should be quashed. On 29th July 2015, the Court of Appeal further dismissed the Lord Chancellor's appeal against the ruling of the High Court.²⁴ The timings available for appeals were considered to be systemically unfair as the system does not take into account the complexity and difficulty of many asylum appeals. While fast track cases are no longer being run, the government is currently considering whether to bring in a new procedure for these types of cases. Children were not originally part of the detained fast-track system but age-disputed children may have been caught up in the regime.

For more information on detention, see the chapter on **return**.

Curtailment of leave and revocation of refugee status

It is rare for a child's refugee status or indefinite leave to remain to be cancelled or revoked but this could happen in cases where it is proven that the refugee status was obtained by deception or if the child has committed a crime or acts which fall within the scope of Article 1F of the Refugee Convention. There is a right of appeal if an individual's protection status is revoked.

'Curtailment' means revoking a person's limited leave to enter or remain. However, since the enactment of the Immigration Act 2014, there is no longer a right of appeal for curtailment of leave (if not a form of protection status). The only recourse available is a request for an internal Home Office administrative review and/or Judicial Review in the High Court. The circumstances in which the child's limited leave to remain could be revoked include:

- If the leave was obtained by deception
- Where the situation changes and there become adequate reception arrangements in place in the child's country of origin

- If there is a change in the child's circumstances
- The child previously granted UASC leave has been joined in the UK by a parent, an adult sibling or other close family member, and can be returned to the home country with that person
- A child previously granted limited leave on the basis that removal would breach Article 8 of the ECHR (right to respect for private and family life) on the basis of established family life in the UK, however, the existing relationship ends or the person for whom the child had a family life subsequently leaves the UK
- If attempts at family tracing have been successful, and the child can be returned to their parents or other suitable family members
- If it is discovered that a child was 18 or over at the time that leave was granted.

Immigration Offences

For more information on Immigration Offences see the chapter on **immigration routes**.

Reporting

Some people going through the asylum process are asked to report to an immigration office or police station on a regular basis. This will most commonly be as a condition once an individual has been refused asylum or where a young person turns 18 and has not yet had their initial decision. There are no set criteria which determine who is asked to report, or how often they are required to report. For example, some people are asked to report weekly, others monthly. Children should not be required to report.

There have been incidents where advocates have been successful in changing the reporting requirements of young people, for example, because of the distance to travel or medical reasons (for more information see '**how can you help?**' section below).

There is no specific entitlement to travel expenses to cover the cost of reporting. If the child has been in care, however, children's services should take this into account when deciding how much money a young person needs to live on when leaving care. Young people who are 18 or over who transfer to asylum support can apply to get travel expenses from the Home Office to cover transport to the reporting centre. The Home Office may make a payment towards this

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if the individual is in receipt of asylum support or, if they are not, if there is an 'exceptional need'.

For those children with UASC leave, the Home Office has issued guidance to its staff outlining that they must ensure that they establish an appropriate contact management strategy for each child. In the majority of cases it will be sufficient to maintain contact by telephone with the social

worker until the young person reaches 17 and a half. A telephone update should take place every six months in order to ensure that Home Office holds the most up to date information on the child and are also aware of any safeguarding concerns that the social services department may have.

how can you help?

- For **detailed advice and information** on working with children subject to immigration control, read the ILPA guidelines for best practice (see **further reading**).
- Make sure the young person has a **legal representative** who is either **registered** with the Office of the Immigration Service Commission (OISC), which is responsible for ensuring that immigration advisers fulfil the requirements of good practice, or who is monitored by their own professional body, as is the case with solicitors, who must be regulated by the Solicitors Regulation Authority (SRA). You can check this through the OISC website or the Legal Aid Agency website. The Law Society website also has a search engine for solicitors (see **Contact Details**). Anecdotal evidence suggests that some legal representatives who are regulated are not always providing a good-quality service and in some cases act in an unscrupulous manner, including in the methods they use to attract business.
- Make sure the legal representative utilises their right to apply for **additional funding** for the separated child's case under the hourly rate scheme. They can apply for additional funds from the Legal Aid Agency by submitting an application for extension of the cost limit. The legal representative can also apply for funds in order to obtain expert reports, such as a psychological or psychiatric report, and a country expert report. However, funding is restricted by the Legal Aid Agency and costs must be justified before being granted for reports.
- If you have **concerns** about a young person's legal representative you should discuss them with the young person (and their panel adviser at the Refugee Council if they have one). Concerns should be raised with the legal representatives, who will have a complaints procedure, and complaints can be made on behalf of the young person through the OISC (see **Contact Details**) or, if against a solicitor to the Solicitor's Regulation Authority. See the chapter on **legal representation** for details of what makes a good legal representative. Explain to the young person that they have the right to change their legal representative, bearing in mind that following restrictions on legal aid the young person will have to justify why they seek alternative representation, which may include a breakdown of the relationship between the client and their representative.
- If a legal representative **refuses to take on an appeal** case because they deem the client to have failed the merits test, they must provide written reasons for the refusal of legal aid and the child or young person should be given a CW4 form to complete should he or she wish to appeal the decision to refuse the merits to the Legal Aid Agency. Please note that even if one representative considers that a case would fail the legal aid merits test this does not mean an alternative representative will necessarily make the same judgement. The legal representative should offer to help the person complete the CW4.
- Be aware that young people may prefer to have a legal representative of the same sex, particularly if they have **sensitive issues** to discuss as part of their asylum claim. In such circumstances, help ensure they have a legal representative of the appropriate gender.
- If you have the consent of the young person, forward copies of **medical reports, age assessments and care plans** to the legal representative. Also contact the legal representative to check that they have received copies of correspondence sent to the child.
- **Know your limitations.** There are strict guidelines about who can provide legal advice. If you do not meet these criteria you should never advise the child about legal issues or, for example, help a child to complete a Statement of Evidence form. Have a good understanding of which organisations are able to provide quality legal advice and refer as appropriate. Also, if the child has a legal representative, giving separate advice to the child could interfere with the professional-client relationship and could lead to a breakdown in that relationship, leaving the child without a representative.

Identification and documentation

- Check that the young person has been given the **right immigration forms** to fill in. For example, did they get a statement of evidence form at the initial welfare

interview with immigration or has it been sent to the legal representative/social worker?

- Explain to the young person that it is very important to **keep their immigration ID papers/cards safe**. Their representative should retain a copy of these documents but the original should always be kept by the client. They will help them gain access to certain entitlements.

Interviews

- Ensure that the **legal representative** is going to attend the interview. Some representatives report being unaware of the funding available to enable the representative to attend screening and substantive interviews with children – this would raise concern about the quality of the legal representative.
- If you consider the questioning at the welfare interview to stray outside of that necessary to establish identity and/or discuss the journey to the UK, advocate on behalf of the child, particularly if there is no legal representative present. The child should not be asked any detail about their claim at the welfare interview.
- Ensure the young person knows they are entitled to have a **responsible adult** with them in interviews to make sure their welfare is considered throughout (see pages 18-19 for the role of a responsible adult and tips on accompanying a young person to an interview).
- If a young person **fails to attend an interview**, they may be refused asylum on non-compliance grounds. If the young person has a valid reason for not attending the interview it is important that the Home Office knows about it and can take it into account when making their decision. Also, if a young person knows in advance of the interview that they are not able to attend, it is important that the Home Office is aware so it can try to reschedule the date.
- If you have concerns over the treatment of the child during an interview, **raise your concerns** with the interviewing officer and check that they are trained to work with children. A complaint can be made to the Home Office about the treatment of the child. If a complaint is considered, liaise with the legal representative if one is instructed. If a legal representative is instructed at a later stage, pass on your concerns/copy of the complaint to them.

Interpreters

- Ensure the young person knows they are **entitled to have an interpreter** during an asylum interview and any appeals, and meetings with their legal representative.
- Find out if the young person would prefer to have an interpreter of the **same or opposite sex**.
- Make sure the young person is **happy with their interpreter**, i.e. they trust and understand the interpreter,

and as far as the young person can tell, the interpreter is correctly interpreting what they have said. If there is a problem, it is important that the young person knows they are entitled to change their interpreter.

- Ensure that the child is **happy with the dialect of the interpreter**. Children can be afraid to mention the confusion they feel when dealing with an interpreter who speaks their language but does not come from their country of origin, e.g. a Farsi/Dari speaking interpreter from Iran when the child is an Afghan national.
- The child should be made aware of the importance of understanding the interpreter. It can be difficult to blame discrepancies or contradictions down the line on a problem with the interpreter.

'Safe third country'/Dublin III Cases

- If a young person is being returned to another EU country under the safe third country rule, check with the young person's legal representative as to whether a **challenge could be made to the return**. The legal representative should be contacted as soon as notification is received about the proposed removal of a young person.
- If the child or young person has any other family members that they know of who are living in, or suspected to be in the EU, this should be explored with the child or raised with the legal representative, including whether they wish to live with or be reunited with this family member.
- If at all possible, try to keep in touch with the young person until he or she has been **safely received** and is being cared for in the third country.

Offences

- If a young person has any issues regarding immigration or other offences make sure that this is considered by the child's legal representative. Ensure that the immigration and asylum representative assists with the **referral to an experienced criminal lawyer** who can challenge the case if there is a defence to the charge.

Reporting

- If a young person is having difficulty meeting the reporting requirements placed upon them by the Home Office, it may be possible to negotiate with the Home Office to review this. You should first speak to the young person's legal representative about this before contacting the Home Office. It may be useful to point out to the Home Office that the young person is a care leaver and still meets with his or her social worker as a persuasive point to remove or change reporting restrictions

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tips on accompanying a young person to a meeting or interview

There are a number of things you can do to help a young person who has a meeting with their legal representative or a Home Office interview.

Preparing for a meeting or interview

- Plan the visit in advance. Prepare the young person by explaining what the procedure will be and the types of questions they will be asked. Call the Panel of Advisers for advice on this (see **contact details**; also see the **further reading** section for details on the ILPA publication *Working with Children and Young People Subject to Immigration Control*).
- An unaccompanied child must have a responsible adult present at a Home Office interview so that they can ensure that during the interview process their wellbeing and welfare is considered.
- If you are taking on the position of 'responsible adult' in an asylum interview (see below for details), discuss with the young person what your role is and find out what support they might like from you during the meeting.
- The young person needs to understand that the responsible adult will be party to all the information discussed in the interview (i.e. evidence relating to their application). The child must be comfortable with that and the adult must be prepared to hear potentially highly distressing information. The child should be consulted about who attends the interview as the responsible adult.
- Explain the different roles and responsibilities of professionals that young people may encounter through the asylum process. For example, explain that the legal representative is independent of the Home Office and explain the role of the Panel of Advisers and social workers.
- Inform the legal representative or Home Office of any particular requirements regarding the interpreter for the meeting. When possible, interpreters should be skilled and trained in interpreting for children, and you can ask that the interpreter has a Diploma in Public Service Interpreting (DPSI) with a specialism in legal interpreting. Find out if the young person has a gender preference for their interpreter and/or interviewer and inform the legal representative or Home Office of this in advance.

Who can be a responsible adult?

The Home Office outlines that a responsible adult should be present in an asylum interview to facilitate communication. Their view is that a responsible adult will usually be a social worker or other member of staff of a local authority or voluntary sector organisation, a legal guardian, or a foster

carer. The Home Office clearly states that a responsible adult cannot be an immigration officer, an officer of the Secretary of State or a police officer.

Given that the legal representative has an important legal role to play in an asylum interview, the legal representative should not take on the role of the responsible adult. Another adult is a more appropriate person to take on the role. This is not to detract from the responsible role that the legal representative should take in ensuring that the well-being of the young person is taken into account in all encounters with their legal representative and the Home Office.

The role of a responsible adult

ILPA provides best practice guidelines (see **further reading**) on the role of a responsible adult and provides details of the main role of a responsible adult at an immigration interview, which is to:

- ensure that the young person understands the interview process and the purpose of the interview
- be present at the interview with the Home Office to ensure that the young person is not unduly inhibited or alarmed by the interview process
- give moral support and reassurance as necessary
- facilitate communication between the young person and the interviewer where necessary
- ensure that the young person's welfare needs are sufficiently provided for, with adequate breaks, refreshments, etc.
- offer any additional information to the interviewer that may have a bearing on the young person's application, emotional wellbeing, mental health and fitness for interview
- ensure that the interviewer is made aware if the young person is becoming distressed or tired and a break is required, or the interview should be curtailed
- verify the competence of the interpreter: at the interview ask the young person how they feel about the interpretation and if they are not happy with it then advocate for another interpreter to be brought in
- The responsible adult is not allowed to ask questions themselves of the child.

At a meeting with a legal representative

It is good practice for a young person's carer, or other adult who the young person wishes to invite, to be present at meetings with their legal representative. After the child's first meeting with their legal representative, allow them to decide who they may want present at the meetings. Some children may feel intimidated by the presence of a number of adults in the room whilst going through their statement and/or history. It is important to consider the wishes and feelings of the child. If the child would like their carer or other adult to attend the meetings with them the role of this person at a meeting with a legal representative would include all of the points set out above under the role of a responsible adult, while the following tips should also be borne in mind:

- A good rapport between the legal representative and the accompanying adult will help set a child at ease (on the other hand, your presence should not inhibit the development of a good rapport between the child and their legal representative).
- Be aware that a legal representative will have to ask difficult questions that may be distressing to their client – be prepared to offer support to the young person in such circumstances.
- Do not answer questions on a young person's behalf. However, if you have knowledge of the child's experiences it may be appropriate to suggest lines of enquiry to the representative. Agree this in advance with the young person when you plan for the meeting. Adults need to take care not to exclude the child – for example, through having conversations with each other either with the child present or in their absence (before or after interviews).
- If the child has sensitive information to recount, for example, about abuse in their country of origin, it may be appropriate for you to offer to leave the meeting temporarily. Discuss this with the young person when you plan the meeting.
- The legal representative may ask you to leave the meeting. In this situation, the representative should explain why they are asking you to leave the room and the child be asked if they are happy for you to leave.
- If you have a concern regarding the quality of the advice being given, you should ask the client for permission to remain with them throughout the meeting.

endnotes

1. See Office of the Immigration Services Commissioner website <http://oisc.homeoffice.gov.uk/>
2. UKVI replaced the UK Border Agency (UKBA) in April 2013. The UKBA previously was called the Border and Immigration Agency, and before that the Immigration and Nationality Directorate.
3. Home Office, Asylum Process Guidance, *Processing Children's Asylum Claims*, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537010/Processing-children_s-asylum-claims-v1.pdf
4. Home Office, Asylum Process Guidance, *Processing Children's Asylum Claims* (see link above), p. 26
5. Home Office, Asylum Process Guidance, *Processing Children's Asylum Claims* (see link above), p. 26
6. Home Office, Asylum Process Guidance, *Processing Children's Asylum Claims* (see link above), p. 26
7. Home Office, Asylum Process Guidance, *Processing Children's Asylum Claims* (see link above), p. 25
8. Home Office, Asylum Process Guidance, *Processing Children's Asylum Claims* (see link above), p. 26
9. Home Office, Asylum Process Guidance, *Processing Children's Asylum Claims* (see link above), p. 26
10. Home Office, Asylum Process Guidance, *Processing Children's Asylum Claims* (see link above), p. 16
11. Immigration Rules para 352ZA
12. Refugee Council, Children's Services, available at: http://www.refugeecouncil.org.uk/what_we_do/childrens_services
13. Regulation 2, The Civil Legal Aid (Immigration Interviews) (Exceptions) Regulations 2012, available at: <http://www.legislation.gov.uk/ukxi/2012/2683/regulation/2/made>
14. Section 9, Legal Aid Agency, Guide to Determining Financial Eligibility for Controlled Work and Family Mediation April 2015 v1 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/420970/laa-determine-controlled-work-mediation.pdf
15. ILPA, *Working with Refugee Children*, 2011, p. 149
16. For further information, please see the CCLC fact sheet on exceptional case funding, available at http://www.childrenslegalcentre.com/index.php?page=mcp_factsheets_finding_a_lawyer
17. Home Office, Asylum Process Guidance, *Processing Children's Asylum Claims* (see link above), p. 33
18. Home Office, Asylum Process Guidance, *Processing Children's Asylum Claims* (see link above), p. 36
19. Home Office, Asylum Process Guidance, *Processing Children's Asylum Claims* (see link above), p. 59
20. 54.7A, Civil Procedure Rules
21. Home Office, Asylum Policy Bulletin 28 – Providing travelling expenses and reimbursing essential travel costs, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257508/pb28.pdf
22. Dublin III Regulation, available at: [http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A41997A0819\(01\)](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A41997A0819(01))
23. Section 33 and Schedule 3, Asylum and Immigration (Treatment of Claimants etc) Act 2004
24. *The Lord Chancellor v Detention Action* [2015] EWCA Civ 840, available at: <http://www.bailii.org/ew/cases/EWCA/Civ/2015/840.html>

immigration routes

This section provides a general outline of immigration law and routes to regularisation related to unaccompanied or separated children. This chapter is up to date from the month of publication but the relevant law changes frequently. Furthermore, this section does not cover all of the possible immigration outcomes. A child or young person should always seek independent legal advice before making an immigration application.

Many unaccompanied or separated children will seek asylum on arrival in the UK. However, a significant number will come into local authority care some time after their arrival, for example: after being separated from their families whilst in the UK (through care proceedings or abandonment), having been victims of trafficking, or having been subject to private fostering arrangements. There are an estimated 120,000 children in the UK who are 'undocumented' and have no leave to remain, more than half of whom it is thought were born in this country.¹

Many separated children will be entitled to apply for leave, or even apply for British citizenship. However, some children and young people who have grown up in the UK may not realise that they do not already have status until they try to get a job or access further or higher education. When they do realise this is the case there can be considerable confusion as to what steps should be taken. Local authorities often fail to identify potential immigration issues for children in their care, or simply fail to take appropriate action. This problem has been exacerbated in recent years by the lack of legal aid for immigration cases, which means that it falls to the authority to pay for children in its care to access immigration advice and representation.

Legal Advice

Immigration law is extremely complicated; professionals working with unaccompanied or separated children should ensure that each child receives appropriate legal advice from a regulated professional. For further information on regulation, please see the chapter on **legal representation**. It is important that provision is made for this advice at the earliest possible opportunity, and not immediately prior to a child's leave expiring or when the child is due to turn 18. Immigration applications can take a long time to prepare and applications can take 6 months or more to be decided. Professionals working with a child should include this in every unaccompanied or separated child's care plan or pathway plan.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) removed legal aid for most immigration law

advice and representation.² Unless a young person is making an asylum application, or they are recognised as a potential victim of trafficking or domestic violence, then they will not be eligible for legal aid. The provision of immigration advice is highly regulated and social workers should never be providing this advice themselves – it is a criminal offence to do so. However, it is essential that they know how to recognise that immigration issues exist and that they act swiftly to address these for any child in their care, facilitating access to legal representation so that applications are submitted as soon as possible. Any assessment of a child's needs under the Children Act must have regard to their best interests and where resolving a child's immigration status is identified as a need, independent legal advice will need to be obtained. Although there is some free advice provision available through law centres, paying a solicitor privately must also be considered.³ For more information, please see the chapter on **legal representation**.

Routes to regularisation

There are a number of routes to regularisation for migrant children. It is important to note that the routes below do not form an exhaustive list, and are correct as to the current law. However, it may be that historic cases where leave has previously been granted will be subject to different or transitional rules.⁴

Routes relating to asylum, humanitarian protection, UASC leave and trafficking are covered in other chapters.

Obtaining British citizenship

The most stable form of status for a child in the UK is British citizenship. A child with this status is not subject to immigration control and does not need leave to enter or remain in the UK. For more information, see the chapter on **citizenship**.

Indefinite Leave to Remain (ILR) & children's best interests

The Home Office has discretion to grant longer periods of leave or indefinite leave to remain to a child or young person if it is clearly in that child's best interests for this to be done.⁵ A number of Home Office policies specifically state that there are circumstances in which granting longer periods of leave to remain, or indefinite leave to remain, would be appropriate, with specific reference to the duty to have regard to a child's best interests under section 55 of the Borders, Citizenship and Immigration Act 2009.⁶ There is no definition of

'best interests' as such, but the United Nations Convention on the Rights of the Child (UNCRC) states that best interests refer to a child's general well-being, including, but not exhaustive of: the views of the child; the need for a safe environment; family and close relationships; development needs; and identity needs. There is a useful publication called "Safe & Sound" by UNICEF UK and the UNHCR which sets out clearly how the best interests of an unaccompanied child should be considered and met from arrival to a durable solution.⁷

The Home Office must make decisions which demonstrate a holistic consideration of all the factors that will impact on children and young people. A decision maker has a responsibility to ensure that they are adequately informed, which should include gathering information from social workers, support workers or other agencies that are involved in the care or support of a child.⁸

If it is considered that it would be in a child's best interests for a longer period of leave or indefinite leave to remain to be granted then this should be made clear when the child or young person is applying for leave – evidence or submissions provided should outline the reasons why. ILR is highly unlikely to be granted unless representations are made to this effect.

Leave under the Immigration Rules

Article 8 of the European Convention of Human Rights ('ECHR') protects the person's right to respect for their family and private life. This means that the government must take account of a child or young person's family and personal ties and can be prohibited from breaching this right, for example, by removing a child or young person. It is a qualified right, however, which means that it can be interfered with by a public authority, such as the Home Office, in certain circumstances, including for the purposes of controlling immigration. The government has sought, through the Immigration Rules, to restrict and interpret the UK's human rights obligations and how it intends to decide applications based on private and family life rights. However, whatever decisions the Home Office make based on the Immigration Rules, the courts have held that the full body of Article 8 case law also applies. The courts have further emphasised that the best interests of children are a primary consideration. Factors relating to immigration control must not form part of the best interests of the child assessment, although this may become a factor when balancing all other considerations.⁹ As such, the sections below outlining different applications under the Immigration Rules should be read with an understanding that even where such applications are refused by the Home Office, applicants could be successful at appeal on the basis of Article 8.

Applications based on the right to a private life

A child or young person can make an immigration application on the basis of their private life in the UK. This could include educational achievements, employment, friends and relationships, support networks, and anything else relevant to their time in the UK. Therefore ties and relationships formed with social workers, health care providers, teachers, friends and support workers will be relevant and should be evidenced as part of the application.

The Immigration Rule that relates to private life is Immigration Rule 276ADE, which states that limited leave to remain in the UK will be granted:

- 1) where a child is under 18 years of age and has spent seven years in the UK (excluding any time in prison) and it would not be reasonable to expect them to leave the UK;
- 2) where a young person is aged between 18 and 25 and has spent half their life in the UK (excluding any time in prison)
- 3) where a young person has lived in the UK for at least 20 years (excluding any time in prison)
- 4) where an adult has lived in the UK for less than 20 years but there are very serious obstacles to their integration in the country they would go to if required to leave the UK.

It is important to note that where a child is arguing that they should be granted leave on the basis of seven years in the UK, they will still have to show it is unreasonable to return to their home country. The Home Office has published guidance that advises its caseworkers to take certain factors into account, including:

- any significant risk to the child's health, for example, where a child is undergoing a course of treatment for a life-threatening or serious illness and treatment would not be available in a country to which he or she would be returning
- whether it would be reasonable for the child to return with his or her parents
- any family and friendship networks there
- any relevant cultural ties there and whether the child understands that culture having been part of a diaspora here
- their ability to speak, read and write a language spoken there
- whether they ever attended school in that country.¹⁰

immigration routes

For young people who are making an application on the basis of their private life, it is very important to submit evidence with their application. This evidence will need to do more than demonstrate the length of time they have spent in the UK. It will also need to show their ties to the UK through education, connections with their community through friendships, participation in activities or religious affiliations. Furthermore, it will be necessary to show not only the strength of their ties to the UK, but also why they would be unable to return to their country of origin. This might be due to lack of support networks, little or no understanding of the language or culture, or particular health or support needs which can only be met in the UK. For a separated or unaccompanied child, it will be important that those supporting them, including social services, provide information to support the application. Examples of evidence include:

- School attendance information, the dates attended and any exam results
- Statements from any other professionals (i.e. foster carer, residential care worker, teacher, advocacy worker) involved in supporting and caring the child
- Letters from organisations (i.e. sports, arts, cultural, religious) in which the child is involved
- Health records, including any mental or physical health needs
- Statements from their friends and colleagues
- A statement or letter from social services setting out a young person's connection to the UK and their needs
- Any care plans and pathways plans.

If an application is successful, the child or young person will normally be granted limited leave to remain for 30 months. They will need to make a further leave to remain application before their leave expires and will be on a ten year route to settlement. It is important to note that it is possible to argue for longer periods of leave, and for settlement, on behalf of a separated child and this is provided for in the Home Office guidance.¹¹ There can also be specific arguments made for a longer period of leave and shorter route to settlement in the case of children in care.¹²

Applications based on the right to family life

For young people who have a relationship in the UK, have established a family, or have other family in the UK, they may wish to apply on the basis of their right to family life. The family life rules are found in Appendix FM of the Immigration Rules. Young care leavers are likely to have applications which are complex, and even where they have a family

relationship with a partner or a child, they are also likely to have other reasons for remaining in the UK on the basis of the time they have spent here. When making an application it is important to include all information about why a child or young person wants to remain in the UK.

Where a young person is in a relationship with someone who is British, or with someone who has been granted refugee status, humanitarian protection or indefinite leave to remain, then there may be circumstances in which they could apply for further leave to remain on this basis. They would need to provide evidence of their relationship and there are sometimes financial and maintenance requirements depending on the type of leave the partner has. It is also possible to apply to remain in the UK on the basis of a relationship with a child who is British or settled, or where the other parent is British or settled.

They may also be granted leave where they do not meet all the requirements under Appendix FM by relying on the exception provision within the rules. If the young person is a parent, they would have to show that they have a 'genuine and subsisting' parental relationship with a child who is: in the UK, a British Citizen, or has lived in the UK continuously for at least the seven years where it would not be reasonable to expect the child to leave the UK.¹³ If the young person is in a relationship with a British citizen or a person with refugee status, humanitarian protection or settled status, they may also rely on the exception if there are insurmountable obstacles to family life with that partner outside of the UK. The exception goes on to describe that "insurmountable obstacles" means *very significant difficulties in continuing their life together outside the UK which could not be overcome, or which entail very serious hardship*.

A young person applying as a parent must be able to provide evidence that they are taking an active role in a child's life, and will still need to meet the suitability criteria (see further below). If someone cannot meet the rules, they can still make an application outside of the rules on the basis of family life.

It is very important that good quality immigration advice is secured in order to explore all options and have representation when going ahead with an application.

Suitability and eligibility criteria

There are various suitability and eligibility criteria which apply to the applications above. Eligibility will depend on the type of application being made. For example, an application as a partner will be subject to relationship and financial requirements.¹⁴

The suitability criteria deal with criminal convictions, debts owed to the NHS, whether someone has previously made false representations to the Home Office and consideration of whether their presence in the UK is conducive to the public good. Young people who may have committed a criminal offence, or may otherwise fall foul of the 'not conducive to the public good' criteria, will need specialist immigration advice prior to making an application because there are complex rules that relate to rehabilitation periods for criminal offences.

Applications on medical grounds

A young person who has not previously made an application for asylum may make an application to remain in the UK on health grounds in some circumstances. These types of applications are made under Article 3 of the ECHR – that no one should be subjected to torture or to inhuman or degrading treatment or punishment. An application in these circumstances may also be made under Article 8 of the ECHR. If a young person has previously made an asylum application then a further application on the basis of health will be considered to be a fresh asylum claim. A child or young person making an initial asylum claim or application can also make representations on medical grounds and these will be considered by the Home Office in their decision and at Tribunal on appeal.

In principle, an application under Article 3 on the basis of medical issues is subject to a high threshold. Cases successful on Article 3 alone are quite rare and this has been borne out in case law.¹⁵ Essentially, if relying on Article 3 alone, a child or young person would have to show that there are extremely exceptional circumstances – even near-death cases have been found not to meet the threshold on Article 3 alone.

Mental or physical ill-health will also normally form part of the consideration of someone's right to a private life in the UK under Article 8. Mental health in particular may be an important consideration: the treatment available and cultural perceptions around mental illness vary widely from country to country. There is recognition that there will be rare cases which succeed on the basis of health, in a context in which both Article 3 and 8 apply.¹⁶

A child or young person making such an application or arguments in relation to Articles 3 and 8 should always obtain legal advice.¹⁷

Statelessness procedure

Some children and young people may be unable to avail themselves of any nationality and may be stateless, meaning

that they are not considered a national by any state.¹⁸ Statelessness can arise because of discrimination in a country's system of nationality law, or can happen when there are changes such as a state gaining independence. In other cases someone is stateless due to their family's migration or a lack of documentation or paperwork. From April 2013 the UK government introduced a new statelessness determination procedure to identify those who are stateless and provide them with a route to legal status.¹⁹ Prior to this there was no dedicated route for stateless people to make an application.

This kind of application must be submitted on a particular application form and will be considered by a special Home Office team based in Liverpool. There is no fee for this type of application. No legal aid is available to get legal assistance with this type of application, except if someone was already represented by a legal aid solicitor prior to 1 April 2013 and the file was not closed, or if the case involves a judicial review, which is still in the scope of legal aid. Judicial review is the main remedy if the application is refused as there is no statutory right of appeal.

Liverpool Law Clinic launched a free legal representation service in 2016 for those who are stateless. The Clinic aims to provide free representation for individuals to make an application for leave to remain as a stateless person. For further information or to refer a child or young person follow this link: <https://www.liverpool.ac.uk/law/liverpool-law-clinic/statelessness/>.

Application fees, waivers and exemptions

Where a child is in the care of a UK local authority and an application fee accompanies the immigration application, the child's application will be 'fee exempt' (no fee payable).²⁰ Otherwise an application fee in these circumstances is payable unless a fee waiver can be obtained. Current fees can be viewed on the gov.uk website and are generally increased every year.²¹ The immigration health surcharge (currently £200 per year) is also payable if there is no fee exemption or fee waiver.

A fee waiver can be applied for if the individual can provide evidence that they are destitute and so cannot pay the fee; or that paying the fee would leave them destitute and their circumstances will not change in the next 12 months; or that there are exceptional circumstances which mean they cannot pay the fee. 'Destitute' is defined as:

- a) a person does not have adequate accommodation or any means of obtaining it (whether or not their other essential living needs are met); or

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The right to reside under EEA/EU law

A child or young person may have a right to reside in the UK under EU law if they are an EEA national or a family member of an EEA national. It can often be very difficult to establish whether a child has EU law rights to remain in the UK. The regulations do not require someone to obtain documentary evidence of their EU rights and so many children will not have documentation about their rights, and may not understand how these rights were derived. EU law rights are divided into:

Direct rights: where a child is a national of an EEA country and is exercising treaty rights. This requires an EEA citizen to have resided in a host state for at least three months and to be either: a worker, a work-seeker, self-employed, studying (with health insurance) or self-sufficient (with health insurance).

Direct family members: this refers to spouses, children (including children of a spouse), and in some cases dependent parents of an EEA national. Their right to reside in the UK depends on the EEA national who must either be exercising treaty rights as above, or have permanent residence. An individual automatically acquires permanent residence in the UK if they live in the UK exercising treaty rights for a period of 5 years.

Extended family members: Other family members who may have been dependant on the EEA national in their household. Again, their rights will depend on the EEA national exercising treaty rights.

Derived rights: These are rights which do not come directly from the free movement treaties but which have been established through case-law. These rights are particular to parents of children with EU rights and so not relevant to unaccompanied children, save where they are also parents.

A child may be in the UK as a European national because they are a citizen of one of the 28 European member states, or a citizen of Switzerland, Iceland, Liechtenstein or Norway. They

are not required to obtain any special documentation to prove this right. However, a European national must be exercising their treaty rights in order to have a right to remain in the UK. To exercise treaty rights, someone must be in the UK looking for work, working, self-employed, retired or in education. For children, this will be difficult to demonstrate unless they are in education and have comprehensive sickness insurance.

Some children will not be European nationals, but will have family rights through a relationship with a family member. Under EU law, this family member does not need to be part of the nuclear family, but can include step-parents, siblings and aunts and uncles. However, if you are acting for a child alone, particularly when trying to prove a right of residence, it can be difficult to obtain the necessary evidence from the parent or family member. Children may not be clear about their rights, and in many cases, separation from their family members might sever their entitlements. This can have serious consequences for separated children in the care of a local authority.

Children are not required to obtain evidence of EEA residence rights or to apply for permanent residence but they **should be strongly encouraged to obtain legal advice about the possibility of doing so to protect their position** particularly in light of the EU referendum result and the uncertainty about the extent to which this will impact on entitlements of individuals exercising EEA treaty rights in the UK.

A useful organisation in relation to EU law is the AIRE Centre, which is a specialist charity promoting awareness of EU law rights. The organisation has an advice line and email service in relation to EU law - info@airecentre.org or 020 7831 4276 (Monday to Friday between 10:30am and 6pm).²²

- b) a person has adequate accommodation or the means of obtaining it, but cannot meet their other essential living needs.²³

Where a child is accommodated by the local authority then fees are payable for applications which relate to indefinite leave to remain (ILR) and nationality. Where it is in a child's best interests to obtain nationality or apply for ILR, then these fees will need to be met by the local authority.

Even in cases where an application is fee exempt or where a fee waiver can be applied, this does not extend to fees relating to a legal representative's advice and representation. If the type of legal advice is not covered by legal aid (see

chapter on **legal representation** for further information) then the local authority would be expected to pay the legal fees if the child is looked after and accommodated.

Appeals

The refusal of an immigration application which raises human rights grounds can be appealed. Where an application does not rely on human rights grounds then the only remedy is an administrative review of the decision, followed by judicial review.

Many appeals against immigration decisions take place out of country, unless to remove someone from the UK would put

them at risk of serious, irreversible harm. This harm refers to a breach of someone's right to life (Article 2 ECHR) or where they are put at risk of torture, inhuman or degrading treatment (Article 3 ECHR). If a young person has previously claimed asylum then they will normally be entitled to an appeal against this refusal in the UK.

However, if a young person is making an application on the basis of their family or private life alone and this is refused, then their case may well be 'certified' by the Secretary of State. This means that they will have to appeal from outside the UK. The only way to challenge this certificate is through judicial review of the decision.

The Immigration Act 2014 introduced the concept of 'deport first, appeal later' for those subject to deportation procedures (see chapter on **criminal justice** for further information). The Immigration Act 2016 extended the concept to 'remove first, appeal later'; those who have a human rights claim, and are not subject to deportation proceedings, are liable to removal with an out of country appeal, unless they can show that the removal in itself would breach their human rights. The phrasing used by the Home Office is that they would suffer a 'real risk of serious irreversible harm'.²⁴

how can you help?

Legal representation: Make sure the young person has a regulated legal representative. A regulated adviser will either be registered with the Office of the Immigration Service Commission (OISC), which is responsible for ensuring that immigration advisers fulfil the requirements of good practice, or be monitored by their own professional body, as is the case with solicitors who must be regulated by the Solicitors Regulation Authority (SRA). The OISC maintains a register of legal advisers regulated by them. The Law Society website also has a search engine for solicitors (see **contact details**). Even where regulated legal representatives may not fulfil all of their obligations to clients. For an example, Praxis Brighter Futures has produced a video based on the experiences of their youth group, which is available on their website <http://www.brighterfutureslondon.co.uk/>.

Evidence of long residence: If the young person is trying to show that they have lived in the UK for a long time, you can assist them to gather evidence. It is important that the young person has evidence of their life in the UK over the entire period of residence. For those who have lived in the UK since they were very young, or were born in the UK, evidence of birth, nursery attendance, school reports/letters and any other letters will be important. The evidence should show regular dates – at least one piece of evidence per year but preferably more.

Other evidence: Other evidence you can help the young person to obtain is letters from a social worker, support worker, any groups or organisations, religious institutions and education institutions. You can assist the child to obtain any documents or evidence relating to physical and mental health issues. A solicitor will also help a young person to

complete a statement about their life in the UK and it may be useful to obtain statements or letters from friends and family. Education certificates and qualifications should also be included, as well as evidence of employment.

Criminal offences: If a young person has any issues regarding immigration or other offences make sure that this is considered by the child's legal representative. Ensure that the immigration representative assists with the referral to an experienced criminal lawyer who can challenge the case if there is a defence to the charge. The child should also receive advice on the immigration consequences of the criminal offences.

EEA/EU Law

Evidence of EEA rights: Where a child's parents have been in the UK exercising treaty rights or have permanent residence then it may be possible to ask the DWP or HMRC to evidence this. Without evidence that the EU national is exercising treaty rights, these applications are unlikely to succeed.

Evidence gathering: one of the most difficult aspects of having European rights is being able to provide sufficient evidence to enforce these rights. In many cases, children and young people will not be in a position to gather this evidence and it may require input from other agencies, including the DWP or HMRC.

Benefits applications: young people may have difficulties in applying for benefits where they do not meet the right to

how can you help?

reside test. It is important that they are assisted through this process, and that incorrect decisions under the right to reside test are challenged.

Timeframe: where an application for confirmation of a European law right is made, then the Home Office must normally respond within 6 months. A complaint can be made where the Home Office fail to deal with these applications in this timeframe.

Appeals/return

Information for appeals: Where a young person is required to leave the UK, make sure that any assessments of them conducted by the local authority are made available to them or their legal representatives. All relevant documentation on a young person's case should be gathered and kept where possible, including original statements, interview transcripts, refusal letters and any determinations of their case from the tribunal. All of this should be made available to them for the purposes of a later application and any subsequent appeal.

Reporting: If a young person is having difficulty meeting the reporting requirements placed upon them by the Home Office, it may be possible for a legal representative to negotiate with the Home Office to review this. You should speak to the young person's legal representative about this.

Information on return: If a young person is required to leave the UK in order to make an appeal then you can assist them to find support networks in their country of origin. Young people should be made aware that they are liable to detention or removal where an appeal has been certified. An application to judicially review this decision is not a barrier to removal until permission for the case to proceed has been granted by a judge. If young people are reporting to the Home Office, then they may be detained and removed at a reporting event.

The young person can be supported to attend a reporting event and should also be given advice on what to do if they are detained – for example knowing who to contact if they are detained and ensuring they have this number. A failure to report when required is considered by the Home Office as “absconding” and can be a reason to detain someone, or can be a reason to refuse an immigration application.

Preparation for return: While a young person's case is ongoing, the outcome should not be second-guessed and all eventualities should be prepared for. Preparations should have been started when the young person was still in care under their pathway plan. This preparation can include helping them to save money, to keep some money and important possessions with them at all times, ensuring that they have a phone card to use to call people if they are detained and the telephone numbers of people they may want to call. They should also be supported to think about how they will cope with return, and how they will make practical arrangements such as accessing money when they are removed.

Information on complaints: Young people should be made aware that the Local Government Ombudsman (LGO) can investigate cases where young people are not assisted with accessing legal advice whilst in the care of the local authority, and that they have a right to make an individual complaint to the LGO.

endnotes

1. COMPAS, Undocumented migrant children in the UK, at <https://www.compas.ox.ac.uk/project/undocumented-migrant-children-in-the-uk/>
2. <http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted>
3. See Coram Children's Legal Centre and NRPf Network Guidance Note: Local authorities supporting children after the cuts to legal aid, 2013, at <http://www.nrpfnetwork.org.uk/SiteCollectionDocuments/Guidance%20Note%20local%20authorities%20post%20LASPO.pdf>
4. This list is not exhaustive. For a full discussion of all possible legal options, see N. Finch, Routes to regularisation for people without legal status in the UK, April 2013, at http://issuu.com/paulhamlynfoundation/docs/phf_soi_routes
5. Section 3(1) Immigration Act 1971
6. This followed the case of *SM and TM and JD and Others v SSHD* [2013] EWHC 1144 (Admin). Sections are now included, for example, in the policy for discretionary leave; private life and family life policy guidance.
7. UNICEF/UNHCR, Safe & Sound, October 2014, available here: <http://www.refworld.org/pdfid/5423da264.pdf>
8. *JO and Others (section 55 duty) Nigeria* [2014] UKUT 517 (IAC)
9. *ZH (Tanzania) v SSHD* [2011] UKSC 4
10. Guidance on application of EX1 – consideration of child's best interests under the family rules and in article 8 claims where the criminality thresholds in paragraph 399 of the rules do not apply
11. See endnote 6 – guidance where longer periods of leave can be granted
12. See Section 8, Home Office, Immigration Directorate Instructions, Ch 8, Section 5A, Annex M: Children, July 2012 - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263209/children_annex_m.pdf
13. Section EX.1., Appendix FM, Immigration Rules, <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-fm-family-members>
14. See Immigration Rules Appendix FM for various family life eligibility criteria
15. See: *D v United Kingdom* (1997) 24 EHRR 423; *N v Secretary of State* [2005] 2 AC 296; *MM (Zimbabwe)* [2012] EWCA Civ 279; and *GS (India) v Secretary of State for the Home Department* 2015 EWCA Civ 40
16. *Rose Akhalu (health claim: ECHR Article 8)* [2013] UKUT 400 (IAC)
17. For further information on Article 3 & Article 8 in the context of medical treatment, please see articles on this on www.freemovement.org.uk
18. Article 1.1, Convention Relating to the Status of Stateless Persons
19. The rules on statelessness applications are contained in the Immigration Rules at paragraphs 124 to 139
20. Please see CCLC's factsheet on fee waivers and exemptions for further information: http://www.childrenslegalcentre.com/userfiles/file/Fee%20waivers_Nov2015.pdf
21. Information on immigration application fees is available at: <https://www.gov.uk/topic/immigration-operational-guidance/fees-forms>
22. For more information see the Aire Centre website, at <http://www.airecentre.org/pages/i-am-an-adviser-or-lawyer-and-am-seeking-advice-for-someone-i-am-helping.html>
23. Home Office, Appendix 1 FLR(FP) / FLR (O), Request for Fee Waiver in order to exercise ECHR Rights https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/420911/Appendix_1_fee_waiver.pdf
25. Section 63, Immigration Act 2016

citizenship

British citizenship is the most secure status that a child or young person can have. If an individual is a British citizen, they are not subject to immigration control and can come into, live in, and leave the UK as they please. They can obtain a British passport to travel and will enjoy the protection of Embassies or High Commissions abroad.

Citizenship is permanent and can only be revoked in rare and extreme cases. This is in contrast to limited or indefinite leave to remain, whereby leave can be revoked if a person is convicted of certain criminal offences. Citizenship also creates stability for a child and is crucial for political participation – generally you do not have the right to vote if you are not a citizen. It opens up educational opportunities, including access to university, home fees and student finance. Citizenship is also the only path to certain career opportunities, including joining the armed forces, civil service or police.

The effect of the acquisition of British citizenship on the child's or young person's original nationality will depend on the laws of that country. The UK allows dual nationality but many other countries do not.

British children – automatic/entitlement

Prior to 1 January 1983, any child born in the UK was automatically a British citizen. The citizenship of a child born in the UK after 1 January 1983 will depend on whether the child's parents are British or settled and whether the child was born before or after 1 July 2006.

Where a child is born in the UK and one or both of their parents is British or settled (i.e. has no time restriction on their stay) at the time of the birth, the child is automatically British if born on or after 1 July 2006.

A child born in the UK before 1 July 2006 is automatically British if they were born to a British or settled mother. Children born in the UK before 1 July 2006 to a British or settled father will only be automatically British if the child's parents were married at the time of the birth or married later. However, a child in this situation can now apply to register as British by entitlement, meaning that they have a right to be registered. The Home Office must register the child as a British citizen in this situation as long as the child meets the good character requirement (see below). The application is made on Form UKF and there is no fee for the registration of such a child.¹

A child who is adopted in the UK by a British citizen will automatically acquire British citizenship.² The child will become a British citizen on the day of the adoption. No application is needed and the child will be able to apply for a British passport after they are adopted.

It is possible to obtain written Home Office confirmation that a person is a British citizen. To do so, a nationality status application will need to be submitted using form NS. Form NS and its accompanying guidance can be found on the government website.³ Please see endnote 11 for the link to the fee for the 2016-17 financial year for this application and any other immigration or nationality fee.

If a child is British, a British passport can be applied for through the normal route.⁴ However, note that first passport applications for some children may be difficult if the required formal documentary evidence expected by Her Majesty's Post Office (HMPO) cannot be provided.

Registration

All children not automatically British must apply to 'register' as British citizens. Only certain children are eligible to register as British citizens, including the following:

- A child born in the UK to a parent who later becomes settled in the UK⁵
- A child born in the UK on or after 13 January 2010 whose parent is not a British citizen and was not settled in the UK but subsequently becomes a member of the UK armed forces⁶
- A child born in the UK who remains in the UK for the first ten years of their life and is not outside the UK for more than 90 days in any of those years⁷

In the case of a child whose parent(s) become settled in the UK or become a member of the armed forces, they must apply while they are under 18 and must meet the good character requirements if aged 10 or over (see below).

In the case of a child who was born in the UK and has lived here for the first ten years of their life, they can register for citizenship either as a child or an adult. The status of the child's parents is irrelevant for this type of registration. There is a higher fee if applying as an adult and the individual will also need to attend a citizenship ceremony. They will need to meet the good character requirements if aged 10 or over (see below).

All the above registration applications incur a fee and must be made on the correct form. For further information on forms and fees, please check the government website for the most up to date information.⁸ Applications for those who have lived in the UK up to the age of 10 are currently made on Form T.⁹

Registration – discretion

The British Nationality Act 1981 allows the Secretary of State the discretion to register children as British citizens.¹⁰ The Home Office has published detailed guidance on how this discretion is used.¹¹ The guidance notes that there are no hard and fast rules about discretion and each case must be considered on its own merits. It further notes that all relevant factors must be taken into account, as well as any representations made in support of the registration.

The main criteria taken into account for a discretionary application for a child are as follows:

Intentions for the future

- this should clearly be seen to lie in the UK
- past behaviour and family circumstances will be taken into account

Citizenship and immigration status of parent

- it is normally to be expected that at least one parent is, or is about to be, settled; or that at least one parent is, at a minimum, unlikely in the short/medium term to be returnable
- in cases of unaccompanied or separated children, it will be normal to provide as much information as possible about parents, any immigration status they may have and their location, if known

Residence in the UK

- the child will normally be expected to be resident in the UK
- this is less important for children under the age of 13
- if the child is 13 or above, the Home Office will normally expect the child to have completed at least 2 years residence
- if the child has been resident for less than 2 years, registration at discretion may still be reasonable if there are compelling compassionate circumstances or there have been aggregated periods of residence
- Registration at discretion may still be justified even there has been no residence in the UK

Conditions of stay

- this is normally expected to be free of conditions – essentially the Home Office would normally expect the child to have ILR

Character

- this requirement is for children aged 10 or over
- any criminal convictions will be relevant, including cautions
- see the section above on 'good character' for further information

Parental Consent

- consent will normally need to be provided
- if the child is separated from their parents and looked after and accommodated, the local authority will normally be expected to provide a background report
- the local authority can register the child even if the parents object, as long as the local authority is satisfied that it is in the child's best interests
- if the child is aged 17, parental consent is not needed

Best interests

- the best interests of the child should be a primary consideration
- the local authority and others that care for the child or are involved in the child's life should provide information on why they believe citizenship is in the child's best interests
- any application should include the views of the child

An application for citizenship under the Home Office's discretion is made under Form MN1 and must also be accompanied by the appropriate fee. There is accompanying guidance to the application published by the Home Office and this should be read in conjunction with the nationality instructions.¹²

Good character

One of the most difficult areas in nationality law for children is the concept of 'good character'. In all applications for nationality registration (apart from stateless registrations) a child who is aged 10 or over must be considered by the Home Office to be of good character. Although there is no law or statute that defines good character, the Home Office applies the same good character guidance to applications made by both children

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and adults.¹³ Therefore there is no difference in how the Home Office considers an adult's or child's good character.

The Home Office will consider whether a child over the age of 10 is of good character on 'the balance of probabilities' – essentially asking whether it is more likely than not that someone is of good character. There are a number of questions to be answered in the application and any significant event, such as a criminal conviction or pending prosecution, must be noted. The Home Office provides examples where it will not consider someone to be of good character, including: those who are convicted of a criminal offence, or where there are reasonable grounds to suspect involvement in a crime, those whose financial affairs are not in an appropriate order, or who have been deliberately dishonest or deceptive in their dealings with the UK government.¹⁴

This means that children will normally be refused citizenship if they have criminal convictions. The length and date of any sentence, caution or settlement is important. The table below shows the type of sentence and the impact it has on a citizenship application.¹⁵

Sentence	Impact
4 years' or more imprisonment	Application will normally be refused, without regard to when the conviction occurred
Between 12 months' and 4 years' imprisonment	Application will normally be refused unless 15 years have passed since the end of the sentence
Up to 12 months' imprisonment	Applications will normally be refused unless 10 years have passed since the end of the sentence
A non-custodial sentence or other out of court disposal that is recorded on a person's criminal record	Applications will normally be refused if the conviction occurred in the last 3 years

Whether a conviction is spent or unspent is irrelevant in citizenship applications.¹⁶ It is also important to note that 'non-custodial sentence or other out of court disposals' include:

- Fines
- Fixed penalty notices
- Cautions
- Warnings

- Reprimands
- Community sentences
- Civil orders relating to character or conduct
- Hospital orders and restriction orders¹⁷

The Home Office also states that even if 3 years have passed, it may still be appropriate to refuse on the basis of good character if there have been multiple examples of such convictions/court disposals or that the circumstances of the conviction/court disposal call into question the individual's character (such as the nature of the offences).¹⁸

The Home Office states that applications will normally be refused if a non-custodial sentence or other out of court disposal (such as a caution) occurred in the 3 years preceding the application.¹⁹ The Home Office does accept that it should take into account an individual's age at the time older convictions or disposals were imposed or if the disposals were 'isolated youthful indiscretions'. It is recommended that those making a citizenship application, if they have any doubt as to whether they have any criminal convictions or record, should make a subject access request to find out what information is held on the Police National Computer (PNC). This costs £10.00 and you can apply online or by post.²⁰

In cases where character may be seen as an issue, and in applications generally, it is important that any evidence that counters this is submitted to the Home Office. This should be supported by strong representations as to the character of the child. It is often useful for social workers, support workers, foster carers, organisations and teachers to provide evidence demonstrating that the child is of good character.

It should also be noted that the bad character criteria has been tightened for citizenship applications recently, with particular focus on immigration issues. This includes illegal entry, assisting illegal migration (for example assisting someone to avoid immigration control) and evasion of immigration control (examples given include failing to report, failing to comply with conditions or working in the UK without permission.²¹ The guidance notes that this could prevent an individual being granted citizenship for 10 years. It is clear that this could be problematic for a number of separated or unaccompanied children, as many will have entered the UK illegally before claiming asylum or will have entered illegally/overstayed with their family before being separated. Although the Home Office subsequently stated that those entering the UK illegally who are subsequently granted citizenship should not be refused on that point alone,²² this may still affect a number of children or young people who subsequently make citizenship applications following illegal entry or failing to report. It may also affect those children who have lived in the UK a long time but whose status

is not regularised by their parents or carers, as they will likely have illegally entered and/or overstayed in the UK.

Evidence

The Home Office will expect all evidence required on the form and in the guidance to be provided with the application. In the case of children who were born in the UK and lived in the UK for the first 10 years, evidence of birth and residence will be the most important information to provide.

If applying on the basis of the citizenship or settlement status of one or both parents, evidence of the parent's birth, citizenship and/or immigration status will be crucial, as well as any evidence of paternity if required, such as birth certificate of the child or a DNA test.

In cases where a request is being made for the Home Office to use its discretion, it is important that as much evidence as possible is provided to show that the Home Office should use its discretion and register the child as a British citizen.

Useful evidence to provide includes:

- Evidence of residence in the UK (this could include letters proving residence, care plans, address history if has lived with numerous carers)
- A statement or letter from the child outlining their life in the UK; family links; and/or the importance of citizenship to them
- A background report by the local authority outlining details of the child's family, the fact that the child's future lies in the UK and why citizenship is in the best interests of the child
- Up to date care plans and previous care plans
- School documentation, including reports, attendance records and letters from teachers
- Details and letters of support from any clubs, groups, organisations or sports clubs that the child is involved in
- Letters from any religious organisation or place of worship that the child is involved in or attends
- Letters or statements from friends and family outlining their relationship with the child and why they think the child should be granted citizenship.

It should be noted that there is no comprehensive list of everything that could be submitted as part of a citizenship application. In general, it will be better to gather as much evidence as possible, particularly for discretionary applications, in order to show that it is in the child's best interests to be

granted citizenship; that their future clearly lies in the UK; that they meet residence requirements and that they are of good character.

Naturalisation

Almost all adults who apply to become British citizens must do so under the naturalisation process. Naturalisation as a British citizen is at the discretion of the Home Office. Currently someone with refugee status can apply for British citizenship if they satisfy the requirements below:

- are 18 or over
- are of sound mind (spouse/civil partner only)
- are of good character (see section above but examples noted on the government website include having a serious or recent criminal record; trying to deceive the Home Office; and involvement in any immigration offences in the last 10 years)
- meet the English language requirements
- have sufficient knowledge of life in the United Kingdom
- intend to continue living in the UK (unless they are the spouse/civil partner of a British citizen)

They must also usually:

- have been in resident the United Kingdom legally for at least five years
- have been free from immigration time restrictions (i.e. have indefinite leave to remain in the UK) for at least 12 months before they apply (or just on the date they apply if the spouse/civil partner of a British citizen)
- have been present in the UK for five years before the date of their application (three years if they are the spouse/civil partner of a British citizen)
- have been granted indefinite leave to stay in the UK or permanent residence if the individual is an EEA national (will need to have a permanent residence card or document showing this)
- have not spent more than 450 days outside the United Kingdom during the five year period (270 days if they are the spouse/civil partner of a British citizen), and not more than 90 days outside the UK in the last year
- not have broken any immigration laws while in the UK.

A period of temporary admission can count towards the 3 or 5 year qualifying period, so, for example, a port applicant for asylum for an individual who was granted leave as a refugee

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under a backlog policy could apply immediately after 3 or 5 years, depending on their circumstances. Periods of illegal stay, for example when an individual overstays their visa and is then in the country unlawfully, do not count towards the qualifying period.

A fee is charged by the Home Office to naturalise as a British citizen. For up-to-date information on this please go to the fees section of the government website.²³

Grant of citizenship

If an application to register a child as a British citizen is granted, the Home Office will issue the child with a certificate of registration. Those under the age of 18 do not have to attend a citizenship ceremony.

Attending a citizenship ceremony is required:

- if the child applies as a minor but has turned 18 by the time that the application is decided
- in the case of someone over 18 applying for registration under section 1(4) of the British Nationality Act 1981 on the basis of ten years' residence
- in the case of an individual over the age of 18 applying under the naturalisation process.

The fee for the ceremony is currently £80. Citizenship ceremonies are usually organised by local authorities and an individual is able to ask for a private ceremony.²⁴ After receiving a certificate of British citizenship, an individual must send their biometric residence permit to the Home Office (some children/adults may not have a biometric residence permit, for example if they had never had leave in the UK and applied under the 10 year route). Once someone has been confirmed as a British citizen they can apply for a British passport.

Challenging a refusal

If a citizenship application is refused, the application fee is not reimbursed. There is no automatic appeal right if the Home Office decides to refuse an application to register a child as a British citizen. It is possible, however, to request a review. The Home Office expects a request for a review to be made on Form NR. As of 18 March 2016, the Home Office now charges a fee of £272 for reviews. The Home Office usually change fees yearly and for the most up to date details on fees, please see the gov.uk website page link at endnote 23 below.

There is no deadline for requesting a review, but it should be done as soon as possible. If the review does not result in a change in the decision, the only remedy available is to challenge the refusal by issuing judicial review proceedings in the High Court. This will require legal assistance. Legal aid may be available for judicial review, so the child or young person should be assisted to find a solicitor with an immigration and asylum legal aid contract.

Legal aid

No legal aid is available for citizenship applications. However, there are some specific legal projects working in this area. There is a pro bono project at Coram Children's Legal Centre taking on certain registration applications and providing advice on this issue. For more details, please see the CCLC website.²⁵ The Project for the Registration of British Citizens provides some representation for complex cases (<https://prcbc.wordpress.com>) and Coventry Law Centre also does some work in this area (see www.covlaw.org.uk). Alternative options are to pay privately for legal representation or to submit the application unassisted, although it is always recommended that an individual obtain legal advice before doing so.

endnotes

- 1 UK government website, Register as a British citizen, available at: <https://www.gov.uk/register-british-citizen/born-before-2006-british-father>
- 2 Section 1(5), British Nationality Act 1981
- 3 UK government website, Application for confirmation of British nationality status: form NS, available at: <https://www.gov.uk/government/publications/application-for-confirmation-of-british-nationality-status-form-ns>
- 4 UK government website, Get a passport for your child, available at: <https://www.gov.uk/get-a-child-passport/overview>
- 5 Section 1(3), British Nationality Act 1981
- 6 Section 1(3A), British Nationality Act 1981
- 7 Section 1(4), British Nationality Act 1981
- 8 UK government website, UK visa, citizenship and immigration forms, available at: <https://www.gov.uk/government/collections/uk-visa-forms>
- 9 UK government website, Application to register as a British citizen: form T, available at: <https://www.gov.uk/government/publications/application-to-register-as-british-citizen-form-t>
- 10 Section 3(1), British Nationality Act 1981
- 11 Home Office, UKVI Nationality Instructions, chapter 9, April 2015, available at: <https://www.gov.uk/government/publications/chapter-9-registering-minors-at-discretion-nationality-instructions>
- 12 UK government website, Application to register a child under 18 as a British citizen: form MN1, available at: <https://www.gov.uk/government/publications/application-to-register-child-under-18-as-british-citizen-form-mn1>
- 13 Home Office, UKVI Nationality Instructions, chapter 18 appendix D: the good character requirement, July 2015, available at: <https://www.gov.uk/government/publications/application-to-register-child-under-18-as-british-citizen-form-mn1>
- 14 Section 1.3, *ibid*
- 15 Section 2.1, *ibid*
- 16 Section 2, *ibid*
- 17 Section 3, *ibid*
- 18 Section 3.8. *ibid*
- 19 Section 2.1, *ibid*
- 20 NPCC Website, Subject Access, available at: https://www.acro.police.uk/subject_access.aspx
- 21 Home Office, UKVI Nationality Instructions, chapter 18 appendix D: the good character requirement, section 9, July 2015, available at: <https://www.gov.uk/government/publications/application-to-register-child-under-18-as-british-citizen-form-mn1>
- 22 Letter by James Brokenshire MP, Immigration and Security Minister, 28 March 2015, available on the freemovement website at <https://www.freemovement.org.uk/wp-content/uploads/2015/03/Refugee-citizenship-letter.pdf>
- 23 UK government website, UK visa fees, available at: <https://www.gov.uk/government/publications/visa-regulations-revised-table>
- 24 UK government website, citizenship ceremonies, available at: <https://www.gov.uk/becoming-a-british-citizen/citizenship-ceremonies>
- 25 Coram Children's Legal Centre, Pro Bono Legal Project at http://www.childrenslegalcentre.com/index.php?page=pro_bono_legal_project_launch

legal representation

Legal advice

Immigration legal advice is highly regulated and anyone who gives immigration advice must be qualified to do so.¹ It is very important that those working with and supporting migrant children and young people are aware of this and that they ensure these children and young people receive quality legal advice and representation from regulated providers.

Anyone providing immigration and asylum legal services to clients under a legal aid contract from the Legal Aid Agency must additionally be accredited within a scheme called the Immigration and Asylum Accreditation Scheme, which is operated by the Law Society.² Those providing legal aid services to unaccompanied asylum-seeking children must be accredited as a level 2 senior caseworker.

Who instructs a legal representative?

Who instructs the legal representative for a child will depend on whether the child has the capacity to make legal decisions. This will involve an assessment of a child's maturity and understanding of the issues.³ Like all professionals, a legal representative will conduct their own assessment of whether a child is competent to understand the advice they are given and to give instructions. As competence changes depending on what a child or young person needs to understand, a lawyer might find that a child is not competent even where a social worker believes that they are. They may find that the child is competent to understand and give instructions for some matters, but not others. It will be dependent on the assessment made by the lawyer.

Where a child is competent, they will still need assistance to find a lawyer who can represent them. The child will also often need help to gather any documentary evidence that the lawyer may require in respect of their case. It is very important that children have representatives who have experience of working with children and a clear understanding of children's best interests. The views of a child must be taken into account when choosing a representative.

When to instruct a legal representative

Unaccompanied asylum-seeking children should be assisted, usually by their social worker, to find a solicitor as soon as possible once they are settled in a local authority area. A child or young person should have legal advice prior to their initial

welfare interview where possible. The legal representative will need significant time with the child or young person prior to the substantive interview to help them understand the process and prepare a statement. This will need to be spread over a number of meetings. Legal aid is available for legal advice and representation in respect of an asylum claim before the claim is made.

Where a separated child is not seeking asylum but needs assistance with their immigration status, then access to, and payment for, legal advice should be included in any care plan for them. For children who are 16 or 17, immigration advice should be considered as part of the Pathway Plan. It is important that children get legal advice as soon as possible in this scenario, as the immigration process can take a long time and their position may be prejudiced by delay or by a change in circumstances (such as turning 18). For example, some applications may not be open to them at the age of 18, there may be more onerous requirements, or a delay may lead to gaps in their immigration history which could cause serious problems down the line.

How to find legal representation

Children should be assisted in finding a legal representation and should be accompanied to the first appointment. If you frequently work with unaccompanied or separated children then it is a good idea to build up close working relationships with legal representatives who offer high quality services. However, others may not have this experience and making referrals to solicitors is particularly difficult in certain parts of the country where there are few legal aid providers. Sometimes it can involve a lot of work and many enquiries before finding a firm or organisation which has capacity to take the case on.

The Refugee Council Children's Panel can help a child or young person who is claiming asylum to find legal representation in their area (http://www.refugeecouncil.org.uk/what_we_do/childrens_services/the_childrens_panel_-_advice_service).

The Law Society has a directory of all solicitors, which can be searched by area of law (<http://solicitors.lawsociety.org.uk/>). This search will also tell you if the law firm has any accreditations and the names of qualified solicitors at the company.

Alternatively, the Ministry of Justice provides a search engine to find legal aid representatives (<http://find-legal-advice.justice.gov.uk/>). This list only includes firms or organisations

that hold contracts for legal aid work with the Legal Aid Agency. Most firms that conduct legal aid work will also provide legal services for a fee where there is no legal aid available.

The Law Centres Network (www.lawcentres.org.uk) has information about local law centres and the services they provide. In general, law centres will only be able to give advice and representation to local residents.

The Immigration Law Practitioners' Association also has a directory of members and search engine to find nearby immigration advisers (<http://www.ilpa.org.uk/search-directory.php>).

Legal aid

Legal aid is not available for every type of legal case. However, legal aid is available for:

- Asylum cases (cases about international protection)
- Judicial review of decisions made by public bodies
- Community care law (for issues such as care and age disputes)
- Victims of trafficking (those with a reasonable grounds decision)
- Family law cases where there has been domestic violence, or cases which involve the local authority.

More information about whether legal aid is available for a case is available on the Law Society website (<http://www.lawsociety.org.uk/for-the-public/paying-for-legal-services/legal-aid/>). Legal aid has not been made specifically available for children.

It is important to note that legal advice for immigration and nationality applications is not covered by legal aid unless an application can be made to the Legal Aid Agency to provide legal aid on an exceptional basis. If a child is unaccompanied or separated and looked after and accommodated by social services it would be expected that the local authority would meet the legal costs of making any such application. This would include the fee for a nationality application (there are no fee waivers for nationality applications).

Some children and young people will have cases that are partially covered by legal aid (for example for an argument that on return they are at risk of inhuman or degrading treatment breaching Article 3 of the European Convention on Human Rights) and are partially out of the scope of legal aid

(for example an argument that removal from the UK would breach their right to respect for private and family life under Article 8 of the European Convention on Human Rights).

Asylum legal aid

Legal aid advice for asylum cases can only be provided by legal representatives who are accredited under the Immigration and Asylum Accreditation Scheme. An unaccompanied asylum-seeking child under the care of the local authority will **always** be eligible for legal aid for their asylum case so long as they meet the means (assessment of income and capital) and merits (the strength of the asylum claim) tests. For a child in the care of the local authority, a legal representative will require written confirmation from the social worker outlining how they are accommodated and the level of support they receive.

The work involved in the initial asylum claim up to the point of appeal is provided under a category called Legal Help. At this stage, the legal representative must be satisfied that there is 'sufficient benefit' in the case being pursued in light of the client's circumstances.⁴ This is quite a low standard of proof and it will be for the legal representative to assess the merits of a claim.

If the child has a publicly-funded legal representative in their immigration/asylum matter and that legal representative is aware of problems relating to the local authority's duties under the Children Act 1989, that legal representative is obliged to ensure that the child receives advice on these problems.⁵ This will be particularly important if a child is subject to an age dispute. For further information see our chapter on **age disputes**.

Attendance at an asylum interview

Where an unaccompanied asylum-seeking child is attending a substantive asylum interview, their legal representative is funded to attend with them. A legal representative should always attend a substantive interview with a child. The legal representative plays a different role to the responsible adult and both should be present for a child's interview; the legal representative should not take on both roles.

The Legal Aid Agency will also fund a legal representative's attendance at a welfare interview.⁶

For more on this, see the chapter on the **asylum process**.

legal representation

Complaints and changing legal aid advisers

Where a child is not satisfied with the service provided, there are steps that can be taken to resolve such issues with the legal adviser. A child should be given information on how to complain by their legal adviser following the first appointment. The firm will have a complaints procedure that should be clear and accessible. A complaint should first be made to the representative unless there is a clear reason not to do so (for example assault). The representative will then inform the complaints partner in the organisation. The law firm or organisation deals with the complaint in the first instance, and they should respond within two working days to acknowledge the complaint.

If the complaint cannot be resolved satisfactorily, then a further complaint can be made to the Legal Ombudsman, an independent scheme that resolves complaints about lawyers, or to the Office of the Immigration Services Commissioner (OISC) in relation to immigration advice. The complaint should contain as much detail as possible, including the main issues involved and what steps were taken to resolve these issues. The time limit to make a complaint to the Legal Ombudsman is six months from the final response by the legal adviser, and 12 months to make a complaint to OISC.

If the child or young person wishes to transfer to a new firm, they should be able to instruct another solicitor. However, legal aid firms have to follow certain guidelines relating to taking on clients who have instructed another legal aid firm within the last six months.⁷ In general, legal aid can only be transferred where:

- the client has reasonable cause to be dissatisfied with the service they received; or
- the client has moved a distance away from the first firm and communication is difficult; or
- the first firm can no longer act for the client because of a breakdown of the relationship or a conflict of interest.

The new solicitor should, with the client's consent, contact the first firm to confirm the reasons for the client moving firms and to request a copy of the client's file. The new solicitor may not be able to start working on the case until they have received the file and decided whether there is justification for the change.

Despite these allowances, it can be hard in practice to change to a different solicitor or law firm within a six-month period. Furthermore, the process of transferring legal aid can be slow, and it is very likely that evidence will be needed to show that the child continues to be looked after and accommodated. A transfer should be done in good time before any deadlines or appeal dates as this can cause

serious delay or issues for the child. If there is an issue with transfer where there is a deadline or appeal date, this should be dealt with within the timeframes to ensure that the child is not prejudiced – an extension will sometimes need to be requested.

Legal aid at appeals

At appeal stage, legal aid will change from Legal Help to Controlled Legal Representation (CLR), for which the merits test is higher. The legal representative must be satisfied that the prospects of success are above 50% (unless the case raises a significant public interest, significant human rights issues, or is of overwhelming importance to the client – the assessment should still be around 45%) and that the possible benefits justify the costs. An unaccompanied or separated child with an asylum appeal should normally receive legal aid funding for Controlled Legal Representation if the legal representative is able to clearly identify a 1951 Refugee Convention reason and risk on return.

If there is a refusal to provide legal aid then the solicitor should provide the child with a CW4 form.⁸ The reasons for refusing or withdrawing legal aid at appeal stage should be made clear to the child. The legal representative must inform the child of their right to have the decision reviewed. It is possible for the child to go to another legal representative, who may take a different view of the case and help the child to challenge the refusal of legal aid for the appeal and then represent them at appeal. It should be noted that this is not the same as transferring legal aid solicitors as explained above and there are not the same restrictions on doing so.

Time limits for lodging an appeal with the Tribunal are very short, so it is very important to lodge the appeal with the Tribunal in time, even while the legal aid funding and representation issues are being resolved.

Immigration advice (non-legal aid)

Immigration and nationality applications are not covered by legal aid. This can be problematic for separated children who do not have an asylum claim. Many children taken into care do not have secure immigration status or were dependent on a family member's limited form of status. They should get advice from an immigration adviser to regularise their status by making an immigration application.

The only option for getting legal aid for an immigration application is to apply to the Legal Aid Agency for what is called Exceptional Case Funding (ECF). Getting Exceptional Case Funding will depend on showing that, even though the case is in an area of law for which there is normally no legal

aid, the particular circumstances of the case mean legal aid should be granted because the child or young person can show that they cannot represent themselves and it would breach their human rights. An application should mention the complexity of the case and any vulnerabilities of the child.

If a child is looked after and accommodated and they cannot get legal aid, the local authority would be expected to pay a legal adviser to represent the child and make an application. As well as legal costs, this may include meeting the cost of any application fees, particularly in the case of nationality applications. Most immigration applications made by looked after and/or accommodated children are fee exempt – for further information see the chapter on **immigration routes**.

The local authority should normally be funding an immigration case for a looked after and accommodated child. If the local authority is refusing to fund such advice and representation, a complaint or challenge, with the assistance of a community care solicitor, should be considered.

Free and pro bono services

There are some free legal advice services, such as the Migrant Children's Project advice line at Coram Children's Legal Centre. In addition, some lawyers may take on a small number of cases pro bono. However, when dealing with a looked-after child's immigration case, it is not advisable to rely on pro bono legal services as these may be unable to deal with the entirety of a case and may require the individual being represented to do a lot of the work themselves. It is important to note that the pro bono will normally only cover legal advice and representation. It is very unlikely that other services such as translating or expert reports can be provided free of charge. Application fees and court fees are not automatically waived because the advice and representation is provided pro bono (however, the child or young person may be entitled to a fee waiver or be fee exempt for an application).

Other areas of law

Judicial review

Legal aid is available for judicial review across different areas of law. Judicial review is a way of challenging unlawful decisions made by public bodies through an application to court. Although immigration and nationality applications are not covered by legal aid, judicial reviews in these cases can be covered by legal aid. For example, even if the immigration application of a child in care based on long residence is not covered by legal aid, if the Home Offices grants leave for two and a half years with a 'no recourse to public funds' condition, a judicial review arguing

the child should not have the condition and should have been granted indefinite leave to remain could be covered by legal aid.

Community care lawyer

Legal advice in relation to community care law may be funded through legal aid. Community care law is used to challenge local authority decisions which relate to support for a child, including where a child is age-disputed, the educational provision for a separated child, or if services are changed or terminated. It is important that children are informed about their right to challenge those decisions and the child is assisted to obtain advice and representation from a community care lawyer.

Criminal lawyers

Where a child is charged with a criminal offence, they should be supported to find a criminal defence lawyer to assist them through the process. Children are entitled to legal aid for criminal advice automatically where they are under 16, or are under 18 and in full-time education. They should have representation at the earliest possible opportunity, including for a police interview.⁹

A good criminal solicitor for separated children will:

- have experience in representing children and attending the youth courts
- have additional training in representing children and in handling vulnerable witnesses
- understand that a criminal record can have serious implications for a child's immigration status
- not put a child under pressure to accept a police caution or to plead guilty

For more information, contact the Youth Justice Legal Centre (www.yjlc.org.uk).

Education lawyers

There is legal aid available to challenge a decision on special educational needs (SEN) and for education judicial reviews. This legal aid can only be accessed through a telephone gateway, which is available on 0345 345 4 345. You can also find information about education law through the Child Law Advice Service: www.childlawadvice.org.uk. This is operated by Coram Children's Legal Centre.

Litigation friends

Where a child is engaged in litigation before a court generally, then the court will normally appoint a litigation friend to act on

legal representation

their behalf. A litigation friend can be anyone who applies to the court, but is normally:

- Someone who has parental responsibility for a child (a parent, or where the local authority has parental responsibility, a social worker)
- A solicitor
- A friend or family member.

To apply, the relevant person will need to complete a certificate of suitability (form N235). Where a child is represented, then the solicitor may act as their litigation friend.

When a case is to be heard in the Immigration Tribunal, there is no express provision for the appointment of a litigation friend. However, the Tribunal does have the power to appoint someone where the applicant lacks capacity.¹⁰

Particular issues

Child does not have capacity

A separated child's capacity to give instructions may be affected by their age, gender, culture, education and any mental health problems or learning disabilities. Capacity is not fixed, and a child who initially does not have capacity may gain capacity to give instructions, or may lose the ability. A child who lacks capacity should still be assisted to find a lawyer, as the lawyer will need to make their own assessment in line with their professional guidance.

Non-disclosure and information-sharing

You should not share anything with a child's lawyer if the child has not given you permission to do so. Likewise, even if you are a social worker and the local authority is paying for a child's legal representative, they are not entitled to share any information with you unless their client, the child, gives them permission to do so.

A lawyer may breach the child's confidentiality only in certain situations relating to child protection and criminal offences. They are not considered regulated professionals under

'Working Together to Safeguard Children' so they are not under the same legal duty as those professionals.¹¹

Instructing interpreters

If a separated child does not speak English, then it is important that an interpreter attends appointments with legal professionals, the Home Office and at court. The Courts and Tribunals Service (HMCTS) will provide an interpreter at a hearing by request, and only HMCTS interpreters may be used in the Immigration Tribunal. However, it is still necessary to have an independent interpreter present at every hearing to interpret instructions and advice before and after the hearing. This is equally true for the child's substantive asylum interview. An independent interpreter can also check the quality of the interpreting service in the Home Office and Tribunal, and should inform the lawyer or appropriate adult immediately if the official interpreting is inadequate.

Where a lawyer speaks the same language as a child, it is still important to have an interpreter present at every meeting.

Interpreters are not required to have regular DBS checks, so it is important to check that a booked interpreter has a recent DBS check when making the booking. Where the solicitor is making the booking for an interpreter, this should be raised with them. Interpreters should not normally be left alone with a child.

Instructing barristers

In most cases, a solicitor or other legal adviser will instruct a barrister to appear on behalf of a child at the Tribunal or court where they believe this is necessary. A barrister must act in the best interests of the child client.

In general, the solicitor will select and instruct the barrister. However, the child or young person can discuss specific barristers or specialised barristers with the solicitor if they have a preference.

In some circumstances, a barrister may be instructed directly without a solicitor. This is known as direct access. This will not normally be appropriate with cases where the client is a child.

A good representative

A good legal representative for a separated child is one who:

- has a thorough knowledge of national and international asylum law and policy, as well as immigration and nationality law
- understands the special rules, procedures and policies that apply to separated children
- understands the importance of appealing the refusal of an asylum claim before the child reaches 18 and will consider the merits of an appeal even where leave is granted as an unaccompanied asylum-seeking child (see the asylum chapter for further details)
- has skills in communicating with and interviewing children and young people and uses an interpreter when appropriate
- acts promptly, keeps appointments and responds to the young person's phone calls as soon as they can
- is aware of local authorities' duties where separated children are concerned
- works in partnership with other agencies supporting the young person, and in particular their responsible adult, their social worker, if different, and their adviser at the Refugee Council if they have one (while also maintaining their duty of confidentiality with the child)
- is able to assess the young person's understanding of the legal process, their maturity and capacity to provide accurate information, and is able to give instructions and act appropriately based on that assessment
- recognises the limits of their experience and expertise and seeks advice from other specialists and experts as appropriate

The legal representative should explain carefully to the child or young person in a language they understand, using an interpreter if necessary, the following:

- the role of the legal representative
- the young person's role in the asylum or immigration application process
- how the asylum and immigration application and appeals process works (including answering any questions a young person may have on procedures)
- the strengths and weaknesses of their claim, based on an accurate assessment of their case.

The legal representative should carry out the following tasks on behalf of the young person:

- take down a comprehensive statement about the child or young person's case (unless the maturity of the child makes it inappropriate to do so) and find supporting documentation about the situation in the child's country of origin
- verify the statement with the child at each stage with an interpreter and give the child a copy of the statement
- not rush the child and communicate with the child at a pace that the child is able to cope with, being sensitive and with an awareness of language barriers
- commission expert reports, including medical reports, and other additional information as necessary to support the young person's application
- ensure that a child has a responsible adult with them during a screening interview and a substantive asylum interview with the Home Office
- arrange for an independent interpreter, if an interpreter is required, to attend a substantive asylum interview at the Home Office
- ensure the young person has the correct immigration papers and residence permit (including correct spelling of name, age and other information) and ensure that they are kept safely
- keep up to date with the progress of an asylum or immigration application or appeal, keep the young person informed and, if the young person gives consent, keep the responsible adult, social worker and adviser from the Refugee Council up to date with the progress of the young person's application
- if required, help the child to challenge a refusal of an asylum claim or grant of a form of temporary status that does not recognise the child as a refugee (in particular, if UASC leave is given as this will be a refusal of the child's asylum claim)
- make sure any appeal is submitted in time
- help the young person to apply for an extension to their temporary leave, within the timeframe specified
- deal professionally with any anxiety the young person has regarding the process
- confirm in writing any action plan and any advice given to the young person

legal representation

A good representative (continued)

- if the asylum process in the child's case is going too slow or fast for the child because, for example, they have mental health concerns or there are concerns over fitness for interview, liaise with the Home Office to agree an acceptable timeframe and extension of the asylum process timeframe, if necessary.

Lawyers have a code of conduct they should always adhere to. The codes are different for solicitors and barristers because of their differing roles in the legal process. However, you can always expect that a lawyer will:

- Provide a client care letter after a first appointment which is detailed and clear. It should set out what was discussed at the appointment and the next steps. It should include a time frame for the case.
- If you are paying for legal services, then the first letter should include an estimate of the costs. An immigration or legal adviser should provide you with information about the fee structure.
- The lawyer should also provide you with information regarding the terms and conditions of the service they provide, even if the services are free or being funded through legal aid.

how can you help?

- For **detailed advice and information** on working with children subject to immigration control, read the ILPA guidelines for best practice (see **further reading**).
- Make sure the young person has a **legal representative** who must be either **registered** with the Office of the Immigration Service Commissioner (OISC), which is responsible for ensuring that immigration advisers fulfil the requirements of good practice, or who is monitored by their own professional body, as is the case with solicitors, who are regulated by the Solicitors Regulation Authority (SRA). The OISC maintains a register of legal advisers regulated by them. The Law Society website also has a search engine for solicitors (see **contact details**). Even where regulated, legal representatives may not fulfil all of their obligations to clients. For an example, Praxis Brighter Futures has produced a video based on the experiences of their youth group, which is available on their website <http://www.brighterfutureslondon.co.uk/>.
- Be aware that the legal representative can apply for **additional funding** for the separated child's asylum case under the hourly rate scheme. The legal representative can also apply for funds to obtain expert reports, such as a psychological or psychiatric report, and a country expert report. Funding is restricted by the Legal Aid Agency and costs must be justified before being granted for reports.
- Although a child who is competent instructs their own legal representative, check with a child whether they would like you to attend the first appointment. Be aware that a child may not feel confident about speaking up if they do not like their legal representative, and that you may need to address problems on their behalf if they have concerns. You may also want to confirm with a child that they have received a first letter from the solicitor setting out the terms and conditions of the solicitor's appointment, the complaints procedure and the steps to be taken on their case. It is a child's decision whether or not to share this letter and the information with you.
- If you have **concerns** about a young person's legal representative you should discuss them with the young person (and their panel adviser at the Refugee Council if they have one). Concerns should first be raised with the legal representative, who will have a complaints procedure. If necessary, complaints can then be made on behalf of the young person through the OISC (see **contact details**) or, if against a solicitor, to the SRA. Explain to the young person that they have the right to change their legal representative, bearing in mind that following restrictions to legal aid the young person will have to justify why they seek alternative representation, which may include a breakdown of the relationship between the client and their representative.
- If a legal representative **refuses to take on an appeal** case because they deem the client to have failed the merits test, check that they have provided written reasons for the refusal of legal aid and that the child or young person was given a CW4 form to complete should they wish to appeal the decision to refuse the merits to the Legal Aid Agency. The legal representative should offer to help the person complete the CW4.

- Even if one legal representative considers that a case would fail the legal aid merits test, you can help the child or young person to get a second opinion. One negative finding does not mean an alternative representative will necessarily make the same judgement. Be aware of appeal deadlines while helping the child to find another legal representative.
- Be aware that young people may prefer to have a legal representative of the same sex, particularly if they have **sensitive issues** to discuss as part of their asylum claim. In such circumstances, help ensure they have a legal representative of the appropriate gender.
- If you have the consent of the young person, forward copies of **medical reports, age assessments and care plans** to the legal representative. Also contact the legal representative to check that they have received copies of correspondence sent to the child by the Home Office.
- **Know your limitations.** There are strict guidelines about who can provide legal advice. If you do not meet these criteria you should never advise a child about legal issues or, for example, help a child to complete a Statement of Evidence form. Have a good understanding of which organisations are able to provide quality legal advice and refer as appropriate. Also, if the child has a legal representative, giving separate advice to the child could interfere with the professional-client relationship and could lead to a breakdown in that relationship, leaving the child without a representative.

endnotes

1. For further information on the OISC, SRA and levels of accreditation, please see the OISC website (<https://www.gov.uk/government/organisations/office-of-the-immigration-services-commissioner>) and SRA website (<https://www.sra.org.uk/home/home.page>).
2. Law Society, What is the Immigration and Asylum Law Accreditation?, available at: <http://www.lawsociety.org.uk/support-services/accreditation/immigration-asylum/>.
3. *Gillick v West Norfolk & Wisbech Area Health Authority* [1986] AC 112.
4. 'The Civil Legal Aid (Merits Criteria) Regulations 2013, available at http://www.legislation.gov.uk/uksi/2013/104/pdfs/uksi_20130104_en.pdf.
5. Paragraphs 8.9-8.10, Legal Aid Agency, 2013 Standard Civil Contract – Specification, Section 8 – Immigration and Asylum Specification, available at: <https://www.justice.gov.uk/downloads/legalaid/civil-contracts/immigration-and-asylum-specification.pdf>.
6. Home Office, Processing children's asylums claims, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257469/processingasylumapplication1.pdf.
7. Paragraphs 3.35-3.38, Legal Aid Agency, 2015 Standard Civil Contract 2015, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/526413/2015-standard-civil-contract-specification-general-provisions-1-6-ame....pdf.
8. Legal Aid Agency, Application for Review of Refusal or Withdrawal of Controlled Legal Representation, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/346249/laa-cw4-version-10-8-2014.pdf.
9. See the government's eligibility guidelines available at: <https://www.gov.uk/legal-aid/eligibility>.
10. *R(C) v First-tier Tribunal & Lord Chancellor* [2016] EWHC 707 (Admin).
11. HM Government, Working together to safeguard children, March 2015, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/419595/Working_Together_to_Safeguard_Children.pdf.

children's services support

Of the 69,540 children looked after by children's services at 31 March 2015, 2630 (4%) were unaccompanied asylum-seeking children. The number of looked-after, unaccompanied asylum-seeking children had been falling since 2009, but increased by 5% between 2013 and 2014 and increased by 29% between 2014 and 2015.¹

The local authority in which a separated or unaccompanied child is present is responsible for their care. The immigration status of the child does not affect a local authority's duty to care for them while they are under 18. After 18, in certain circumstances, immigration status may lead to the withdrawal or withholding of services from those who are leaving the care of the local authority (see chapter on **support for young people turning 18**).

Some unaccompanied children come to the attention of local authorities very soon after their arrival in the UK, for example if the local authority is contacted by immigration officers at a port of entry. The Home Office must notify the local authority of an unaccompanied child in their area who claims asylum at the earliest possible point if they are not already known.² Unaccompanied children who claim asylum at the Asylum Intake Unit (previously called the Asylum Screening Unit) in Croydon might be transferred through a rota system to different local authorities across London. In other cases the referral of a child to children's services might be made by the police, another professional or a member of the public. If a child has not had contact with the relevant local authority but is in need of support, they should present to the local authority.

Since July 2016, some children are being transferred to other local authorities in England on a voluntary basis. In the Immigration Act 2016 there are specific provisions for the transfer of responsibility for unaccompanied children from one local authority to another and for granting power to the UK government to enforce transfer between authorities. There is an interim national transfer protocol which requires the best interests of the child to be considered in any transfer".³

A child's first contact with children's services (previously called 'social services') is likely to be with an Assessment or Duty Team. Within **one working day** of a referral being received a local authority social worker should **make a decision** about the type of response that is required. This will include determining whether:

- the child requires immediate protection and urgent action is required
- the child is in need, and should be assessed under section 17 of the Children Act 1989

- there is reasonable cause to suspect that the child is suffering, or likely to suffer, significant harm, and whether enquires must be made and the child assessed under section 47 of the Children Act 1989
- any services are required by the child and what type of services
- further specialist assessments are required in order to help the local authority to decide what further action to take.⁴

The case will probably then be transferred to another team, depending on the initial assessment. This might be a specialist Asylum Team (although most local authorities no longer have these), or a Looked After Child Team or team for Children with Disabilities, among others.

Following acceptance of a referral by the local authority children's social care team, a social worker should lead a multi-agency assessment under section 17 of the Children Act 1989. Local authorities have a duty to ascertain the child's wishes and feelings and take account of them when planning the provision of services. A multi-agency child in need plan should be developed to meet the needs (accommodation, financial, education and other support needs) of the child that have been identified. Separated children often have complex needs in addition to those faced by looked after children more generally and social services should have regard to the religious, cultural and language needs of the child. This will include, for example, considering specialist mental health support and ensuring that appropriate and good-quality interpreters are used if required. The special support required to address these needs must begin as soon as the child becomes looked after by the local authority. It will be most effective where this support is provided through a stable, continuous relationship with the child.⁵

As for any looked-after child, a health plan and a personal education plan should be produced as part of the overall care plan. The health plan should cover the child's state of health including physical, emotional and mental health. This should include detail of how any psychological issues will be addressed. For example, these may result from the child's experiences in their country of origin, on their journey to the UK or at the hands of traffickers in the UK. The health plan should also take into account any developmental or learning difficulties.⁶

The maximum timeframe for the assessment to conclude, such that it is possible to reach a decision on next steps, should be no longer than 45 working days from the point of referral.⁷ However, it is important to note that for looked-after children, assessments should be done as soon as reasonably

practicable and there are regulations for placement plans (maximum five days) and looked-after child reviews (20 working days).⁸

In the assessment process, the local authority will determine whether the child's needs fall under section 17 or section 20 of the Children Act 1989. They will also consider whether care proceedings are required under section 31. The section of the Children Act under which the child is supported is very important, as it not only determines the level of support with which they are provided as a child (under 18), but also affects whether they are entitled to leaving-care support from the local authority once they reach 18.

The local authority should also consider applying for a care order under section 31 of the Children Act 1989, particularly for younger children and those with significant vulnerabilities, including victims of trafficking and those with capacity issues.

The vast majority of separated children are given support under section 20 of the Children Act 1989. See Table 2 below for further information on what support is available for children in care and leaving care.

Type of accommodation provided

No definition of 'accommodation' is provided in section 20 of the Children Act 1989, although it is taken that it must be suitable and appropriate accommodation. It must meet the needs of the child, and take their wishes, so far as is practicable, into account.

It is normally the case that children under the age of 16 are placed in foster care; while older children will often be placed in semi-independent accommodation with limited support. It is important to note, in all circumstances, that there is no stated policy that prevents local authorities from

Support under the Children Act 1989

Sections 17 and 20 of the *Children Act 1989* define the duties of local authorities to provide support in accordance with a child's needs.

Under section 17 of the *Children Act 1989*:

1. *It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part)—*

a) to safeguard and promote the welfare of children within their area who are in need; and

b) so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs.

Separated or unaccompanied children cannot be supported under section 17. Section 17 is designed to support children where there is already a parent or carer, and must not be used to support unaccompanied children.⁹

Under section 20 of the *Children Act 1989*:

1. *Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of—*

a) there being no person who has parental responsibility for him;

b) his being lost or abandoned; or

c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.

The duty to accommodate under section 20 involves more than simply providing a place to live. A child who fulfils the criteria in section 20(1) is a 'looked after' child¹⁰ and afforded further protection and rights. This can involve consulting with a child about a placement; keeping siblings together; not disrupting education; and a general duty to safeguard and promote the welfare of the child.

The Children Act regulations give clear instructions on the writing and reviewing of a care plan for a child who is looked after, as well as on the regularity of visits by a named social worker and on access to records. Section 20 also requires a local authority to provide a service to those leaving care

children's services support

placing a child aged 16-17 in foster care. Indeed, statutory guidance from 2010¹¹ suggests a starting point that young people would be placed in foster care unless their needs otherwise suggest that they are able to cope with other forms of accommodation, or they wish to be placed in other types of accommodation and their needs are such that they can manage.

Parental responsibility

Parental responsibility is defined as 'all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property'.¹² Someone who has parental responsibility has the right to make important decisions about a child's life. Those with parental responsibility for a child may need to be involved in decisions about, for example, where a child lives, how the child is educated, whether the child has medical treatment, or the child's involvement in legal proceedings.

It is important to note that a local authority supporting an unaccompanied asylum-seeking child will not acquire parental responsibility for the child unless the local authority obtains a care order under section 31 of the Children Act 1989. This can create problems for these children if in certain circumstances no one is able to provide consent for a course of action.

However, the local authority must still act as a corporate parent. Statutory guidance on transition to adulthood states that:

Care leavers should expect the same level of care and support that others would expect from a reasonable parent. The local authority responsible for their care should make sure that they are provided with the opportunities they need, which will include offering them more than one chance as they grapple with taking on the responsibilities of adulthood.¹³

The role of foster carers

When an unaccompanied or separated child is accommodated under section 20, the most suitable care arrangement will often be foster care. Local authorities are expected to consult with children about what they want, and to consider this feedback in any decisions made.¹⁴

Although best efforts are usually taken by local authorities to place young people with foster carers with language, cultural and/or religious ties, it is often not possible. This needs to be handled with sensitivity, and additional support provided where appropriate. The local authority does have a duty, as far as is reasonably practicable, to provide suitable placement within the authority's area that meets the needs of those children.¹⁵

Foster carers can play a key role in facilitating separated children's access to key services such as education and health services and to support them through the immigration process. They can also provide key direct emotional support and assistance in accessing therapeutic support, although this is not necessarily needed by all young people. Consistent care and support can help promote young people's resilience and capacity to cope in the context of forced migration. While several studies have found that unaccompanied children have high levels of post-traumatic stress symptoms, this is lower for young people living with family and for unaccompanied young people living in foster care compared to those living in group homes or independently.

It should, of course, be noted that while foster care is often described positively by separated children as a form of accommodation where they felt a sense of belonging and inclusion, others in foster care have felt uncared for, isolated and have perceived themselves to be treated differently. As there is limited scope for cultural matching, sometimes this can be prioritised over other aspects of matching such as personality, interests and lifestyle expectations. Overall, most unaccompanied children are placed trans-culturally so there are issues here for fostering teams and social workers to consider in terms of matching, preparation, planning, comfort and belonging.

In light of the range of experiences and difficulties facing refugee and migrant children, there is potential for foster carers to play an important role in providing much-needed support for the children in their care, both as individual children alone in an unfamiliar country, and in terms of navigating complex systems of official support, including those related to their education, legal status and health. Many local authorities will provide additional training and guidance for foster carers looking after unaccompanied asylum-seeking children because of their specific additional needs due to their experiences, and the need to resolve their immigration status.

Independent Reviewing Officers

The statutory duties of an Independent Reviewing Officer (IRO) are to:¹⁶

- monitor the performance of the local authority in carrying out their functions in relation to the child's case
- participate in any review of the child's case
- ensure that any ascertained wishes and feelings of the child concerning their case are given due consideration by the appropriate authority
- perform any other function which is prescribed in regulations.

The primary task of the IRO is to ensure that the care plan for the child fully reflects the child's current needs and that the actions set out in the plan are consistent with the local authority's legal responsibilities towards the child. The IRO's primary focus is to quality-assure the care planning and review process for each child and to ensure that his/her current wishes and feelings are given full consideration.¹⁷

Advocacy services

The Children Act 1989¹⁸ gives looked-after children, children in need and care-leavers a statutory right to advocacy when they are making, or wishing to make, a complaint or representation to a local authority. However, many children and young people seek advocacy without wishing to make a formal complaint. The role of an advocate is to provide an entirely independent voice for the child.

The practice of the advocate will depend on the needs of the child, but is likely to include phone calls and other correspondence with their social worker, supporting them at meetings and reviews, and helping them through the formal complaints process if they request this. Advocates may also refer children and young people to solicitors if a local authority is in serious breach of their statutory duties. The advocate should ensure that the child understands their rights and entitlements, and is able to make an informed decision about the choices that are available to them. The advocate will not seek to influence the child or young person with regard to their decision-making.

A recent survey conducted by the Office of the Children's Commissioner found that only 46% of children in care surveyed knew how to get an advocate.¹⁹ Local authorities should provide information about advocacy services and offer to help find an advocate for children and young people who receive a service from them.²⁰ It should be noted that these advocacy services will not be accessible to those who have

been assessed as over 18 by the local authority. Further information on advocacy services can be found in the **contact details** section.

Complaints and challenges

The obligations on local authorities to children in their area are extremely important and the consequences of local authorities not meeting their duties can be incredibly serious. If a local authority fails to comply with its duties to a child, such failures should be addressed as soon as possible. If a child is not receiving the appropriate support they can be helped to use the local authority's complaints system. Each local authority must have a complaints procedure and a complaint can also be made to the Local Government Ombudsman (this should normally be made within 12 months).

Beyond these mechanisms, the main means by which the actions of local authorities are scrutinised is through the judicial review procedure: a process that involves making an application to the Administrative Court, part of the High Court, for the court to review whether the conduct of public bodies is in accordance with the law. Legal aid is available for this under community care and public law, so the first step where legal action is necessary is (with the child's consent) to make a referral to a community care or public law solicitor who provides services under legal aid.

Leaving care services

The majority of separated young people will be entitled to leaving care services under the Children (Leaving Care) Act 2000. This Act came into force in October 2001 and built on and amended the Children Act 1989. It 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
- ensuring that they receive more effective support once they have left.

However, it is important to note that significant changes have been made to the rights of care-leavers who have no immigration application or asylum claim. Please see the chapter on **support for young people turning 18** for further information.

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 services to which they are entitled. The categories and entitlements are summarised in the table below.

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Table 2 - Categories of 'looked after' Children

Category of young person	Criteria	Services to be provided
<p>Eligible children (Schedule 2, Part 2 of the Children Act 1989)</p>	<ul style="list-style-type: none"> • 16 or 17 years old • 'Looked after' under s. 20 for at least 13 weeks since the age of 14 • Still looked after 	<ul style="list-style-type: none"> • All existing duties to 'looked after' children • Assessment of 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 • A personal adviser
<p>Relevant children (Section 23 of the Children Act 1989)</p>	<ul style="list-style-type: none"> • 16 or 17 years old • 'Looked after' under section 20 for at least 13 weeks since the age of 14 • Ceased to be looked after 	<ul style="list-style-type: none"> • Personal adviser if a child does not already have one • Assessment of needs, if not already completed • Pathway plan if not already completed • Pathway plan to be kept under regular review • Accommodation and maintenance to safeguard and promote child's welfare • Authority must keep in touch with relevant child
<p>Former relevant children (Section 23 of the Children Act 1989)</p> <p>[PLEASE NOTE: Eligibility will change under the Immigration Act 2016 – please see Chapter on Support for young people turning 18 for further information]</p>	<ul style="list-style-type: none"> • 18 to 21 years old • Has been either an eligible or a relevant child or both • If, at 21, the young person is still being helped by responsible authorities with education or training, he or she remains a former relevant child to the end of the agreed programme of education or training, even if that takes her or him past the age of 21 	<ul style="list-style-type: none"> • 'Staying put' arrangement, where appropriate <p>Contact duties</p> <ul style="list-style-type: none"> • Keeping in touch with young person <p>Continuing duties</p> <ul style="list-style-type: none"> • Personal adviser • Keep pathway plan under review <p>Assistance duties</p> <ul style="list-style-type: none"> • Assistance with employment • Assistance with education/training • Assistance in general, to extent which welfare requires it (this may include accommodation) • Assistance to enable young person to live near place where he is/will be employed or seeking employment
<p>Qualifying children (Section 24 of the Children Act 1989)</p> <p>[PLEASE NOTE: Eligibility will change under the Immigration Act 2016 – please see Chapter on Support for young people turning 18 for further information]</p>	<ul style="list-style-type: none"> • Young person under 21 (under 25 if in education/training) • Ceases to be looked after or accommodated, or privately fostered, after the age of 16 but while still a child. • This includes young people who were accommodated within 13 weeks of their 18th birthday who will not qualify for full leaving care services 	<ul style="list-style-type: none"> • Advice • Assistance • Befriending as appropriate • Vacation accommodation for higher education courses or residential further education courses if necessary.

What is a needs assessment and pathway plan?

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. This obligation continues until they are 21 (or 25 if pursuing a programme of education or training), and 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. The pathway plan should build on the care plan and the purpose is to plan for the young person's transition to adulthood. The pathway plan must be recorded in writing and should be reviewed at least every six months. There should also be a review whenever the care leaver or their personal adviser asks for one. The young person should be actively involved in his or her assessment and planning, as should significant adults in the young person's life.

The pathway plan and review should set out 'the manner in which the responsible authority proposes to meet the needs of the child',²¹ and should address the following issues:

1. The nature and level of contact and personal support to be provided, and by whom, to the child or young person
2. Details of the accommodation the child or young person is to occupy
3. A detailed plan for the education or training of the child or young person
4. How the responsible authority will assist the child or young person in relation to employment or other purposeful activity or occupation
5. The support to be provided to enable the child or young person to develop and sustain appropriate family and social relationships
6. A programme to develop the practical and other skills necessary for the child or young person to live independently
7. The financial support to be provided to the child or young person, in particular where it is to be provided to meet his accommodation and maintenance needs

8. The health needs, including any mental health needs, of the child or young person, and how they are to be met
9. Contingency plans for action to be taken by the responsible authority should the pathway plan for any reason cease to be effective.²²

Further to this, case law has clarified that a pathway plan 'must clearly identify a child's needs, and what is to be done about them, by whom and when' and that it ought to be a 'detailed operational plan' so that it can be used 'as a means of checking whether or not [the] objectives are being met'. It should:

'...set out the start and the end of the path, identifying points along that path which represent the steps to be taken and in due course taken, and objectives to be achieved and in due course achieved. Each review of the plan should show therefore the point along the path which the young person has reached, an evaluation of the progress made, and the further steps to be taken and modification to the steps or targets if deemed necessary.'

However, pathway plans are often 'nothing more than a short narrative about the young person's situation' and the majority of people in the leaving-care system do not know about their rights and entitlements and so are unable to challenge the content of the plan.

The local authority's corporate parenting role should include ensuring access to appropriate immigration advice and representation where this is needed. Such needs should be fully explored, with difficulties (for example, in accessing high-quality legal advice in good time) anticipated and deadlines recorded within the pathway plan. Such matters are typically of very high importance to the young person yet local authorities often fail to plan for, or meet, these needs in practice.

What is the role of a personal adviser?

The personal adviser acts as a 'go-between' between the young person and the local authority.²⁶ They should provide advice and support and participate in the young person's assessment and preparation and reviews of the pathway plan. It is important to note that the personal adviser should not be the one to carry out the actual assessment.²⁷

With eligible children and relevant children, a personal adviser can assist with the child or young person's assessment and in drawing up the pathway plan. In the case

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of eligible, relevant and former relevant children, they can participate in reviews of the pathway plan; liaise with the responsible authority in the implementation of the pathway plan; co-ordinate the provision of services; and take steps to make sure the child or young person is using those services. They should keep themselves informed of the progress and well-being of the child or young person, and maintain written records of contact with them. Case law has clarified that a social worker is required to review, monitor and oversee all pathway plans.²⁸

This is significant as the personal adviser will not have the authority to make any financial decisions relating to the young person's needs. However, this requirement on the social worker should act as a procedural check to ensure that all pathway plans are properly reviewed at least every six months.

The knowledge and skills expected for an effective personal adviser are set out in Appendix A of the Children Act 1989 guidance.²⁹

'Staying put' arrangements

'Staying Put', put simply, refers to situations in which a care-leaver continues to live with their foster carer after their 18th birthday. Following legislative change May 2014,³⁰ all local authorities must support such arrangements if it is in the young person's interest and both the carer and the young person are supportive of this. This means that young people should not have to leave their foster carers until they are ready or turn 21.

Financial support

Children's services are responsible for financially supporting young people up to the age of 18, regardless of immigration status, if they are supported under Section 20 of the Children Act 1989 or are a relevant or eligible child as defined above (for young people over 18, see the chapter on **supporting young people turning 18**).

An assessment of a young person's financial requirements should be part of their general assessment and the amount of support necessary should depend on need, and should not be based on any standard or general policy that the local authority has. However, the amount may vary according to each local authority's policy on financial support and where the young person is placed. It will also depend on whether the young person is employed or not (for information on

entitlement to work, please see the chapter on **work and training**). The process by which they will receive their financial support should be made clear to the young person, whether it be through their foster carers, accommodation provider, directly from children's services, or via another agency contracted by the local authority to give out money.

Home Office funding for children seeking asylum

Unaccompanied children who are seeking asylum are the responsibility of the local authority where they are present, with the authority paid via a grant agreement with the Home Office.³¹ This has led to problems in predicting demand and allocating resources, as often this funding does not necessarily cover the costs involved in caring for this group of children and young people. The detail and level of funding may change each financial year so it is important for local authorities to ensure they have the correct guidance. The general arrangement is that local authorities send returns to the Home Office on a monthly basis informing the Home Office how many days they have been providing support to a child. Maximum rates apply, usually set at different levels for under/over 16 year olds, with a significantly lower level for older children.

Where a local authority has cared for an age-disputed young person who is then found to be an adult, the Home Office will provide funding for a maximum of 28 days while the assessment is conducted.

The grant for those under the age of 18 is not affected by the decision made on a child's asylum claim. However, certain children are excluded from support:

- Prior to 2016, the Home Office has not historically provided funding if the child arrived in the country as an unaccompanied child and has continued to be the responsibility of the local authority since arrival. If a child arrived with a parent or usual carer, and was subsequently cared for by the local authority or if they spent some time in the care of another adult (i.e. not placed there by the local authority) no costs will be reimbursed.
- The dependent children of any unaccompanied children cared for by the local authority, as these children are not deemed to be unaccompanied themselves.
- Children who have become British citizens (or have citizenship of another European Economic Area state).

Separated or unaccompanied children from EU countries

Local authorities often struggle to help EU national children who have no adult caring from them in the UK. These children will not be seeking asylum and do not need a form of 'leave to remain' under the Immigration Rules since they can move between EU member states freely. However, accessing welfare benefits and/or accommodation is often difficult as entitlement to these depends on whether the young person is a 'qualified person' under the Immigration (EEA) Regulations 2006. Whilst an EU national is still a minor, support and accommodation should be provided under section 20 of the Children Act 1989, and since other welfare support is typically unavailable, that will be the primary source of support for such children.

However, once an EU national becomes an adult, they may be excluded from leaving-care support even if they are a former relevant child because of Schedule 3 of the Nationality, Immigration and Asylum Act 2002. If a local authority decides to exclude an EU young adult from leaving-care support due to Schedule 3 of the Nationality, Immigration and Asylum Act 2002, legal advice should be sought on the correctness of this decision.

It is important that EU national children in care obtain immigration advice and social services should facilitate access to quality legal advice about the options available to EU child nationals in care.

how can you help?

- A young person should be clear about how they are to access **financial support**, for example, understanding frequency of access and means of payment. They should also know who to go to in order to sort out any problems with their financial support. If the young person does not know, find out by talking to the appropriate social worker who works in the relevant team.
- If the **circumstances of a young person change**, encourage them to inform the local authority. If the young person has **concerns** about the support provided to them, including housing problems, support the young person in finding out how to make a **complaint** to the local authority or the housing provider contracted by the local authority. Each local authority must have a complaints procedure and a complaint can also be made to the Local Government Ombudsman (this should normally be made within 12 months). Also help them to have their rights met and refer the young person to specialist agencies who may be able to help. Find out about local advocacy services in your area. Other agencies that may be able to provide support include: the advocacy organisation Coram Voice, the National Youth Advocacy Service and the Children's Panel at the Refugee Council (see **contact details**).
- Beyond these mechanisms, the main means by which the actions of local authorities are scrutinised is through the judicial review procedure. Legal aid is available for this under community care and public law, so the first step where legal action is necessary is (with the child's consent) to make a referral to a community care or public law solicitor who provides services under legal aid. There is a directory of legal aid service-providers on the gov.uk website (<http://find-legal-advice.justice.gov.uk/>), where you can search for firms in the community care category, or in public law. With the child or young person's consent, you should call the prospective solicitors firm to ask whether they have capacity to take on the case, providing the details of the case as clearly as you can.
- Check if there is a **local project** that the young person could join to receive additional support. Refugee organisations and children's organisations may run projects in your area – see **contact details** for further information. In situations where young people lack support from a social worker, find out and inform the young person about **additional support** available in the area (for example, youth service support, mentoring schemes, young refugee groups, counselling support).
- For a young person in an **out-of-borough, long-distance placement**, help them find out how to access support from their social worker (for example, over the phone or through visits) and find out what the private accommodation provider's responsibilities are. For example, do the private providers have a responsibility to help the young person access appropriate education? Inform the young person what support they should be receiving and to what standard and, if they have concerns, support the young person in trying to resolve them, if necessary by making a complaint.

children's services support

endnotes

1. Department for Education, Children looked after in England (including adoption and care leavers) year ending 31 March 2015, October 2015, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/464756/SFR34_2015_Text.pdf.
2. Home Office, Processing Children's Asylum Claims, July 2016, page 20, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537010/Processing-children_s-asylum-claims-v1.pdf.
3. Section 69, Immigration Act 2016.
4. Working Together to Safeguard Children. A guide to inter-agency working to safeguard and promote the welfare of children, March 2015, pages 28-29, available at: <http://www.workingtogetheronline.co.uk/index.html>.
5. Department for Education, Care of unaccompanied and trafficked children, July 2014, paragraph 2, available at: <https://www.gov.uk/government/publications/care-of-unaccompanied-and-trafficked-children>.
6. *Ibid*, paragraph 34.
7. Working Together to Safeguard Children. A guide to inter-agency working to safeguard and promote the welfare of children, March 2015, paragraph 60, available at: <http://www.workingtogetheronline.co.uk/index.html>; Family Rights Group, *An introductory guide to local authority children's services*, available at: http://www.frg.org.uk/images/Advice_Sheets/1-an-introductory-guide-to-local-authority-childrens-services.pdf.
8. Regulations 9 and 33, The Care Planning, Placement and Case Review (England) Regulations 2010.
9. *R (on the application of G) (FC) v London Borough of Southwark* [2009] UKHL 26.
10. Section 22(1) of the Children Act 1989 sets out that a child who is looked after by a local authority is a child who is (a) in their care; or (b) provided with accommodation by the authority in the exercise of any functions.
11. Department of Education, *Provision of Accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation*, 2010, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8260/Provision_20of_20accommodation.pdf.
12. Section 3(1), Children Act 1989.
13. The Children Act 1989 guidance and regulations Volume 3: planning transition to adulthood for care leavers, revised January 2015, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397649/CA1989_Transitions_guidance.pdf
14. Section 22C, Children Act 1989.
15. Section 22G, Children Act 1989.
16. Section 25B(1), Children Act 1989.
17. Statutory guidance for Independent Reviewing Officers and local authorities on their 11 functions in relation to case management and review for looked-after children, March 2010, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/337568/iro_statutory_guidance_iros_and_las_march_2010_tagged.pdf.
18. Section 26A, Children Act 1989.
19. Children's Commissioner, State of the Nation: Report 1 Children in Care and Care Leavers Survey 2015, available at: https://www.childrenscommissioner.gov.uk/sites/default/files/publications/Care%20monitor%20v12_1.pdf.
20. Advocacy Services and Representations Procedure (Children) (Amendment) Regulations 2004.
21. Regulation 8(2), Children (Leaving Care) (England) Regulations 2001.
22. Schedule, Children (Leaving Care) (England) Regulations 2001.
23. *R (J) v Caerphilly County Borough Council* [2005] EWHC 586 (Admin); [2005] 2 FLR 860.
24. *R (Birara) v London Borough of Hounslow* [2010] EWHC 2113 (Admin).
25. O. Studdert, 'The Importance of Pathway Plans and Local Authorities' Duties to Care Leavers', Family Law Week, available at: www.familylawweek.co.uk/site.aspx?i=ed68903.
26. Regulation 12 of the Children (Leaving Care) (England) Regulations 2001 sets out the functions of personal advisers.
27. *R(J) v Caerphilly County Borough Council* [2005] EWHC 586 (Admin).
28. *R(A) v LB of Lambeth* [2010] EWHC 1652 (Admin); [2010] 2 FCR 539.
29. Appendix A, The Children Act 1989 guidance and regulations Volume 3: planning transition to adulthood for care leavers, January 2015.
30. Section 23CZA(2), Children Act 1989, inserted by section 98 of the Children and Families Act 2014.
31. Home Office, Funding to local authorities: Unaccompanied asylum-seeking children (UASC), Financial year 2016/17, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/426933/UASC_Funding_Instructions_2016-17.pdf

support for young people turning 18

There is often considerable confusion among separated young people about what will happen when they reach the age of 18. The shift from childhood to adulthood is a difficult time for any young person, struggling with concerns around relationships, education and careers. Separated young people have to deal with significant additional anxieties on top of those faced by their peers. Many separated young people who are turning 18 face an uncertain future and are extremely concerned about being removed from the UK. Also, their immigration status can have a significant impact on their rights and entitlements. Both statutory service providers and the separated young people themselves are often unclear as to what housing, subsistence and other support (practical and emotional) young people are entitled to in the UK as they turn 18.

It is therefore important that a young person is prepared for the changes in levels of support at 18 and that professionals are clear about how to help young people to prepare for this change. The section below provides a summary of basic information on turning 18 and ways of supporting young people going through this transition.

Access to welfare benefits

Once granted leave to remain, such as refugee status, humanitarian protection or limited leave to remain, a young person will become eligible for mainstream benefits.

For many separated children with limited leave as an unaccompanied asylum-seeking child (UASC leave), however, the period of leave expires when they reach 17 ½. The expiry of leave will affect their entitlements to benefits and housing and Children Act support when they become an adult.

In order to protect these entitlements, the young person must apply for an extension of their leave to remain before its expiry. When this is done it has the effect of extending the leave (by virtue of section 3C of the Immigration Act 1971) and, along with it, the entitlement to certain benefits, housing provision and Children Act support.

Where the application is made 'in time' (before it expires) the leave, and therefore the entitlement to benefits that the leave attracts, will not expire on the date it was limited to but will be extended automatically until:

- A decision is made to grant further leave (when the new leave takes over); or
- Where a decision to refuse further leave is made, until the time for bringing an appeal from that decision expires; or

- Where an appeal is brought, that appeal is finally 'disposed of' (i.e. when it is allowed and not challenged by the Home Office or it is dismissed and no further appeal can be brought or the time for appealing expires).

As soon as the deemed extended leave expires (i.e. when the appeal rights are exhausted) eligibility to income support/ job seekers allowance and housing benefit ends because the person then becomes someone who requires leave to enter or remain in the UK but does not have it and so is excluded from all means-tested and disability benefits.¹

Leaving care support at 18

The majority of separated young people should be entitled to leaving care support when they turn 18. Young people are entitled to this support up at least to the age of 21, if they were previously supported by a local authority under Section 20 of the Children Act 1989 for at least 13 weeks subsequent to their 14th birthday, and either continued to be 'looked after' up to age 18 or had been 'looked after' after reaching the age of 16. They are known as '**former relevant children**'. For former relevant children, a local authority has a duty to provide them with their accommodation as part of their leaving care support, if their welfare requires it.²

Former relevant children are entitled to:

- a personal adviser
- a pathway plan
- financial assistance with employment, education and training
- assistance in general (this may include accommodation if the young person's welfare requires it)
- vacation accommodation for higher education if needed
- contact with the local authority: the responsible authority is under a duty to keep in touch with them

Young people who arrive, or start receiving support, 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. They are known as '**qualifying children**' and, although they are not entitled to the main leaving care entitlements, they are entitled to advice, assistance and befriending.

support for young people turning 18

Pathway planning

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), and 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
- 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 considerable delays in the young person, and those working with them, receiving a 'final' or 'permanent' outcome of their asylum claim. Delays in processing claims, periods of temporary leave and the appeals process will be the main causes of these delays, and it is impossible for anyone to predict in which way claims 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.

- supporting young people who have been refused leave to remain in the UK and who have exhausted all appeals but are not removed. This may be for a number of reasons, such as difficulties in getting permission for them to return to their country of origin or place from which they fled (because for example nationality is being disputed). These so-called 'end of line' cases are a significant group of young people in local authority care (see below for more information).

In addition, for those working with victims of trafficking, there should be necessary measures taken with a view to finding a durable solution based on an individual assessment of the child's best interests if they have been trafficked.³ For further information, please see the chapter on **trafficking**.

'Appeal rights exhausted'/'end of line' cases

As noted above, support from a local authority often continues post-18, as the majority of separated young people are entitled to leaving care support services. The case of *R(SO) v Barking and Dagenham* in 2010 made clear that if a young person over 18 is entitled to leaving care support, including accommodation if their welfare or education and training needs requires it, this should be provided by the local authority, rather than the UK Home Office through asylum support (often referred to as section 95 support or section 4 – though the latter is soon to become section 95A - support).

However, the enactment of the Immigration Act 2016 will have a significant impact on leaving care support and access to other types of support for certain categories of care leavers. Draft versions of the future arrangements to be made for young people without immigration status leaving local authority care are available in the form of flowcharts at annex B of the Home Office's briefing on 'reforming support for migrants without immigration status', at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/494240/Support.pdf. However, this document was written in January 2016, before the Immigration Bill had finished its passage through parliament, and is therefore subject to change.

At the time of writing, the regulations setting out the type of support that will be available to care leavers have yet to be published and brought into force. It is likely that they will come into force in 2017. In summary, it appears that the following will apply in relation to eligibility for leaving care support:

1. Former looked after children who (a) require leave to enter or remain when they turn 18 but do not have it, and (b) are not asylum seekers, 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 the Children Act 1989.
2. Care leavers with no immigration status (including those whose leave as an unaccompanied minor which has expired, those who are ARE and those who are undocumented) will only be able to access accommodation and/or financial assistance in limited circumstances, **to be laid out in regulations**.
3. For care leavers who have an outstanding application or appeal (including a further leave to remain application following unaccompanied leave), a right of appeal, who are destitute, or who ARE but have additional support needs (to be determined by a person set out in regulations), the support to be provided **will be laid out in regulations**. It is not clear at this time whether this support is going to be provided by Local Authorities or by the Home Office.

Historically there had been some confusion over whether local authorities were required to provide support to young people who had not received, or no longer had, leave to remain, often referred to as 'end of line' or 'appeal rights exhausted' cases, who were still in the UK. The current law, prior to the new provisions from the 2016 Act come into force, on the withdrawal or withholding of local authority support to young people is included in Schedule 3 of the *Nationality, Immigration and Asylum Act 2002*, which prevents certain categories of migrants from accessing 'leaving care' and other types of support.

Paragraph 6 of Schedule 3 states that young people who are considered to be '*failed asylum-seekers*' are entitled to continue to receive leaving care support from a local authority up to the point where they '*fail to comply with the removal directions*' set by the Immigration Service (a removal direction details the time and place of removal from the UK). In other words, being a failed asylum seeker is not sufficient cause on its own to withdraw or withhold social services support - they must, in addition, have failed to comply with removal directions issued in respect of them.

However, some 'end of line' young people, rather than being defined as 'failed asylum seekers', may fit another category detailed in Schedule 3, paragraph 7, of the *Nationality, Immigration and Asylum Act 2002*. This category is '*persons unlawfully in the UK*'. If a young person is found to be a person 'unlawfully in the UK', then they can have their leaving care support withdrawn before they fail to comply with removal directions - i.e. as soon as they become 'unlawfully in the UK'.

Who is and who is not 'unlawfully in the UK' and therefore currently ineligible for leaving care support can be complex to determine. Subject to a minor exception (affecting a very small number of individuals who applied for asylum at the port of arrival and at no time received a grant of leave to enter the UK), most young person aged 18 or over, who are appeal rights exhausted and have no further lawful basis of stay in the UK, will become 'unlawfully in the UK'.

However, at the time of writing, even if the young person is subject to paragraph 6 or 7 they may still be entitled to continue to receive social services support if it would breach their rights under the European Convention on Human Rights (ECHR)⁴ or under the European Community Treaties⁵ not to provide this support. See box on following page for further details.

Asylum Support

Young people who are entitled to support from the Home Office (support previously administered by the National Asylum and Support Service, or NASS) when they turn 18 include:

- young people who have not had a decision on their initial asylum application when they turn 18 (an issue that usually affects those who have arrived aged 17 or over).
- young people who have an outstanding appeal against an outright refusal of asylum upon turning 18 and were not granted limited leave to remain as an unaccompanied minor when their asylum claim was refused.
- young people who have applied for an extension of leave to remain 'out of time' (i.e. after their leave has expired) and their asylum claim is being treated as a 'fresh claim' by the Home Office.

The young person needs to be able to demonstrate that they will be destitute after their 18th birthday in order to be eligible.

If the young person is not receiving full leaving care support because they arrived within 13 weeks of turning 18, they will be transferred from children's services support to asylum support on their 18th birthday - if they fit the criteria noted above - and receive subsistence and accommodation directly from the Home Office. A young person who will be eligible for asylum support should be assisted in applying for it before their 18th birthday. The local authority should also inform the Home Office whether they continue to have a duty to support them under leaving care arrangements, because if they do then the young person should not be dispersed.

Young people who have refugee status, humanitarian protection or limited leave (including those who are applying

support for young people turning 18

Human Rights Assessments

As noted above, there will be significant changes to certain categories of care leavers and human rights assessments brought about by provisions in the Immigration Act 2016 which were not in force at the time of writing. The processes outlined below are unlikely to continue in their current form, if at all, thereby changing the processes by which care is stopped for care leavers with no leave to remain or outstanding application.

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'⁶

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.

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.⁷ The assessment must be individual in each case.

for further leave in-time or are appealing a refusal of further leave) will not be entitled to asylum support, as they will be entitled to apply for mainstream benefits (see below).

Detention and returns

The possibility of being returned and the likelihood of being detained as part of the process is one of the main anxieties young people have as they turn 18, particularly for young people who receive limited leave that expires before they turn 17½. For more information on the detention and returns process and how to help a young person in this situation, see the Chapter on **Return**.

Section 4 support (section 95A from 2017 onwards)

Adult asylum seekers whose asylum claims are refused are, subject to certain rules, eligible for what is known as 'Section 4' support.⁸ This support consists of accommodation and a card with the weekly allowance loaded on to it, called the Azure Card, with no cash support. Generally, it is only available to failed asylum seekers who have either signed up to return voluntarily or are unable to leave the UK through no fault of their own (for example, because they are too ill to travel or because they have outstanding representations with the Home Office such as a fresh claim for asylum or

a Judicial Review).⁹ For technical reasons relating to the definition of an 'asylum seeker' for support purposes,¹⁰ an unaccompanied asylum seeking child who had the decision made on their asylum claim prior to their 18th birthday would not in general be eligible for 'Section 4' support, unless:

1. The former unaccompanied asylum seeking child appealed the asylum refusal and that appeal was pending on his/her birthday and the appeal has been finally dismissed; or
2. There was a right of appeal from the asylum refusal which was not exercised AND the time for making that appeal expired after the unaccompanied asylum seeking child's 18th birthday.

Local authorities dealing with separated children who are 'appeal rights exhausted' might not generally be aware that there is no power in law to assist them under Section 4 and still routinely refer such cases to the Home Office. However, if a young person over 18 is entitled to leaving care support, then support should be provided by the local authority, rather than the Home Office through asylum support or section 4 support. It could be argued in such cases that the local authorities who provided the support while the young people were minors will retain the duty to support and assist to avoid a breach of their human rights until such time as they are removed from the UK.¹¹

As noted above, there are going to be significant changes made to section 4 support and the entitlement to said support under the Immigration Act 2016. Section 4 support will change to section 95A support. At the time of writing the regulations had not been written and the changes were not in force. It appears that there will be limited circumstances in which those whose asylum claims have been refused can receive any support and that support will likely be more limited and harder to access than previous incarnations.

Are young people eligible for leaving care support beyond the age of 21?

If at age 21 a young person is already 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
- Postgraduate qualifications

If at age 21 they not in education or training then support from leaving care will usually stop. There should be a final pathway planning meeting and the young person should be told that they can re-contact the service in the future at any time up to their 25th birthday if they wish to seek support with education or training.

how can you help?

See the chapters of this guide on the **asylum process** and **return** for advice on how to provide support to young people who have turned 18 and are being detained and/or removed, and see the chapter on **finding legal representation** for legal representation at 18.

Leaving care support

- If a young person is **not receiving leaving care support** at 18 because they were previously supported under **section 17** of the Children Act 1989, this may be **challenged** (see Chapter on **Children's services support for more information**). It may be that the young person should have been supported under section 20. Talk to the local authority and encourage them to provide leaving care services in this situation. If this fails, a legal challenge could be initiated, with the full consent of the young person.
- If a young person arrived within 13 weeks of their 18th birthday, under the Children (Leaving Care) Act provisions they are still considered as **'qualifying children'**. That entitles them to some support from the local authority. Therefore, ensure the young person is accessing this support if they want it.

'Appeal rights exhausted'/'End of line'

- If a young person reaches 'end of line' status ideally they should continue to be provided with **local authority support**, as they are particularly vulnerable. They **should not be moved onto Home Office section 4 (or 95A) support**. If the local authority decides to withdraw support, they should

provide the reasons for doing so in writing, and also carry out a **human rights assessment** before doing so. It may be possible to challenge the withdrawal of support, and if you have the full consent of the young person, consider making that challenge. Non-governmental organisations supporting young refugees, such as the Refugee Council, may be able to provide advice on how to go about it.

- 'End of line' young people who are **in education** are still entitled to continue with that education. There are no legal restrictions on their studying in the UK, although local policies can make it difficult. This is an important entitlement and young people should be made aware of it.
- For young people who have had **local authority support withdrawn**, there are agencies to refer them to who support destitute people, providing accommodation and food. Find out what agencies can provide support in your area. These include local churches and refugee community organisations. One-Stop Services provide confidential information and advice and may be able to organise emergency accommodation, food and clothing to destitute asylum-seekers and refugees (see **Contact Details**). The Refugee Council also has a list of day centres and shelters in the UK (see **Contact Details** section). Take time to help the young person access this support, refer the young person to the appropriate services and follow up to ensure the young person has accessed the services referred to.

If the young person is able to apply for 'Section 4/95A' support (most will be ineligible) more information on this, and an application form, can be found on the www.gov.uk website:

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Home Office > Asylum > Asylum support > Applying for support > Section 4 support (see **Contact Details** section for website).

- Bear in mind that policy changes regularly and therefore you need to check the policy bulletins on the government website to get up-to-date information (see **Contact Details**).

Asylum Support

- Check whether the young person is eligible to receive **mainstream benefits**, rather than asylum support. For example, people with leave to remain as an unaccompanied minor, who apply for an extension to this leave 'in-time', are entitled to access mainstream benefits.
- If a young person is transferred to the Home Office for support and is informed that they are going to be dispersed, check that they have not been 'looked after' under section 20 of the Children Act, in which case they are entitled to remain where they are. Moreover, if young people are receiving some leaving care support as 'qualifying children', there is a strong argument for them to remain under the auspices of the local authority where they are receiving this support. The Home Office will consider not dispersing people in exceptional circumstances, for example, if they are taking exams or have specific support needs that cannot be met in the area to which they are being

dispersed. Therefore, it is worth challenging a decision to disperse. Anecdotal evidence suggests that where a young person has an advocate, they are more likely to receive a positive outcome.

- If a young person is dispersed, help them **prepare for the move**. For example, find out what support networks are available in the city to which they are going to be dispersed and make contact where possible. Contact the Refugee Council for details of One-Stop Services in the area concerned.
- If the Home Office decides to refuse to provide someone with support, or if they decide to stop supporting someone, that person has the right to appeal against that decision. This is known as an **asylum support appeal**. If the Home Office decides to refuse to support a person they will write to that person. If the person wishes to appeal against the decision they have to complete an appeal form within three working days and send it to the First-tier Tribunal (Asylum Support), where asylum support appeals are heard. Asylum support appeals are not immigration appeals. Immigration appeals are heard at the First-tier and Upper Tribunals of the Immigration and Asylum Chamber. Advice on asylum appeals can be provided by Asylum Support Appeals Project (ASAP - see **Contact Details** for further information) or the young person's local One Stop Service or advice agencies.

endnotes

1. By virtue section 115 of the Immigration and Asylum Act 1999. But note that not all benefits are caught by section 115. In particular, it does not apply to contribution based benefits, to which a person may have become entitled if they have worked.
2. See *R (on the application of SO) v London Borough of Barking and Dagenham* [2010] EWCA Civ 1101
3. Article 16(2), EU directive 2011/36/EU
4. Such as Article 3 of the Convention which prohibits torture and inhuman or degrading treatment or punishment (now rendered a duty for all public authorities by Article 6 of the Human Rights Act 2000).
5. 'Schedule 3, paragraph 3, Nationality, Immigration and Asylum Act 2002
6. *Limbuela (R v SSHD ex p Adam, Limbuela and Tessam)* [2005] UKHL 66, paragraph 8
7. *Birmingham City Council v Clue* [2010] EWCA Civ 390
8. A reference to section 4 of the Immigration and Asylum Act 1999 which enables the Secretary of State to provide or arrange for the provision of accommodation for, amongst others, 'failed asylum seekers'
9. Home Office information on Section 4 support at <https://www.gov.uk/government/publications/asylum-support-section-4-policy-and-process>
10. Sections 4(4)(a) and 94(1) of Immigration and Asylum Act 1999, as amended by section 49 of the Nationality, Immigration and Asylum Act 2002
11. *R (on the application of SO) v London Borough of Barking and Dagenham* [2010] EQCA Civ 1101, Para 40

private fostering

Private fostering is an arrangement where a child is looked after by someone who is not a close relative for 28 days or more. A private foster carer can be part of the child's wider family, a friend of the family, the parent of the child's boyfriend or girlfriend or someone unknown but willing to foster the child. A cousin, great aunt or a co-habitee of a mother or father would therefore be a private foster carer. Close relatives - a grandparent, a brother or sister, an aunt or an uncle, a step-parent - are not private foster carers.¹

Ofsted has recognised four broad types of private fostering arrangement:

1. UK children in educational placements
2. UK children experiencing family disruption
3. Children from overseas who intend to return
4. Children from overseas intending to stay

Department for Education statistics show that in 2015 only 37% of children in private foster care arrangements were UK born and this number has been declining since 2008.²

There are a wide range of reasons why children may find themselves being cared for by someone other than a parent or close relative, including:

- children sent to this country for education or healthcare by birth parents from overseas
- children who have been left with a relative or family friend after their parents have returned to their country of origin
- children living with a host family (for example, for language school or during boarding school holidays)
- children living with a friend's family as a result of a parental separation, divorce or arguments at home
- a teenager living with the family of a boyfriend or girlfriend.

Official statistics show that 1,560 children were reported as being cared for and accommodated in private foster care arrangements as of March 2015 and that 2,740 new private fostering arrangements began during the year ending March 2015. These numbers are in stark contrast to estimates widely circulated within policy and practice literature. CoramBAAF has suggested figures of between 15,000 to 20,000 children in private foster care at any one time while in 2010 Children and Families Across Borders (CFAB)

estimated there were 10,000 unregistered Private Fostering Arrangements in the UK, with 4,000 of the children involved in these arrangements originating from outside of the UK.³

Some children may have been sent to the UK to live with relatives or carers but ended up living in abusive private fostering arrangements. Children in these situations can come from various countries and backgrounds and suffer many different types of exploitation, including domestic servitude, benefit fraud, sexual exploitation or prevention from going to school or accessing support. The lack of review and oversight of placements makes identifying these children very difficult and young people may stay in abusive situations for many reasons: because they do not know their treatment is illegal, they risk being homeless if they run away, they fear that they will be removed from the UK, or they don't know anyone they can trust to whom they feel they can disclose that they have been abused.

There is a lack of awareness about these young people among professionals and within communities, and their exploiters deliberately act to keep them and their treatment hidden, although some may come into contact with professionals in schools, churches or GP clinics. Those privately fostered children and young people who are isolated from any other means of support and advice and who have issues with their immigration status are particularly vulnerable. Such children and young people may need pro-active involvement from those professionals who come into contact with them to ensure their welfare is safeguarded.

Kinship care

Private fostering is often confused with kinship care. There is a wide variety of arrangements that are considered to be kinship care. However, it is most tightly defined as care of a child by a close relative (grandparent, sibling, aunt or uncle or step-parent). The regulations, duties and responsibilities relating to kinship care differ significantly, so it is important to clarify what the specific arrangement in question is considered within the local authority to be, as well as the purpose of the arrangement.

private fostering

Recognising a private fostering arrangement

Given the estimated large number of private fostering arrangements of which local authorities have not been notified, it is possible that professionals will come into contact with children where there is reasonable evidence to suggest they are being privately fostered, but who are officially unknown.

Key things to look for are:

- Is the child under 16, or under 18 if disabled?
- Is the child living with someone who is not a parent, guardian or close relative (grandparent, sibling, aunt or uncle or step-parent)?
- Is this arrangement for more than 28 days?
- If the placement is less than 28 days, is it one of a series of placements that add up to more than 28 days?

Sometimes it is not easy to establish the relationship between the fostered child and those that are caring for them. This can be particularly true of children subject to immigration control. The relationship determines whether an arrangement is private fostering or not but care must be taken when assessing this as there may be circumstances where, for example, terms such as 'aunty' and 'uncle' are used as terms of respect for certain adults and family friends. Sometimes the child may have a different understanding of their relationship to the adults with whom they are living from reality. They may, for example, believe the adults to be their parents, so this situation should be handled with great sensitivity.

Duty to notify the local authority

By law, a parent, private foster carer or other individual involved in making a private fostering arrangement must notify children's services as soon as possible. However, parents and carers often do not tell professionals or agencies about such arrangements; they may not be aware that they need to or they may choose not to. A survey published by CoramBAAF in the summer of 2015 showed that 91% of UK adults do not know what private fostering is or know that it should be reported to the local council.⁴

Parents and carers organising a private fostering arrangement for their child, and the private foster carers themselves, have a legal duty to inform the local authority of the arrangement in writing.⁵ This should be done six weeks before the arrangement begins or, in the case of an emergency,

immediately. The private foster carer must also inform the local authority of certain changes in circumstances in relation to the arrangement.⁶ These include change of address, conviction of anyone in the household of an offence, or disqualification from fostering, and changes to the membership of the household: both new people moving in and existing members moving out.

The local authority must also be informed by someone involved in the arrangement if it comes to an end. This does not apply if it is intended for the arrangement to resume within 27 days,⁷ as this would still be considered a private fostering arrangement.

Although there is no statutory duty for professionals to notify the local authority where they are aware of an unreported private fostering arrangement, there is an expectation that professionals who are aware of a private fostering arrangement, or an arrangement they have reason to believe is private fostering, will contact the relevant local authority to notify them.⁸

Local authority duties to privately fostered children

Local authorities have a responsibility to safeguard the well-being of children in private fostering arrangements. This includes the duty to appoint an independent reviewing officer to oversee private fostering arrangements in the area and the well-being of the children involved. In practice, some local authorities will have a specialist private fostering team, while many will fulfill their duties within existing looked-after children or kinship teams.

Once a local authority has been notified of a new arrangement, they must then organise for the child to be visited by a social worker within seven working days. This visit should include viewing the premises, assessing the suitability of the private foster carer and other members of the household, speaking to all individuals with parental responsibility for the child, and speaking to the child alone, unless inappropriate.⁹

The social worker should conduct a similar visit every six weeks for the first year, and at least every twelve weeks after that for the duration of the arrangement.¹⁰ During visits, the following should be taken into account:

- the wishes of the child (taking their age and understanding into consideration)
- the suitability of the foster carer and all other members of the household
- provisions for the child's health and education.¹¹

The social worker may, as a result of the visit, require that changes are made to the care and accommodation of the child to promote the child's welfare. As part of the regular inspections it is the social worker's job to assess the suitability of the private foster carer, other members of the household and the accommodation. Where it is decided that the child is being accommodated by an inappropriate adult or in an unsuitable location, a local authority can prohibit an individual from being a private foster carer or from privately fostering in the specific premises.¹²

While a child is privately fostered their parents retain full responsibility for the child. They should therefore be consulted in relation to any decision-making. This may be challenging if the parents or guardian are living abroad, but best efforts should be made.

Financial support

Unlike a situation in which a child is looked-after in a local authority foster care placement, there is no specific financial support available to private foster carers. The person responsible for financially supporting a private fostering arrangement is the parent (or person with parental responsibility) who has entered into the arrangement with the private foster carer. The private foster carer can, of course, ensure that they are in receipt of all welfare benefits they are entitled to. However, if the local authority considers the child to be a 'child in need', they have the power to provide financial support under section 17 of the Children Act 1989. Section 22C of the Children Act 1989 also makes provision by which a private fostering arrangement can be formalised - relatives and connected persons can be assessed and considered for approval as local authority foster carers and to formalise the care of the child with the local authority.¹³

Trafficking

Concerns have been raised regarding children who have been brought to the UK under the guise of private fostering arrangements but are in fact being trafficked for the purposes of domestic servitude or benefit fraud. High-profile and tragic examples of private fostering arrangements, such as the Victoria Climbié case, have highlighted the need for appropriate monitoring and involvement of professionals. It may be possible wrongly to interpret the relationship between a trafficked child and the person by whom they are being kept in a private fostering arrangement. This may be the case even if there is a connection between the child and the

private foster carer. For example, sometimes distant relatives or family friends will agree to foster a child privately from abroad in order fraudulently to access child tax benefits. If a child has been brought from another country and is living with an adult in a private fostering arrangement and is working as a domestic slave or being abused or exploited in any other way, the local authority must intervene and initiate child protection procedures. See the chapter on **trafficking** for more information.

A number of organisations working with trafficked children and young people have raised concerns about the fact that professionals may behave differently where they are unsure about cultural differences, and so leave children vulnerable.¹⁴ It is essential to prioritise child safety and protection, particularly in circumstances where there is a possibility of trafficking, abuse or exploitation. Professionals and practitioners should seek to avoid making decisions based on assumptions or prejudice related to perceived cultural differences.

Asylum and immigration issues

The Home Office defines a child seeking asylum who is in a private fostering arrangement as an 'Accompanied Asylum Seeking Child' (AASC), although it recognises that a child may move from being 'unaccompanied' (i.e. with no adult to care for them) to 'accompanied' and vice versa. Some children may arrive as an AASC in a private fostering arrangement, for example if the parents are unable to leave the country of origin, and a distant relative or family friend has been given responsibility for the child and then travels to the UK to claim asylum. Conversely, some children may discover that they have relatives or family friends in the UK after they arrive with whom they can live. If a child arrives with an accompanying adult, the adult will be asked to provide evidence of their relationship to the child, such as a genuine birth certificate or guardianship papers.¹⁵

Children in private fostering arrangements may be in the UK without regular immigration status, either because they arrived on a visa and overstayed, or because they entered the UK illegally. If not assisted to regularise their immigration status, where appropriate, many children end up discovering that they do not have permission to live in the UK, and are not eligible to work, study or access support when they turn 18. Children's services should look into the child's immigration status, and whether appropriate arrangements are being made to assist the child to obtain secure status (if they do not already have this).

how can you help?

- Ensure that the local authority is fulfilling its duty towards a privately fostered child by:
 - Ensuring that a child is in a suitable, vetted and safe private fostering arrangement
 - Regularly visiting the child, their private foster carer, and providing help and advice where necessary
 - Assessing all arrangements concerning children from overseas. Do not accept that the child is a niece or nephew without definitive proof
 - Always look into the immigration status of the child and find out if actions are being taken to help them regularise their status
 - Always obtain the wishes and feelings of the child, see them alone and make sure that they are aware of who they can talk to if they are unhappy at home.
- Be alert to the possibility of a private fostering arrangement where it has not been registered with the local authority. Make sure that you know and understand the signs. Be aware of the risks for children in such circumstances, including:
 - trafficking
 - abuse and exploitation
 - domestic servitude
 - benefit fraud.
- If you suspect a child is at risk, the immediate response should be to alert the relevant authorities.
- If you are in contact with a child or young person who may have unresolved immigration issues, it is essential that they receive legal advice as soon as possible.
- If possible see the child alone, away from the adults in the household and in a place where the child feels safe.

endnotes

1. See section 66, Children Act 1989 <http://www.legislation.gov.uk/ukpga/1989/41/part/IX>
2. Department for Education, Notifications of private fostering arrangements in England: year ending 31 March 2015, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/440401/SFR22-2015_Text.pdf
3. Education Committee - Children first: the child protection system in England: Written evidence submitted by Children and Families Across Borders (CFAB), <http://www.publications.parliament.uk/pa/cm/201213/cmselect/meduc/137/137vw04.htm>
4. CoramBAAF, Leading Charities Warn Over 10,000 Children at Risk Because 91% of the UK Adult Population Don't Know What Private Fostering is, July 2015 at <http://corambaaf.org.uk/node/7936>
5. Section 67, Children Act 1989 <http://www.legislation.gov.uk/ukpga/1989/41/part/IX>
6. Section 9, The Children (Private Arrangements for Fostering) Regulations 2005 <http://www.legislation.gov.uk/uksi/2005/1533/regulation/9/made>
7. Section 10, The Children (Private Arrangements for Fostering) Regulations 2005 <http://www.legislation.gov.uk/uksi/2005/1533/regulation/10/made>
8. This is supported by the National Minimum Standards for Private Fostering. Section 2.2.3 sets out the expectation that professionals who are aware of a private fostering arrangement, or an arrangement they have reason to believe is private fostering, will contact the relevant local authority to notify them – see <http://media.education.gov.uk/assets/files/doc/n/national%20minimum%20standards%20for%20private%20fostering.pdf>
9. Section 4, The Children (Private Arrangements for Fostering) Regulations 2005
10. Section 8, The Children (Private Arrangements for Fostering) Regulations 2005
11. Schedules 2 and 3 of the Children (Private Arrangements for Fostering) Regulations 2005
12. Section 69, Children Act 1989 <http://www.legislation.gov.uk/ukpga/1989/41/section/69> The Disqualification from Caring for Children (England) Regulations 2002
13. For further information, please see section 22C of the Children Act 1989 and page 16-17 of the Department of Education statutory guidance – “Family and Friends Care: Statutory Guidance for Local Authorities” https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/288483/family-and-friends-care.pdf
14. ECPAT UK, Understanding child trafficking and private fostering. 2011 and Bordering on concern: Child Trafficking in Wales, ECPAT UK, 2009
15. Home Office Asylum Processing Instruction, Processing an asylum application from a child, para 4.1 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257469/processingasylumapplication1.pdf

age disputes

A significant number of young asylum seekers arrive in the UK without documentation to prove their age, or with documentation that does not belong to them or has been obtained fraudulently. Many have their age questioned by either the Home Office or the local authority to which they have turned for support. In 2015, 766 individuals were recorded as having had their ages disputed, although this does not represent the total number as it only reflects Home Office disputes. Many of these young people undergo age assessments, a process that can be lengthy and confusing, and this can in turn create difficulties for those working with or caring for them.

Why is age important?

The question of age is extremely important, as it will not only affect how an individual is supported, and their access to education, but it will also affect how their asylum application is processed.

Accommodation, benefits, and education

Asylum-seeking adults and families are entitled to support, including accommodation and financial support to meet essential living needs, from the Home Office. For unaccompanied children seeking asylum, on the other hand, support should be provided by the local authority in which they are physically present. Section 17 of the Children Act 1989 imposes a general duty upon a local authority to safeguard and promote the welfare of children within their area who are in need, and section 20 of the Children Act 1989 states that every local authority shall provide accommodation for any child in need within the area who requires accommodation as a result of there being no person who has parental responsibility for them (see chapter on **children's services support**). In addition, a local authority must ensure a child receives appropriate education. As well as it being important to determine whether they are a child or an adult, the exact age of a child has significant implications for the level and type of care and education they receive.

Why is it difficult to establish the age of many children?

Age determination is an inexact science, and the margin of error can sometimes be as much as five years either side, especially around the time of puberty. The Royal College of Paediatrics and Child Health has stated:

There is no single reliable method for making precise estimates. The most appropriate approach is to use a holistic evaluation, incorporating narrative accounts, physical assessment of puberty and growth, and cognitive, behavioural and emotional assessments.¹

A number of factors make age assessments difficult, including:

- Young people may look and act older than they are because of their experience in their country of origin, and their long and difficult journey to the UK.
- Young people may have given different ages to different professionals/authorities, particularly on their journey to the UK, where to be identified as a child may have been perceived as placing them in greater danger.
- Boys in some parts of the world grow facial hair earlier than boys in Europe. For example, in some parts of Afghanistan it is common to grow a beard at the age of 13 or 14.
- Within ethnic and national groups there are wide variations in young people's growth, ages of puberty and so on, just as in the UK.
- A young person may not know their date of birth. In some places date of birth is not important and birthdays are not celebrated. In some places calendars are rarely used.
- The young person may be from a country where there is no clear birth registration system or identity document process. There may have been little use for dates of birth in the home country.
- Concepts of time and the passage of time can be different in different cultures, as can the stage at which someone is considered to be an adult.
- Different calendars are used in different countries. Converting from one calendar to the other can be difficult. Mistakes can be made and the wrong date of birth provided.
- The expectations brought by children and adults to the age assessment process can confuse matters. For example, children may believe that they should claim certainty about their age when they do not know how old they are. Also, social workers may feel that children must be a certain age because they have made their journey alone.
- Some children will be traumatised and/or illiterate and this may have an impact on their ability to communicate and provide information in a coherent manner.

age disputes

Determination of asylum claim

The process of determining an individual's asylum claim is different depending on whether a person is a child or an adult. Historically there have been different, more favourable policies in relation to child asylum seekers. In addition, section 55 of the Borders, Citizenship and Immigration Act 2009 places a general duty on the Home Office to safeguard and promote the welfare of children in the exercise of its functions. There are more procedural safeguards (such as interviewing in the presence of an appropriate adult) in place when determining children's claims and their maturity is taken into account when assessing credibility. Furthermore, it is Home Office policy not to detain an unaccompanied child under administrative immigration powers, save in exceptional circumstances and then only overnight. Notably, a significant number of age-disputed young people have been detained and then subsequently found to be children. In 2013, for example, the Refugee Council worked with 44 age-disputed individuals who had been detained as adults, of whom 36 were subsequently released as children.²

Home Office decisions on age

Age disputes most frequently arise when an asylum seeker first applies for asylum, usually at a port of entry or at the Home Office's Asylum Intake Unit during the welfare interview (formerly a screening interview). They can also occur when the Home Office receives information from EURODAC showing that a child's fingerprint match has provided differing name or age information given in another European country. If an asylum seeker's claim to be a child is doubted by the Home Office, and 'there is little or no documentary evidence to prove their age', the Home Office conduct an initial 'assessment' of the individual based solely on appearance and demeanour. Current Home Office policy is as follows:

- a. If the claimant's physical appearance or demeanour **'very strongly** suggests that they are **significantly over 18 years of age**' they should be treated as adults. [emphasis added]
- b. All other applicants should be afforded the benefit of the doubt and treated as children until a careful assessment of their age has been completed. This does not indicate the Home Office's final acceptance of the applicant's claimed age, which will be considered in the round when all relevant evidence has been considered, including the view of the local authority to whom the child should be referred.

It is important to note that this assessment is not that the child looks or acts a bit older than 18; it is that the child's appearance *very strongly* suggests that an individual is *significantly* over the age 18. In both category a) and category b) cases, the individual should be given an IS.97M form stating that their age is disputed.³ This assessment has been shown to be a flawed method of deciding age for the purposes of detaining a claimant who may be a child.⁴

The Modern Slavery Act 2015 also makes clear that where there is uncertainty over the age of a suspected victim of trafficking, there should be a presumption that the victim is under 18 until a local authority assessment has taken place, or the person's age is otherwise determined.⁵

Age assessments by a local authority

Children will come into the care of local authorities at different stages. Some young people will already have been assessed by a local authority prior to claiming asylum, whilst others will be referred to a local authority according to where they stated they lived at the time of the asylum application.

Even if the Home Office is treating someone as an adult, if a referral is made to children's services (either self-referral or by an agency), the local authority must make their own decision as to the young person's age, as a gateway decision for the purposes of deciding whether they then might be a child in need under Part 3 of the Children Act 1989. The local authority may accept the child's claimed age or dispute age and undertake an age assessment. The young person should be supported whilst the assessment is being undertaken.

Age assessments should not be carried out as a matter of course, but should be used to ensure that appropriate services (including education and appropriate accommodation) are offered. Disputing the age of a child or young person can affect the way they engage with their social worker and the repeated questioning of their credibility and identity can leave children and young people feeling angry and confused. It is therefore important that age assessments are not undertaken unless absolutely necessary. Statutory guidance on the care of unaccompanied children states that:

*Age assessments should only be carried out **where there is significant reason** to doubt that the claimant is a child. Age assessments should not be a routine part of a local authority's assessment of unaccompanied or trafficked children.*⁶ [emphasis added]

A social worker should be clear what the 'significant reason' to doubt the age is, and this should be conveyed to the young person. In some circumstances, the child or young person might be able to produce clear information about their age, for example, from documents or by reference to education.

There may be occasions where a local authority feels that an age assessment is not necessary but where the Home Office requests an assessment before it will treat the young person as a child in the immigration process. In these circumstances the local authority may need to negotiate with the Home Office to explain why the young person should be treated as a child without further assessment.

Which local authority is responsible for carrying out an age assessment?

Local authority responsibility is related to where a child presents. Although some children may be living in one local authority, actual responsibility may well be with another local authority if the child first presented there. (For one of the main exceptions to this, please see information on the National Transfer Scheme in the paragraph below.) It is possible that an unaccompanied or separated child who has moved across boundaries may seek an age assessment from more than one local authority. In some cases assessments may not agree.

However, a voluntary scheme for the transfer of responsibility for an unaccompanied child from one local authority to another was introduced in 2016. As outlined in the scheme guidance and in the chapter on **children's services support**, a referral for transfer of a child should happen very quickly - ideally within 48 hours of a child presenting to a local authority. It is then the responsibility of the receiving local authority to conduct an age assessment of the child, should one be deemed necessary. In practice however, the transfer of responsibility has often taken significantly more than 48 hours, and it is possible that a child may be age assessed more than once. As noted above, a local authority must make its own decision as to a child's age. This would include a receiving local authority accepting responsibility for a child whose age has already been assessed elsewhere.

There is further information on the scheme in the chapter on the **asylum process** and detailed information in the interim transfer protocol and flowchart published by the Home Office.⁷

A local authority approached for support should check whether any previous assessment has been carried out by another local

authority. If an assessment has previously been completed, it must be established whether this was conducted lawfully. This will usually mean, at minimum, requesting the previous assessment pro forma. The authority should also consider requesting the full assessment, considering the assessment and ensuring that the child has received and understood the assessment. 'In cases outside the transfer protocol the 'old' local authority and 'new' local authority must collaborate and promptly agree which will take responsibility. It is important to note that the 'new' local authority is not bound by the previous assessment. The authority should look at all the circumstances in the round when considering whether a new assessment needs to be carried out.

In the event that new information is being brought forward, and if outside the transfer scheme the individual has moved location and local authority, this should also be referred to the local authority which conducted the previous age assessment and agreement reached, depending on the circumstances, as to which local authority will reassess the age of the individual, taking full account of all sources of information. In the event that no new information is brought forward that was not considered as part of the original assessment, the individual should be informed that they can make a formal complaint to the local authority responsible for the age assessment to dispute the age assessment findings, and/or look to challenge the age assessment legally and be referred for independent advice.⁸ Again, the new local authority should look at matters in the round and determine whether a new assessment should take place.

Dental records and x-rays

The use of dental records and x-rays has been strongly criticised by the British Dental Association⁹ and the Royal College of Paediatrics and Child Health. Dental assessments have a wide margin of error and are based on research usually involving European and American populations. Moreover, there are ethical concerns over obtaining x-rays for non-medical purposes.

If a public authority proposes obtaining a dental x-ray for the purpose of an age assessment, the young person's representatives can consider objecting and explain to the young person that they are entitled to refuse consent to non-medical x-rays. However, a 2016 case raised problematic issues around dental x-rays which allows the court to refuse to proceed with a judicial review against an age assessment until the x-ray is undertaken, if the local authority can show why the dental x-ray is necessary.¹⁰ It is therefore important that the young person discuss any dental x-ray issue with their legal

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representative, whether that be when an assessment is to be carried out or during a challenge to an age assessment.

How should an age assessment be conducted by a local authority?

There can be a lack of awareness as to what is required to conduct a lawful and fair assessment and what weight to give to different, sometimes conflicting, indicators of age and maturity. Many social workers have reported feeling that they do not have the specialist skills required, sometimes due to having to learn 'on the job' from fellow professionals.

A local authority's assessment must be as full and comprehensive as possible, and conducted in a clear, transparent and fair manner. The approach taken to age assessment has evolved through practice by local authorities and legal challenges to the process. In the case of *R (B) v Merton*¹¹ the judge set down broad guidelines as to how age ought to be assessed in respect of unaccompanied children who arrive in the UK without documentary evidence to prove their age. The judge confirmed that the local authority 'cannot simply adopt a decision made by the Home Office' and outlined a number of criteria for a lawful assessment. Further criteria have since been established in subsequent cases. Whilst a lawful age assessment is often referred to as 'Merton compliant', assessors need to comply with a range of case law as outlined on page 65.

In October 2015, best practice guidance for social workers on conducting age assessments was published by the Association of Directors of Children's Services. It is hoped that this guidance, co-written by experienced social workers, practitioners and legal experts, will help social workers undertake this difficult task, with the input of others working with or caring for these children, such as foster carers and advocates. This comprehensive guidance can be found at http://adcs.org.uk/assets/documentation/Age_Assessment_Guidance_2015_Final.pdf. Best practice guidance was published in Scotland in 2012 and may also be a useful reference.¹²

The role of the appropriate adult in age assessments

Where a child or other vulnerable person is to be interviewed, it is generally accepted that they should have the opportunity to have an appropriate adult present during the interview. The role of the appropriate adult was first set out in the context of

criminal law and is defined in the Police and Criminal Evidence Act 1984 (PACE) guidance.¹³ This guidance specifically states that the appropriate adult is not simply an observer.

In the age assessment context, the courts in 2011 held that a child should have the opportunity to have an appropriate adult present during the assessment.¹⁴ In an age assessment, the role of the appropriate adult is:

- to make sure that the child understands what is happening to them and why
- to support and advise the child, including asking for breaks if the child needs a break to consult with the appropriate adult, to seek legal advice from their legal representative, or if the child is tired, distressed or ill
- to observe whether the social workers are acting properly and fairly and to intervene if they are not
- to assist with communication between the child and the social workers in a constructive and appropriate manner
- to ensure that the child understands their rights, including the right to seek legal advice before continuing further with the interview.

Any independent adult known to the child can act as an appropriate adult in the age assessment process. Some children will have an advocate, either provided through the local authority or through a voluntary sector organisation, who is likely to be a suitable person if the child is happy with their attending in this role. Some local authorities provide an independent adult, but the child should have a choice if they are not happy with that person. It can be difficult to find an appropriate adult to attend an age assessment.

It is not necessarily advisable to have a child's friend as the appropriate adult if they do not have sufficient understanding of the process and their role. However, it should be the child's choice and if they would like an adult who is their friend to be the appropriate adult, this request should be considered. It is advisable that the same appropriate adult is present at all interviews that form part of the age assessment process.

If the role and function is explained to them, it is likely that most young people would wish to have an appropriate adult present. If a young person says they do not want an appropriate adult present, it may be because they are not happy with the person who has been selected. For example, some young people may not want to have to discuss their past experiences in front of certain adults such as their foster carers or others.

Case law – guidance from the court regarding age assessments¹⁵

The judge in *Merton* set out a number of issues to be considered in order to make assessments lawful. These include:

- Local authorities should not simply accept an age assessment made by the Home Office but should undertake an independent assessment of their own.
- At the outset of the age assessment, the social workers should explain the nature and purpose of the assessment and the roles of those present.
- Where an interpreter is required, it is greatly preferable for them to be present during the interview.
- Physical appearance is a notoriously unreliable indicator of age. Social workers should have regard to a range of factors (e.g. culture, life experience, journey, etc.) and not rely solely on appearance to make a decision.
- Before the social workers have reached a final decision about the child's or young person's age, they should put any adverse findings they are minded to make to the child to enable them to provide an explanation or additional facts, which might counter or modify such findings.¹⁶
- '...(A)n untrue history, while relevant, is not necessarily indicative of a lie as to the age of the applicant. Lies may be told for reasons unconnected with the applicant's case as to his age, for example to avoid his return to his country of origin.'
- 'Cases will vary from those in which the answer is obvious to those in which it is far from being so, and the level of inquiry unnecessary in one type of case will be necessary in another.'
- Local authorities, as decision-makers, have a duty to give adequate, cogent and relevant reasons for any decision.
- The assessment should be undertaken by two qualified social workers, who have received appropriate training and have experience of interviewing young, vulnerable children.¹⁸
- An appropriate adult who is independent of the local authority should attend age assessment interviews¹⁹ and should be made aware that they are there to support and assist the child being interviewed and not merely as a passive observer.²⁰
- Social workers should pay attention to the level of tiredness, trauma, bewilderment and/or anxiety of the child and provide appropriate breaks as necessary. If the child is ill then the interview should be rearranged.²¹
- Social workers should seek to establish a rapport with the child and should ask open-ended questions.²²
- Social workers should bear in mind that even where a child may have received coaching in relation to some aspect of their account, that does not necessarily mean that they are lying about being a child.²³
- If the social workers are *minded* to make an adverse decision, they should give the young person opportunity to know the adverse matters intended to be relied on and an opportunity to respond.
- If an adverse decision is made, the local authority has an obligation to explain the reasons for it. It is best practice for these reasons to be provided in writing, with an explanation of how the child can challenge the decision.
- The reasons for a social worker's decision should be internally consistent and should not exhibit any obvious error or inadequate explanation for not accepting any apparently credible and consistent answers of the child.²⁴
- The age assessment process should be inquisitorial (not adversarial) and non-hostile,²⁵ allowing for the difficulties children might face giving evidence. In particular, 'due allowance should be made for the fact that a child might have a different way of recounting narratives and that proper regard should be paid to the fact that it was a child who was the subject of the age assessment process'.²⁶
- The court was likely to find that a decision was unlawful if it failed to take into account the fact that a child's cultural and social background would have had a significant effect on his or her ability to provide documentary evidence of his or her age or a clear chronology of his or her previous experiences.

Subsequent case law has elaborated on the requirements on social workers completing age assessments. A lawful assessment will now have regard to the following:

- Local authority decisions are likely to be found to be more cogent if they are as holistic as possible and assessors have drawn together multi-agency information from others who had contact with the child or young person, such as teachers, advisers and key workers and where social workers have considered personally observing the child interact with his or her peers.¹⁷

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Determination of age by the First-Tier Tribunal

There have been cases where the First-Tier Tribunal (Immigration and Asylum Chamber) has made its own findings about a young person's age as part of an asylum appeal determination. The immigration judge should only be making a finding on age insofar as it is necessary to establish risk under the Refugee Convention. In these cases, if the young person is found in the Tribunal not to be their claimed age, it has been held that a local authority cannot simply accept the Tribunal's finding and deny or withdraw services. Neither the Tribunal's decision nor the evidential basis on which it was reached has any weight outside those proceedings. The local authority must instead make its own decision based on all the available facts, including its own age assessment and 'give due respect to the basis and reasoning of the tribunal's finding, whilst taking into account of the fact that they may have difference evidence available to them'.²⁷

However, the Home Office should accept the determination and treat the appellant as a child, if that is the finding of the judge. In certain circumstances, it will be appropriate to request an adjournment of an appeal hearing on the basis that there is an ongoing judicial review challenging a dispute over age.

After the local authority age assessment has been completed

If a local authority decides that a young person claiming to be a child is over 18, they should be referred to the Home Office for support and accommodation. If it is decided that the young person is under 18, they will be provided with support under the Children Act 1989. Social workers should contact the Home Office if they want them to alter the accepted age to under or over 18. The Home Office will not house people as adults whose papers say that they are under 18 unless they also have written notification from the local authority to say that they have been assessed as being over 18.

In most circumstances, local authorities should use an 'age assessment information-sharing pro forma' that has been approved by the Home Office and the Association of Directors of Children's Services in order to share relevant information with the Home Office, rather than providing the full assessment.²⁸

When the Home Office receives the outcome of a local authority age assessment, the member of staff responsible for the case will consider the findings and whether the processes which have led to the findings appear compliant with case law. Where there are concerns, the Home Office must discuss the age assessment with the local authority. The Home Office and local

authority should then agree the accepted age and facilitate transfers to services where relevant – for example, if someone is found to be an adult and needs to apply for asylum support. The local authority and Home Office must amend all records and relevant documents with the accepted date of birth and forward these to the other organisation and individuals as appropriate.

Challenging an age assessment

A child who has been age assessed and found to be different to the age they claim to be may wish to challenge that assessment. Any challenge to an age assessment should be made promptly and no later than three months after the grounds to challenge arose.²⁹ In some circumstances, for example, when a young person is assessed to be an adult and dispersed to Home Office accommodation, it may be months or even a year or more before they are referred for legal advice. In these cases there needs to either be a request for a review of the decision or request that an out-of-time application be accepted, but permission to proceed with the judicial review may not be given because of the delay. In these circumstances it is important to explore whether the young person ever received the full assessment and the circumstances surrounding how this was received and explained to the young person.

Age assessments can be challenged by way of judicial review. Judicial review is carried out by the Administrative Court, although claims for judicial review in these cases are now transferred to the Upper Tribunal (Immigration and Asylum Chamber). In the past, judicial review challenges were based on the argument that the assessment had not been conducted properly and that the correct procedure had not been followed. If this was found to be the case, the local authority was obliged to re-assess. This is now not the only test. If evidence can be put forward which contests the age assessed by the local authority, this can be used to raise a judicial review. However, lack of correct process or conduct can still be used to argue lesser weight being placed on assessment. Furthermore, the Supreme Court in *R (A) v Croydon*, *R (M) v Lambeth* held that, although age assessment remained the responsibility of local authorities, where there is a dispute between the young person and the local authority following an age assessment, the person's age falls to be determined by the court.³⁰ The court is not restricted to choosing between the child's claimed age or the local authority's assessed age. The role of the court in age assessment judicial reviews is an inquisitorial one, where there is no burden of proof as such on the child or the local authority, and the judge can come to their own conclusion.³¹

The following guidance has been given on how full age assessment hearings should be conducted:

- The question is not just whether the person is a child, but how old they are. Therefore, a challenge can still be brought against a decision that a person is a child who is older than they claim.
- The case will go ahead if there is a realistic prospect that, at a fact-finding hearing, the court will conclude that the person is younger than assessed by the local authority.

Whether the claimant should be subject to cross-examination and whether any special measures (such as evidence by video link) should be put in place should be left to the trial judge.³²

There have now been a number of substantive judicial review hearings of age assessments, which have involved detailed live evidence from a number of witnesses and lengthy cross-examination. In the majority of cases, the claimant will be expected to give live evidence, although there may be cases when this is inappropriate and the young person's legal representative should assess this.

Age disputes and detention

Age disputes often arise in the context of detention and removal cases. According to stated policy, unaccompanied children must only ever be detained in the most exceptional circumstances, for no more than 24 hours and then only overnight, whilst alternative arrangements for their care and safety are being made (in other words, their detention should be for welfare purposes only).

However, unaccompanied children can still end up detained in Immigration Removal Centres either because they have been treated as adults after an initial Home Office assessment, based on their appearance or demeanour very strongly suggesting that they are significantly over the age of 18, or because their age has been disputed by a local authority and they have been detained by the Home Office later in the process.³³ The recent case of *R (AA) v Secretary of State for the Home Department* held that the issue of whether an individual can be detained as an adult cannot be decided in such a way but rather must be determined objectively and is a matter of fact.³⁴ However, this decision is under appeal.

The Home Office will not treat someone as an adult unless one or more of the following categories apply:

- a. There is credible and clear documentary evidence that they are 18 or over.
- b. A 'Merton-compliant' (i.e. a lawful) age assessment by a local authority is available stating that they are 18 years of age or over.
- c. Their physical appearance/demeanour very strongly suggests that they are significantly over 18 years of age and no other credible evidence exists to the contrary.
- d. The individual, prior to detention,
 - i. gave a date of birth that would make them an adult and/or stated they were an adult; and
 - ii. only claimed to be a child after a decision had been taken on their asylum claim; and
 - iii. only claimed to be a child after they had been detained; and
 - iv. has not provided credible and clear documentary evidence proving their claimed age; and
 - v. does not have a 'Merton-compliant' age assessment stating they are a child; and
 - vi. does not have an unchallenged court finding indicating that they are a child; and
 - vii. physical appearance/demeanour very strongly suggests that they are 18 years of age or over.

All seven criteria within category (d) must apply.

The Home Office defines an age dispute case as one where an individual:

- claims to be a child; and
- the categories in (a) to (d) above do not apply; but
- the individual is unable to prove they are under 18 years of age and are awaiting a lawful age assessment to confirm their age.³⁵

Charity workers and volunteers who make regular visits to Immigration Removal Centres may meet young people in detention who look under, or who claim to be under, 18. Solicitors, foster families, children's services as well as friends of the detainee may also become aware of a child in

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detention. If you are working with a child whose physical appearance/demeanour, according to the immigration officer, suggests that they are significantly over the age of 18, you should assist them to obtain legal representation as a matter of urgency.

In all cases regarding individuals whose age is in dispute, if immigration officers receive relevant new evidence, they should promptly review any previous decision to treat an individual as an adult. If an individual claims to be a child whilst in detention the decision on whether to maintain detention or release should be made as promptly as possible by the Home Office. If they meet any of the criteria set out above, bearing in mind that a decision based solely on physical appearance is likely to be unlawful, then Home Office policy is that they must be released from detention into the care of a local authority in order that a lawful age assessment can be conducted. The Joint Working Guidance by the Home Office and the Association of Directors of Children's Services makes clear that age assessments should not be undertaken in Immigration Removal Centres, police stations or ports, and that a young person claiming to be a child should be released into the care of the relevant local authority which should take responsibility for the individual and for conducting an age assessment.

The Home Office must liaise with the local authority so they can assume their statutory responsibility and arrange a placement as quickly as possible. If the provision of a placement is delayed by the local authority, the Immigration Removal Centre should make immediate arrangements to safeguard the individual within the centre whilst awaiting the local authority response.³⁶

Age disputes can also arise in the criminal justice system. For more information please see the **criminal justice** chapter.

how can you help?

- A local authority should only be undertaking an age assessment where they have 'significant reason' to doubt the claimed age of the child or young person.
- The reason/s should be recorded and if you feel an age assessment is being conducted unnecessarily you may wish to question this and ask for the reasons.
- If you are concerned that a young person is deliberately stating the wrong age you may wish to discuss with them the legal and practical consequences of their decision.
- Explore the possibility of the young person safely obtaining some information from their country of origin that may help to verify their stated age, for example, medical reports or school registration documents.
- If you are supporting someone who claims to be under 18 and whose age has been disputed by the Home Office, insist that a local authority make its own assessment and make sure the reasons for their decision (whether it be that the child is under or over 18) are made in writing.
- Where there has been an age dispute that has been resolved, the young person may have an incorrect ARC (Application Registration Card), asylum application documentation and/or Biometric Residence Permit. To avoid confusion and difficulty in accessing services, it is essential that the young person has the correct documentation. The young person's solicitor should ensure that any documentation or permit is checked when providing that young person with his or her documentation. If any changes need to be made then the relevant Home Office department will need to be contacted.
- If a local authority refuses support because they have assessed the young person as being 18 or over, or have assessed the child to be an age different to the one claimed, then legal representation may be needed to challenge a local authority's unlawful age assessment, or the provision of inappropriate support, accommodation or services under a local authority's Children Act 1989 duties. You can help the child look for a solicitor with a community care legal aid contract. There is a directory of legal aid services providers on the gov.uk website (<http://find-legal-advice.justice.gov.uk/>), in which you can search for firms in the community care category, or in public law. With the child or young person's consent, you should call the prospective solicitors firm to ask whether they have capacity to take on the case, providing the details of the case as clearly as you can (for example, whether an age assessment has been conducted and when, by which local authority, what age the child claims to be etc.). It is very important to refer a child to a solicitor in an age dispute case as soon as possible because of time limits for bringing a challenge to an unlawful age assessment.
- If the local authority has assessed the young person to be over 18 and this is not being challenged then they may need help to access adult asylum support from the Home Office. The local authority should ensure that the young person is not left without support and should help to facilitate the transfer to Home Office accommodation. The organisation Migrant Help can provide more information and advice on applying for asylum support: <http://asylumhelpuk.org/i-am-seeking-asylum/application-for-support/>.

If you come across a child in detention, you can:

- Contact the Refugee Council Age Dispute project (email Age.Disputes@refugeecouncil.org.uk).
- Check whether there has been a lawful local authority age assessment. If no assessment has previously been conducted, the young person or someone acting on their behalf should contact the referral and assessment team (or similar) of the local authority in the area where the child is being detained, to refer a child in need who may require services. If the local authority refuses to assess then a solicitor should be involved.
- Ensure the child has a good legal representative to pursue their case quickly and challenge their detention, including possibly through an unlawful detention judicial review if required. If a young person in detention claiming to be under 18 has received removal directions to a third country or to their country of origin, and they are shortly due to be removed from the UK, the priority will be to find them a legal representative in order for them to obtain a court order as soon as possible, which stops the individual from being removed. It may be that the child already had a legal representative prior to being detained, in which case that solicitor can continue to represent them while they are in detention (provided a certain amount of work has already been done on the case). If the child has no legal representative, only the immigration solicitors firms which have been given contracts to work with specific detention centres can provide representation (please note that this restriction only applies to immigration providers, not community care or public law solicitors). It may be possible for the child to sign up for an advice appointment at a duty advice surgery in the Immigration Removal Centre but this may involve waiting. A direct referral to another legal representative can be made where the child has reason to complain about the previous legal representative, or where the Home Office has already set removal directions (i.e. the decision to send someone on a particular flight).

endnotes

1. The Royal College of Paediatrics and Child Health, Policy statement on the assessment of the age of refugee children, 2007.
2. Refugee Council, 'Age Dispute Project 2013: End of Year Report', available at: https://www.refugeecouncil.org.uk/assets/0003/3077/Age_Dispute_End_of_Year_Report_2013.pdf.
3. Coram Children's Legal Centre, Happy Birthday? Disputing the age of children in the immigration system, 2013, available at: http://www.childrenslegalcentre.com/?page=happy_birthday?.
4. *R (AA) v Secretary of State for the Home Department* [2016] EWHC 1453 (Admin). For further information on this case, please see our case note, available at: http://www.childrenslegalcentre.com/index.php?page=mpc_legal_framework_age_disputes.
5. Section 51, Modern Slavery Act 2015.
6. Department for Education, Care of Unaccompanied and Trafficked Children, 2014, available at: <https://www.gov.uk/government/publications/care-of-unaccompanied-and-trafficked-children>.
7. See interim national transfer protocol and flowchart for further information, available at: <https://www.gov.uk/government/publications/unaccompanied-asylum-seeking-children-interim-national-transfer-scheme>.
8. Home Office and Association of Directors of Children's Services, Age Assessment Joint Working Guidance, 2015, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/432724/Age_Assessment_Joint_Working_Guidance_April_2015_Final_agreed_v2_EXT.pdf.
9. British Dental Association, X-rays for young asylum seekers: inaccurate and unethical, 23 November 2015, available at: <https://www.bda.org/news-centre/latest-news-articles/Pages/Xrays-for-young-asylum-seekers-inaccurate-and-unethical.aspx>.
10. *London Borough of Croydon v Y* [2016] EWCA Civ 398, available at: <http://www.bailii.org/ew/cases/EWCA/Civ/2016/398.html>.
11. *R (B) v London Borough of Merton* [2003] EWHC 1689 (Admin), available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2003/1689.html>.
12. Glasgow City Council and Scottish Refugee Council, Age Assessment Practice Guidance: An Age Assessment Pathway for Social Workers in Scotland, 2012, available at: http://www.migrationscotland.org.uk/uploads/files/documents/age_assessment_guidance.pdf.
13. See Police and Criminal Evidence Act 1984 (PACE) guidance, available at: <https://www.gov.uk/guidance/police-and-criminal-evidence-act-1984-pace-codes-of-practice>.
14. *R (FZ) v London Borough of Croydon* [2011] EWCA Civ 59.
15. Case law summary based on that provided in Appendix N of Home Office and Association of Directors of Children's Services, Age Assessment Joint Working Guidance, 2015.
16. Reinforced in *R (NA) v Croydon* [2009] EWHC 2357 (Admin) at paragraph 52, available at: <http://www.familylawweek.co.uk/site.aspx?i=ed40521>; *R (FZ) v London Borough of Croydon* [2011] EWCA Civ 59, paragraph 20, available at: <http://www.bailii.org/ew/cases/EWCA/Civ/2011/59.html>.
17. *R (C) v London Borough of Enfield* [2004] EWHC 2297 (Admin), available at: <http://www.independentageassessment.co.uk/caselaw/C%20v%20Enfield%202004.pdf>.
18. *AW (A Child) (R, on the application of) v London Borough of Croydon* [2009] EWHC 3090 (Admin), available at: <http://www.familylawweek.co.uk/site.aspx?i=ed46492>.
19. *R (FZ) v London Borough of Croydon* [2011] EWCA Civ 59, available at: <http://www.bailii.org/ew/cases/EWCA/Civ/2011/59.html>; also see *R (NA) v Croydon* [2009] EWHC 2357 (Admin) at paragraphs 16 and 50, available at: <http://www.familylawweek.co.uk/site.aspx?i=ed40521>.
20. See the Guidance for Appropriate Adults produced for the criminal justice system in England and Wales, available at: <https://www.gov.uk/government/publications/guidance-for-appropriate-adults>.
21. *Durani v Secretary of State for the Home Department* [2013] EWHC 284 (Admin), at paragraphs 82-83, available at: <http://www.independentageassessment.co.uk/caselaw/Durani%20v%20SSHD%202013.pdf>.
22. *R (AS) v London Borough of Croydon* [2011] EWHC 2091 at paragraphs 18 – 19, available at: <http://www.familylawweek.co.uk/site.aspx?i=ed89977>.
23. *R (AS) v LB of Croydon* [2011] EWHC 2091 (Admin), available at: <http://www.familylawweek.co.uk/site.aspx?i=ed89977>.
24. *Ibid*, paragraph 19.
25. *C.f. R (CJ) v Cardiff City Council* [2011] EWCA Civ 159, available at: <http://www.familylawweek.co.uk/site.aspx?i=ed95168>; *R (C) v LB Enfield* [2004] EWHC 2297 (Admin), available at: <http://www.independentageassessment.co.uk/caselaw/C%20v%20Enfield%202004.pdf>.
26. *R (ES) v Hounslow (AAJR)* [2012] UKUT 00138 (IAC), paragraph 43, available at: <http://www.independentageassessment.co.uk/caselaw/ES%20v%20Hounslow%202012.pdf>.
27. *PM v Hertfordshire County Council* [2010] EWHC 2056 (Admin).
28. Home Office and Association of Directors of Children's Services, Age Assessment Joint Working Guidance, 2015, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/432724/Age_Assessment_Joint_Working_Guidance_April_2015_Final_agreed_v2_EXT.pdf.
29. *Ministry of Justice Rules and Directions, Part 54 – Judicial review and statutory review*, available at: <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part54>.
30. *R(A) v Croydon, R(M) v Lambeth* [2009] 1 WLR 2557.
31. *MC v Liverpool City Council* [2010] EWHC 2211 (Admin).
32. *R (F and Ors) v Lewisham and Ors* [2010] 1 FLR 146.
33. *R (AA) v Secretary of State for the Home Department* [2016] EWHC 1453 (Admin).
34. Home Office Asylum Instruction, Assessing age, section 2.1, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257462/assessing-age.pdf.
35. Detention Services Order 14/2012: Care and management of age dispute cases in the detention estate, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418815/DSO_14-2012_Care_and_management_of_age_dispute_cases_in_the_detention_estate.pdf.
36. Home Office and Association of Directors of Children's Services, Age Assessment Joint Working Guidance, 2015, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/432724/Age_Assessment_Joint_Working_Guidance_April_2015_Final_agreed_v2_EXT.pdf.

education

Attending a nursery, school or college can play a crucial role in assisting children and young people from other countries to settle into life in the UK.¹ The structure and routine of a school day helps to provide a sense of normality and security for separated children. School communities also provide opportunities to make friends, play sports and games, and make links with the wider community. Schools and colleges can help children through the loss, separation and change they are experiencing, and allow young people to continue their personal development. It is crucial for their general wellbeing that separated children have access to education and are helped to feel included and settled.

Children have a fundamental right to compulsory education. However, many separated children and young people face difficulties in securing school and college places and accessing appropriate education. Barriers to accessing education include: waiting times to access further education colleges, confusion over entitlement to financial assistance, difficulties in navigating the English education system, and discriminatory or inconsistent admissions policies.² Although immigration-related documentation is not required for registration at a school, some schools may be reluctant to accept migrant children (especially undocumented migrants) due to issues over funding arrangements or pressure on school places, or difficulty providing evidence of address.

Having a 'no recourse to public funds' condition on your leave does not affect access to education as the definition of public funds in the Immigration Rules does not include education.³

Primary and secondary schooling

Local authorities have a duty to provide suitable full-time education for all children of compulsory school age resident in that local authority that is appropriate to their age, ability and any special educational needs they may have, irrespective of their immigration status.⁴ **Refugee, asylum-seeking and other migrant children aged five to 16 all have the same entitlement to full-time education as other children in the UK.** Local authorities also have additional legal duties, including the following:

- Local authorities must offer school places in accordance with their published admissions arrangements, and they must ensure that there is no unreasonable delay in securing school admission for a child. Separated children in local authority care should be found a full-time education placement in a local mainstream school within 20 school days. The Education Act 2005 makes

it a statutory responsibility to prioritise school admissions of looked-after children, and the 2014 Department for Education School Admissions Code recommends that looked-after children are given the highest priority when placed on the waiting lists of oversubscribed schools.⁵ This also applies to academies and free schools. Social workers and carers should understand local arrangements for priority admissions and ensure the child gains a place at the most appropriate school for them.

- Schools cannot legally refuse to admit a child at the beginning of the academic year unless the school is full, or they have admissions criteria (such as admission being linked to home address, religion or exam-based selection).⁶ However, they may exercise discretion regarding the admission of a child during the course of the academic year, unless the child has been prevented from starting at the beginning of the academic year due to illness, moving residence or other circumstances beyond the parents' control.⁷
- Regarding school admissions, local authorities and schools must comply with both the Race Relations Act 1976 and Race Relations (Amendment) Act 2000, which make discrimination on the grounds of race unlawful. The Race Relations Act 2000 also requires local authorities and schools to promote equality of opportunity and positively promote good race relations. Local authorities must furthermore comply with the Sex Discrimination Act 1975, the Special Educational Needs and Disability Discrimination Act 2001 and the Equality Act 2006. The Equality Act 2010 was enacted in order to provide a single, consolidated source of discrimination law. This act did not bring in major differences for schools, although there were some changes to protection, positive action, victimisation and auxiliary aids. For further information, see the non-statutory guidance on the Equality Act 2010 for schools.⁸
- Local authorities have a duty to provide additional support for unaccompanied children in their care. Department of Education guidance states that 'as for any looked after child, a health plan and a personal education plan should be produced as part of the overall care plan'. The education plan should include: 'a clear education pathway for securing high quality education provision in school or other education setting and details of particular support the child may need, for example, where the child has a special educational need. With children for whom English is not their first language, this

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may also include support both to learn English and to develop literacy skills in their mother tongue.' The local authority should also 'take steps to ensure robust procedures are in place to monitor educational progress and a culture of proactive commitment to secure the highest educational outcomes for unaccompanied or trafficked children. This should be monitored by a senior manager, such as the virtual school head.⁹

If looked-after children are moved, for example to a new foster placement, education must be considered and in place before the move unless it occurs in an emergency. Looked-after children should not spend more than 20 days out of education.

The Department for Education also has statutory guidance on alternative provision of education. Alternative provision is defined as:

*education arranged by local authorities for pupils who, because of exclusion, illness or other reasons, would not otherwise receive suitable education; education arranged by schools for pupils on a fixed period exclusion; and pupils being directed by schools to off-site provision to improve their behaviour.*¹⁰

The statutory guidance includes further information on the duty on the local authority to provide suitable education and how it can do so.¹¹

In the case of *R (KS) v LB of Croydon* it was held that the failure to facilitate access to education for three unaccompanied asylum-seeking minors for almost a year was unlawful. Following judicial review proceedings Croydon was ordered to provide suitable education to the children pending the identification of a full-time mainstream placement. The English as a Second Language (ESOL) course on which the children¹² had been placed was found not to meet the local authority's obligations under the Education Act 1996 because it was under a duty to provide full-time, suitable education taking into consideration the child's individual needs.

Free school meals

In a few local areas, free school meals are provided to every primary school pupil. In most areas, however, provision of universal school meals is for all children who are in reception, year 1 or year 2. For older children, getting free school meals will depend on eligibility, which may be affected by immigration status, though there is discretion for individual schools to provide free school meals to those who are not eligible.

For separated children in local authority care it is the responsibility of children's services departments, under the provisions of the Children Act 1989, to ensure that separated children in their care have a midday meal while at school. For example, a foster carer may provide a packed lunch, or a social worker may give money to the young person to buy a school meal.

Travel costs

A local authority has a duty to provide free transport if they consider it necessary in order to enable a pupil to attend school. This will always be the case for a child of compulsory school age who attends the nearest suitable school if it is beyond statutory walking distance: two miles to a primary school and three miles to a secondary school. Other cases are decided upon their own merits (and including factors such as special needs, religion or road safety) and local authorities have the power to use discretion in the decision-making process.¹³

School uniform grants

Under the Education Act 1996¹⁴ and Local Authority (Payment of School Expenses) Regulations 1999 all local authorities have the power, but no statutory duty, to provide financial assistance for school uniforms, and it is for them to decide the criteria on which the provision of such assistance would be based. Practice varies from one local authority to another. In some locations, financial assistance for school uniforms and equipment may be available from local foundations or voluntary organisations. Separated children in care who do not receive this assistance should get help from children's services in obtaining a school uniform in accordance with the provisions of the Children Act 1989.

Further education

Further education is post-compulsory education at pre-degree level, which may include the opportunity to take qualifications also available at the level of compulsory schooling.

Schooling for 16–18 year olds

There is no obligation for local authorities to provide school places for 16- to 18-year-olds (although the age when young people can leave learning has now increased to the age of 18).¹⁵ At the time of publication, a young person between the age of 16 and 19 will be accepted at a school according to the school's admissions policy, although decisions on school places must comply with equality and race relations legislation.

Access

All separated young people, regardless of status, can apply to study at a sixth-form college or further education college. There are two conditions for accessing further education (and higher education) places. Potential students must:

- satisfy the entry requirements of the course (for example, language skills and previous qualifications); and
- pay for the course fees, either by accessing state funding to which they are entitled, or by paying privately.

Obtaining a place at a sixth-form college or further education college is dependent on availability of places and the eligibility of the student, in accordance with the admissions policy of the college.

Some colleges do not accept young people who are waiting for a decision or have a temporary period of leave (such as limited leave to remain or limited leave as an unaccompanied asylum-seeking child) which will end before the course they are applying for finishes. One of the reasons for this is that funding mechanisms are based largely on completion rates – the college receives part of their funding once the student completes the course. It is important for further education institutions to be aware that when a young person's leave expires, they are entitled to apply for a further leave, and if this is refused, can appeal that decision, during which period their entitlements stay the same (see the chapter on the **asylum process**). Therefore, even if a young person's leave expires before the end of the course, given that applying for further leave and possibly appealing a decision take time, the likelihood of the young person not finishing the course because they have to leave the country is small, and thus should not influence the decision on whether or not to offer a place.

Funding for 16- to 19-year-olds: eligibility

The Education Funding Agency is responsible for funding education for learners up to age 19. The student must be 16, 17 or 18 on 31 August at the start of the teaching year when they commence their learning programme. For funding purposes, a student's eligibility is established at the start of their programme – on the first day of the first academic (or teaching) year of the course, which is 1 September if the academic year starts between 1 August and 31 December. This is referred to as the 'relevant date'. Course fee regulations are complex and depend on immigration status, whether study is part time or full time, and whether the young person is receiving benefits or social services support.

Immigration status on the relevant date is what matters, but the guidance also states that institutions should 'satisfy themselves that there is a reasonable likelihood that the student will be able to complete their study programme before seeking funding for the student'.¹⁶

Full-time students aged between 16 and 19 will be exempt from fees and eligible for support if they are considered to be 'home students'. Students who are not studying full time may be charged depending on their circumstances. Although the sections below provide an introduction to fees, you are advised to seek further information from specialist advisers (see **contact details**) and talk to the course provider directly.

The following students are amongst those included as eligible for funding in the guidance:

- Those who are 'settled' in the UK and who have been 'ordinarily resident' in the UK and Islands for the three years preceding the first day of the first academic year of the course. Settled means having the right of abode in the UK, which British citizens have, or having indefinite leave to enter or remain or permanent residence in the UK.
- Those with 'recently settled status'. This means those who have become settled (for example, acquired indefinite leave to remain or British citizenship) within the three years preceding the start of the course. The guidance does not state that they have to show three years' ordinary residence.
- Those with refugee status, humanitarian protection, discretionary leave or exceptional leave to enter or remain, their spouses, civil partners and children. The guidance does not state that they have to show three years' ordinary residence.
- Those who are accompanying or joining parents, spouses or civil partners who are British citizens (and others with the right of abode). They do not have to show that they have lived in the UK for the last three years.
- Those who are accompanying or joining parents, spouses or civil partners who have leave to enter or remain in the UK. They do not have to show that they have lived in the UK for the last three years.
- Those who are accompanying or joining relevant family members who are European Economic Area nationals.
- Those who are the children of diplomats.
- British or European Economic Area citizens who are entering the UK not accompanied by their parents. They do not have to show that they have lived in the UK for the last three years.

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- Those whose passports have been endorsed to show that they have no restrictions on working in the UK. They do not have to show that they have lived in the UK for the last three years.
- Asylum seekers.
- Those who are placed in the care of social services, including unaccompanied asylum seekers.
- Those in receipt of section 4 asylum support under the Immigration and Asylum Act 1999.
- European Economic Area citizens and their extended family members.

The Education Funding Agency funding guidance states that in order for a student to be eligible for funding they must have the legal right to be resident in the United Kingdom at the start of their study programme. However, those without permission to be in the UK (i.e. who are undocumented) may fall into one of the above-mentioned categories, and may as such be eligible. Moreover, the guidance also states that the funding body will consider other exceptional circumstances and advises institutions to seek advice from their funding body if they are having difficulty assessing general student eligibility.¹⁷

Vulnerable student bursary

Some vulnerable 16- to 19-year-olds qualify for a bursary from the government to help with education-related costs such as a travel to college, books, meals and equipment. There is a different scheme (the Education Maintenance Allowance or EMA) in Wales, Scotland and Northern Ireland.¹⁸ The vulnerable student bursary is £1200 a year and is available for all children or young people in full-time education who are in local authority care or who have recently left care. There is also a discretionary bursary scheme in relation to which providers are free to determine the assessment criteria for eligibility and the frequency of payment for all awards.

For children and young people who are not in local authority care, eligibility for the vulnerable student bursary is subject to residency criteria set out in the Education Funding Agency Funding Regulations.¹⁹ Students aged 19 and over may be eligible to apply for support from the Discretionary Learner Support Fund (see below).

Funding eligibility for 19 years +

The Skills Funding Agency is responsible for funding further education for those aged 19 or older on 31 August in the relevant funding year. Institutions receiving funding from the

Skills Funding Agency are required to make sure that learners are eligible to be funded. The Skills Funding Agency can, like the Education Funding Agency, restrict eligibility. It issues funding rules for each academic year. Students must be eligible on the day that they start the programme of learning. If the student is eligible at the start of their programme, they remain eligible throughout.

The following students are amongst those listed as eligible for funding in the rules:

- Most individuals who have the right of abode in the UK who have been ordinarily resident within the European Economic Area for at least the previous three years on the first day of learning. British citizens have the right of abode.
- Most individuals who are citizens of the European Economic Area who have been ordinarily resident within the European Economic Area for at least the previous three years on the first day of learning.
- Non-EEA citizens who have permission to live in the UK, which is not for educational purposes, who have been ordinarily resident in the UK for at least the previous three years on the first day of learning.
- Those with indefinite leave to enter or remain, their spouses, civil partners and children. There is no three-year ordinary residence requirement. The college must see proof of the young person's immigration status.
- Those with refugee status, humanitarian protection, discretionary leave to enter or remain, exceptional leave to enter or remain or leave outside the rules, and their spouses, civil partners and children. There is no three-year ordinary residence requirement. The college must see proof of the young person's immigration status.
- Asylum seekers who have lived in the UK for six months or longer while their claim is being considered by the Home Office and no decision has been made.
- Asylum seekers who are in the care of social services and are receiving leaving care support under section 23C or section 23CA of the Children Act 1989.
- Asylum seekers who are in the care of social services and are receiving support under section 21 of the National Assistance Act 1948.
- Refused asylum seekers who have been refused refugee status and who have lodged an appeal and there has been no determination within six months of lodging the appeal.

- Refused asylum seekers in receipt of section 4 asylum support under the Immigration and Asylum Act 1999.
- Refused asylum seekers who are in the care of social services and are receiving leaving care support under section 23C or section 23CA of the Children Act 1989.
- Refused asylum seekers who are in the care of social services and are receiving support under section 21 of the National Assistance Act 1948.
- Family members (spouse, civil partner, child, grandchild, dependent parent or grandparent) of a European Economic Area national where the family member has been ordinarily resident in the European Economic Area for the three years prior to the start of their course.
- Family members (spouse, civil partner, child, grandchild, dependent parent or grandparent) of a European Union national where the European Union national has been ordinarily resident in the European Economic Area for the three years prior to the start of the family member's course.
- EU national family members (spouse, civil partner, child, grandchild, dependent parent or grandparent) of a non-EU EEA national who has been ordinarily resident in the European Economic Area for the three years prior to the start of the family member's course.

Certain home students may be eligible for full fee remission, for example if they are in receipt of Job Seekers Allowance or Employment and Support Allowance, those taking basic adult literacy and numeracy courses, although not English for Speakers of Other Languages (ESOL), those studying level 2 qualifications for the first time (equivalent to 5 or more GCSEs), and 19 to 24-year-olds studying level 3 qualifications for the first time (equivalent to 2 or more A Levels).²⁰

Learner support funds for those 19 or over

Discretionary Learner Support Funds can be accessed by some young people studying at a sixth form school or at a further education college. Support can be provided for those over 16 who are facing financial difficulty and those over 19 who need support for general hardship, transport, childcare (for learners over 20) or associated learning costs. These funds are provided to support learners with a specific financial need that could prevent them participating in further education. Learners aged 16 and over who have been accepted onto, and are studying for, a programme of learning

funded by the Education Funding Agency will be eligible to apply for discretionary funds – see the government's guidance on discretionary learner support for more details.²¹

Other support

Hardship funds are sometimes made available and administered by individual colleges; these have their own eligibility criteria. There are also some private trusts or charities that can deal with student financial hardship, but they can usually only offer small amounts of money (between £200 and £500).²² See **contact details** for further information.

Funding for ESOL classes

English for Speakers of Other Languages (ESOL) classes are not automatically free, apart from for those aged 16 to 18. However, free tuition will still be available to priority groups identified by the government, such as those who: are actively job seeking, have very low levels of skills, are unemployed, or are receiving income-based benefits. In the 2016-17 financial year public funds for ESOL will be focused on those on Jobseekers Allowance (JSA) following a Work Capability Assessment.²³ Learners aged 19 or over who are not in receipt of JSA on the day they begin their course are entitled to 'co-funding', which means that the learner must pay a part of their fee.²⁴

Ordinarily resident?

For funding purposes, an individual is deemed to be 'ordinarily resident' in a given country or region if they habitually, normally and lawfully reside from choice and for a settled purpose in that country. Note that residence must be *lawful*, i.e. the person must have valid leave. Temporary absences from the relevant area should be ignored. Someone who has not been ordinarily resident because he or she, or the person's parent, spouse or civil partner, was working temporarily abroad will be treated as though the person had been ordinarily resident in the relevant area.

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Higher education

Higher education primarily describes post-18 learning that takes place at universities, as well as other colleges and institutions that award academic degrees, professional qualifications and Continuing Professional Development (CPD) modules.

Home or overseas fees and eligibility for student finance

Publicly funded educational institutions may charge two levels of fee: 'home' fees and 'overseas' fees. Full-time home students may be charged up to £9000 per year for tuition fees, while fees for overseas students will be much higher than this (the average is £11,000 but they can be more than £30,000 per year depending on the institution, the level of course and the type of course). As well as fee level, whether a young person can study will be affected by their eligibility for student finance. Eligibility for student finances is assessed in relation to the first day of the first academic year of the course, which for student finance purposes will be one of four dates:

- 1st January (for courses starting 1st January to 31st March)
- 1st April (for courses starting 1st April to 30th June)
- 1st July (for courses starting 1st July to 31st July)
- 1st September, (for courses starting 1st August to 31st December).

Asylum seekers

Asylum seekers may apply to study at a higher education institution. However, they will not be entitled to pay home fees. Neither will they be eligible for student finance. It is worth noting, though, that universities can, and sometimes do, use their discretion to allow asylum seekers to pay home fees. Some also offer full fee waivers and bursaries for asylum seekers.²⁵

Those with discretionary leave or limited leave to remain

Most individuals with discretionary leave or limited leave to remain will not be entitled to pay home fees and will not be eligible for student finance.

However, in the 2015 case of *R (Tigere) v Secretary of State for Business, Innovation and Skills*, the Supreme Court ruled that an individual who has lived in the UK for many years cannot be excluded from obtaining student finance simply because they do not have settled status (indefinite leave to remain) in

the UK.²⁶ Following this case, the government updated the regulations to include as eligible for student finance those who meet all of the following conditions in England:

- are 'ordinarily resident' in England on the first day of the first academic year of the course
- have been 'ordinarily resident' in the UK for the three years preceding the first day of the first academic year of the course
- either are:
 - (1) under 18 years old and have lived in the UK for the preceding seven years prior to the first day of the first academic year of the course, or
 - (2) over 18 and have lived half their life or 20 years in the UK preceding the first day of the first academic year of the course.²⁷

The narrow interpretation of the decision in *Tigere* will still exclude, for example, those young people who have limited leave to remain but arrived in the UK as teenagers. For example, if someone arrived in the UK when they were 13, they will not be able to access student finance until they are 26 years old (half their life in the UK) and only where they have been ordinarily – which is to say lawfully – resident for at least the three years prior to the first day of the first academic year of the course. However, if that young person becomes settled (is granted indefinite leave to remain), they would become eligible earlier (see below).

Refugee status

A person granted refugee status (and her/his spouse and child) is entitled to home fees and student support if:

- they are ordinarily resident in the UK (for home fees) and/or England (for student support) on the first day of the first academic year of the course, and
- they have not ceased to be ordinarily resident since being recognised as a refugee.

The spouse and/or child must have been such a family member of the refugee on the date that the refugee made their application for refugee status. In addition, the child must have been under the age of 18 on the date that the refugee made their application for refugee status.

Refugees are currently granted five years' limited leave in the first instance (instead of indefinite leave to remain). This does not affect their right to apply for student support according to the law.

Humanitarian protection

A person (and her/his spouse and child) who has been refused refugee status but was granted humanitarian protection is entitled to home fees if they have leave and are ordinarily resident in the UK on the first day of the first academic year.

They are also eligible for student support if:

- they are ordinarily resident in the England on the first day of the first academic year of the course; and
- they have been ordinarily resident in the UK since being granted humanitarian protection, and for the three years preceding the first day of the first academic year of the course.

The spouse and/or child must have been such a family member of the person with humanitarian protection on the date that the person with humanitarian protection made their application for refugee status. In addition, the child must have been under the age of 18 on the date that the person with humanitarian protection made their application for refugee status.

EU nationals and other categories

Eligibility for student finance for EU/EEA nationals and their family members is complex. There are a number of categories and the UK Council for International Student Affairs (UKCISA) covers the requirements for home fees and student finance for those residing in England on their website: <http://www.ukcisa.org.uk/Information--Advice/Fees-and-Money/England-fee-status>.

UKCISA covers the requirements for the following:

- EU nationals and family members
- EU nationals in the UK
- EEA/Swiss workers, and family
- Those with the right of permanent residence (a right based on EU law).

There are also specific rules on Swiss nationals and Turkish workers – details of eligibility are also on the UKCISA website.

Indefinite leave to remain (ILR)

A young person with indefinite leave to remain is entitled to home fees and student finance if:

- They are settled within the meaning of section 33(2A) of the Immigration Act 1971 (i.e. are ordinarily resident in the UK without being subject to any restrictions on the period for which they may remain

in the UK) on the first day of the first academic year of the course

- They have been ordinarily resident in the UK for the three years preceding the first day of the first academic year of the course
- Their residence in the UK during that period was not wholly or mainly for the purpose of receiving full-time education
- They are ordinarily resident in the UK (for home fees) and/or England (for student support) on the first day of the first academic year of the course.

Evidencing eligibility for financial support

Even where someone is eligible for financial support, there can be problems accessing it because of the documents that they are asked to show.

Young people who are successful in their asylum applications and/or appeals and have been granted a form of leave to remain must be able to produce the necessary documentary evidence to support it, such as Home Office letters or documents.

People who have applied for an extension or variation of their leave to remain will retain the same entitlements while a decision on that application is pending, but will have sent their original documents to the Home Office as part of the process. The Home Office does not send out a standard reply as a matter of course. All that a funding body should reasonably expect is some form of proof that, at the start of the course, the application was with the Home Office and a decision (if negative) had not yet been made. It is recommended that a legal representative's letter be provided to confirm that the application has been sent. In addition, a certified copy of the previous biometric residence permit should be provided.

It would be unreasonable for a body to demand that only original documents be accepted as proof of eligibility. It would also be unreasonable to demand that a Home Office decision on any appeal or request for extension of leave to remain be made prior to awarding support.

Educational support from the local authority

Young people who are entitled to services from a local authority under the Children (Leaving Care) Act 2000 may be assisted with education costs as part of their leaving care plan, including travel and equipment costs and, in some circumstances, tuition fees. Those entitled to leaving care services who are in full-time further education when they turn 19 are not entitled to income support and housing benefit after their 19th birthday, but

education

the local authority should pay for their accommodation and maintenance to allow them to continue in full-time study.

The 2013 case of *R (Kebede) v Newcastle City Council*²⁸ previously clarified the duties owed to care leavers by the local authority with regard to financial support for educational purposes. The court reiterated that there is a duty on a local authority to make a grant in relation to educational expenses as part of its leaving care support, to the extent that a former relevant child's educational needs require it. The court found that a 'principal expense associated with

education is the cost of tuition' and so it followed that it was the local authority's duty to give assistance by making a grant to enable care leavers to meet this expense. However, the recent Immigration Act 2016 has specific provisions that mean that the local authority will not be required to pay for a young person's tuition fees in this situation, as they are now ineligible for such support.²⁹ This provision is expected to come into force in early 2017.

See the chapter on **support for young people turning 18** for more information.

how can you help?

School

- Gather information about local school and local authority **admission arrangements**. A local authority will be the admissions authority for community and voluntary-controlled schools, whilst for foundation, voluntary-aided schools and academies, the governing body of the institution will be the admissions authority. Most local authorities produce guides to local primary and secondary schools that include admissions criteria. You can also find out which section of the local authority deals with school admissions and how to contact them for support in getting a place at school.
- If a child has not been able to get a school place, find out the reason why, and get refusals in writing – this evidence is needed for appeals. Check the local authority and schools' admissions policies to make sure that there has been no unfair treatment. Be prepared to challenge and ask questions if the issue is not resolved quickly. Anyone can challenge a decision.
- Some pupils may have had a disrupted education and may have limited literacy/numeracy skills, and others may be academically advanced but in need of **English language support**. Find out from the young person's local authority what support can be provided if their first language is not English.
- Find out about any **local education projects** that may exist, for example, to help children find school places, after-school homework clubs or supplementary schools for children to keep up and improve literacy in their first language.
- Find out about the local authority's **education welfare service**. They may also provide help in getting children and young people into school or college.
- If a separated child does not have a **school uniform**, advocate with children's services for financial assistance to provide one.

- If a separated child is having difficulty with **travel costs** for getting to school, support the child in applying for assistance from the local authority.
- From 2016, the Department of Education is expanding the information it collects from schools in the **School Census** to include pupils' nationality and country of birth.³⁰ It should be made clear to young people that they are not legally obliged to supply the data if they do not wish to.

Further and higher education

- If you are not sure what financial support the young person is entitled to, contact the UK Council for International Student Affairs (see **contact details**), which provides up-to-date information on loans, grants and benefits. Ensure young people know what rights and entitlements they have in accessing and funding their post-16 education and support them in doing so.
- Help the young person apply for a bursary if they are eligible. If the young person is not entitled to statutory funds or has extra needs, help them apply to the college or university hardship fund, or particular bursary programmes.
- If a young person is being charged overseas fees at university, help the young person to apply to the university to be treated as a home student, or help them negotiate a reduction of fees (both are at the discretion of the university). Help the student put forward their case for why they should not be charged overseas fees (for example, because of their personal circumstances, or because paying overseas fees would exclude them from further study).
- If a young person has access to leaving care services, help them get social services support for their education.

Other courses

- A number of private companies, non-governmental organisations and refugee community organisations provide basic skills and vocational training (for example, the Refugee Council or Refugee Education and Training Advisory Service – see **contact details**). These courses may sometimes be

targeted at refugees and/or asylum seekers. Make enquiries about what is available in the area in which the young person you are supporting is living.

endnotes

1. See, for example, R. Kohli, (2007) *The meaning of safety, belonging and success for unaccompanied asylum seeking children*, University of Bedfordshire (Dartington Conference, Integrating Diversity, 28th-30th September 2007).
2. Refugee Council, *Something to smile about: promoting and supporting the educational and recreational needs of refugee children*, February 2011.
3. See paragraph 6 of the Immigration Rules, at www.gov.uk.
4. Section 14 of the Education Act 1996 and Department for Education, Schools admissions: applications from overseas children guidance, December 2014, available at: <https://www.gov.uk/guidance/schools-admissions-applications-from-overseas-children>.
5. Department for Education, *School Admissions Code 2014*, paragraph 1.7, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389388/School_Admissions_Code_2014_-_19_Dec.pdf.
6. Department for Education *School Admissions Code 2014*, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389388/School_Admissions_Code_2014_-_19_Dec.pdf.
7. Section 433, Education Act 1996.
8. Department for Education, The Equality Act 2010 and schools – Departmental advice, May 2014, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/315587/Equality_Act_Advice_Final.pdf.
9. Department for Education Guidance 2014, paragraphs 36-40, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330787/Care_of_unaccompanied_and_trafficked_children.pdf.
10. Section 19(1), Education Act 1996, as amended by section 3, Children, Schools and Families Act 2010.
11. Department for Education, Alternative Provision: Statutory guidance for local authorities, January 2013, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/268940/alternative_provision_statutory_guidance_pdf_version.pdf.
12. Pursuant to section 19, Education Act 1996.
13. Section 509, Education Act 1996.
14. Section 19, Education Act 1996.
15. Under the Education and Schools Act 2008.
16. Education Funding Agency, Funding guidance for young people 2015 to 2016, paragraph 23.
17. Education Funding Agency, Funding guidance for young people 2016 to 2017.
18. Education Maintenance Allowance (EMA) - see <https://www.gov.uk/education-maintenance-allowance-ema>.
19. Education Funding Agency, Funding guidance for young people 2016 to 2017, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/515830/16_to_19_funding_guidance_2016_to_2017v1.pdf.
20. Refugee Council Briefing, *Short guide on access to further education: asylum seekers and refugees*, August 2011.
21. Discretionary learner support - see <https://www.gov.uk/discretionary-learner-support/overview>.
22. See the UK Council for International Student Affairs information sheet on financial hardship for details of how to apply to a private trust or charity, available at: <http://www.ukcisa.org.uk/Information--Advice/Fees-and-Money/Financial-hardship>.
23. Skills Funding Agency (SFA) priorities and funding for the 2016 – 2017 financial year, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/485969/BIS-15-615-skills-funding-letter-2016-to-2017.pdf.
24. Adult education budget funding and performance management rules 2016-17, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/534080/Adult_education_budget_funding_and_performance_management_rules_2016_to_2017_V3.pdf.
25. See, for example, Article 26 student bursaries (<http://article26.hkf.org.uk/student-bursaries>) and Student Action for Refugees (http://www.star-network.org.uk/index.php/news/comments/find_out_which_universities_welcome_refugees/).
26. *R (on the application of Tigere) (Appellant) v Secretary of State for Business, Innovation and Skills (Respondent)* [2015] UKSC 57 <https://www.supremecourt.uk/cases/docs/uksc-2014-0255-judgment.pdf>.
27. The Education (Fees and Awards) (England) Regulations 2007 (as amended), Schedule 1 paragraph 13.
28. See Coram Children's Legal Centre case note for further information: <http://www.childrenslegalcentre.com/userfiles/Kebede%20v%20Newcastle%202013%20FWHC.pdf>.
29. Schedule 12, Immigration Act 2016.
30. Department for Education, Section 1.4, School census 2016 to 2017 Guide, August 2016, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/544214/2016_to_2017_School_Census_Guide_V1_2.pdf.

work and training

Paid employment

Anyone with refugee status, indefinite leave to remain, humanitarian protection, limited leave to remain, discretionary leave or UASC leave has the right to work in the UK and does not need to apply for permission to work. There are no restrictions on the type of work they can do while they hold this status.

Asylum seekers

Asylum-seekers do not have permission to work but, since February 2005, if someone seeking asylum has been waiting for an initial decision on their claim for longer than 12 months, they can apply for permission to work.¹ A Supreme Court judgment in 2010 found that the concession also applies to individuals who have made a fresh claim for asylum.²

The following criteria must apply in order for an individual to be considered for permission to work:

- the applicant must have waited more than 12 months for an initial decision by the Home Office on the asylum claim or fresh claim for asylum,
- the delay in the Home Office's decision must not have been the fault of the applicant,
- the claim for asylum or fresh claim must be ongoing, even if it is at the appeal stage.³

For further information on applying for permission to work, please see the Refugee Council's briefing on applying for permission to work while claiming asylum.⁴ There have been further changes to European Union legislation regarding access to employment, including reducing the waiting time to nine months, but the UK has not opted in to them. Thus the rules above continue to be relevant for those seeking to work.

Given that the majority of initial decisions for separated or unaccompanied children seeking asylum should be made quickly, in line with guidelines on handling children's applications, the restriction on work should not affect many young people. However, in practice the Home Office can take a long time to make decisions on applications, including fresh claims for asylum applications.

It is important to note that, even where an applicant is granted permission to work, asylum seekers' employment options are restricted to the jobs identified on the UK's official shortage occupation list.⁵ This list is updated relatively regularly and is available on the government website: <https://www.gov.uk/government/publications/tier-2-shortage-occupation-list>. Most

of the occupations on the list require qualifications and high salary rates. In addition, an individual will not be able to work as a self-employed worker, nor set up their own business.

Applications for permission to work should be dealt with by the Home Office caseworker who is dealing with the young person's asylum claim. If it is an older case, it will be the Complex Casework Directorate that deals with the case.⁶

Those applying to extend their leave to remain

Young people who have been granted UASC leave until they are 17 and a half years old will have permission to work. They will continue to have permission to work if they make a valid, in-time application to extend or vary their leave. This requires submitting the application before their leave expires on the correct form, with the relevant fee if required. If this application is submitted, the young person will be treated as having leave, on the same terms, until a decision is made on the application by the Home Office.⁷

Where the Home Office refuses further leave, the entitlement to engage in paid employment continues until the time for bringing an appeal of that decision expires (14 days from the day the refusal was sent), where no appeal is lodged. Where an appeal is brought within the 14-day time limit, entitlement to work will continue until the appeal is finally determined. If the appeal is allowed (and not challenged by the Home Office), then further leave will be granted on the same terms (permitting employment). If the appeal is dismissed, and either no further appeal can be brought or the time for appealing expires, then the individual becomes appeal rights exhausted (ARE) and no longer has the right to work.

Those with no leave to remain in the UK

When all their appeal rights are exhausted, a person has no leave to remain in the UK and is not permitted to work. There may be some separated or unaccompanied children or young people who also have no leave because they overstayed a visa or have never had permission to be in the UK. See the chapter on **types of immigration status** for more information.

It is currently a criminal and civil offence to employ an individual subject to immigration control if:

- they have not been granted leave to enter or remain in the UK, or
- their leave to enter or remain in the UK
 - is invalid,

- has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), or
- is subject to a condition preventing them from accepting the employment.⁸

The government plans to increase penalties on employers for employing those without permission to work.

A young person who works while not having the right or permission to do so will fall foul of an immigration offence, namely that they have failed to follow a condition or restriction of their leave.⁹ Under the Immigration Act 2016, 'illegal working' is now also a criminal offence for the individual. The new criminal offence of 'illegal working' included in the Immigration Act 2016 includes the ability to seize wages as the proceeds of crime.¹⁰

Demonstrating eligibility to work

All children and young people granted refugee status, humanitarian protection, discretionary leave, limited leave, UASC leave or indefinite leave to remain will be given a 'Biometric Residence Permit' (BRP), which will show what status they have. A letter from the Home Office granting status could also be used to demonstrate eligibility to work if the BRP has been lost and a replacement is being sought, although the Home Office states that this does not constitute proof of status.¹¹

As part of the process of applying for further leave to remain, the applicant must surrender their original status document. This means they will not be immediately able to show their right to work to a current or future employer, and proving their eligibility to work can often be problematic. If a solicitor or immigration adviser has assisted the young person to make a further leave to remain application or an application to vary their leave, the young person can request that they provide a headed letter confirming that an in-time, valid application has been made and this could be used as further evidence of eligibility to work. Additional evidence could take the form of a certified copy of the BRP (a copy of the BRP signed to say it is a true copy, usually by the solicitor or immigration adviser).

If an employer is looking to recruit an individual who has made an application for further leave to remain, they can contact the Employer Checking Service (ECS) to confirm their continuing entitlement to work at <https://www.gov.uk/employee-immigration-employment-status>. The ECS will clarify that the employee or potential employee has the right to work at the point of recruitment and that this entitlement can continue until a conclusive decision has been made. The Home Office will

send the employer a 'positive verification notice' to confirm that the applicant has the right to work. The employer must keep this document.

However, sometimes delays in applying for further leave to remain and being registered on the Home Office's database do occur. Practice shows that employers have been misinformed or have received the wrong information about the right to work for some separated young people. If they cannot confirm that a young person has made an application for further leave, evidence from a legal representative demonstrating that the application was sent in time may be helpful.

The Home Office has recently produced guidance for employers in relation to acceptable documents.¹² The Refugee Council and Equality and Human Rights Commission have also published joint guidance in relation to the right to work.¹³

Voluntary work and volunteering

In its guidance the Home Office distinguishes between voluntary work and volunteering. Volunteers are not workers for the purposes of the national minimum wage and do not qualify. Voluntary workers are still defined as workers, but they are exempt from being paid the national minimum wage, so they can give their time for free to charitable or public-sector organisations.

Those with valid leave in the UK can undertake voluntary work, but voluntary work cannot be undertaken by asylum seekers or failed asylum seekers awaiting the outcome of an application for asylum or further submissions, unless they have been granted permission to work.

Asylum-seekers and individuals who are appeal rights exhausted or have no valid leave are allowed to volunteer without obtaining permission to work, as long as the activity is 'genuinely voluntary' (i.e. the activity is not replacing a paid worker). The unpaid work must therefore be carried out 'on behalf of a charity, voluntary organisation or body that raises funds for either'. The Home Office guidance notes that:

- there should be no payment, other than reasonable travel and meals expenditure actually incurred (not an allowance for the same),
- there should be no contractual obligations on the volunteer,
- the volunteer is helping a registered voluntary or charitable organisation (or organisation that raises funds for either),
- the volunteering is for a public sector organisation, and

Applying for National Insurance numbers

Every person over the age of 16 who wishes to work or claim benefits, and has the immigration status that allows them to do so, must obtain a National Insurance number (NINO). This includes separated or unaccompanied young people who have been granted refugee status, humanitarian protection, limited leave, discretionary leave, UASC leave or indefinite leave to remain. In addition, asylum seekers who receive permission to work because they have been waiting for an initial decision on their asylum claim for over 12 months will need to be issued with a NINO.

When they turn 16, children in the care system (whether seeking asylum or not) may not have automatically acquired a National Insurance number via the 'juvenile registration' system. Therefore, a separate procedure has been developed which must now be followed. This system is administered by a specialist team within the Inland Revenue called the 'Looked After Children' section.

An application must be made through the young person's social worker and applications can be made on behalf of a child or young person in or leaving care up to the age of 20 (after the age of 20 the adult registration process must be used).

The social worker should apply for the NINO after a child is 15 years and nine months old by writing a letter to HMRC using their local authority's official letter-headed paper. The letter should say that the social worker wishes to apply for a National Insurance number for a looked after child and must include:

- the child's full name
- any previous names the child has used
- the child's date of birth
- the date the child went into care
- the child's current address
- the contact details of the social worker who has written the letter

In the case of a separated or unaccompanied child, photocopies of the child's Home Office documents should also be included. Examples of acceptable Home Office documents are:

- a letter granting leave and containing the young person's correct personal details (name and date of birth)
- a copy of the Application Registration Card displaying the same details.

The letter and photocopies of any documents should be posted or faxed to:

National Insurance contributions and Employers Office
HM Revenue and Customs
BX9 1AN
Fax: 0191 225 7384

If more information is needed HMRC will issue a CA3530 'Application for a National Insurance number for a child looked after by a local authority' form to the social worker to confirm the details required. The form should be completed and posted back to HMRC within one month. If it is not returned within a month, another request to register letter will have to be sent to HMRC. Once HMRC has received the required information they will send a letter to the child confirming their NINO.¹⁴

For unaccompanied or separated children who claim asylum aged 16 or over, in practice the Home Office should complete a NINO application at the beginning of the child or young person's substantive asylum interview. The Home Office then submit the application on the child or young person's behalf. In theory, this should mean that if there is a grant of refugee status or humanitarian protection or limited leave to remain, that child or young person should receive a NINO on a letter with their decision. If a NINO is not provided around the time of the decision, this will need to be chased with the Home Office.¹⁵

If the young person is applying for an extension of limited leave to remain, their documents will be with the Home Office. Therefore, it may be necessary to provide any Home Office letter acknowledging receipt of an in-time application and/or confirmation from the Employers Checking Service (see above) when they apply, which will confirm the timeliness of the application. A copy of the solicitor's letter making the application for an extension, along with a 'receipt' from the Home Office, indicating that the extension application is under consideration, might also be included.

For further information on the evidence required for a looked after child to be registered, please see the government website on making such a application.¹⁶

If the young person does not have a social worker but needs a NINO, they can call a helpline on 0300 200 3502. For further details please see <https://www.gov.uk/government/organisations/hm-revenue-customs/contact/national-insurance-numbers>.

Another option for young people who have turned 18 is to call Job Centre Plus (see <https://www.gov.uk/contact-jobcentre-plus> for contact details). They will check the individual's basic conditions and make an appointment to attend a Job Centre for an evidence of identity interview, after which the young person should receive a NINO.

work and training

- the volunteering is not a substitute for employment (i.e. fulfilling a role that a salaried worker would normally fulfil).

While one part of the Home Office guidance states that it does not 'support volunteering activities by anyone whose asylum application has been refused and their appeal rights exhausted' because they should be leaving the UK,¹⁷ there is no legal power to stop failed asylum seekers from volunteering and that has been accepted by the Home Office.¹⁸

Vocational training

Refugees, those with humanitarian protection and young people with limited leave to remain or indefinite leave to remain are entitled to apply for vocational training because they have the right to work in the UK. Asylum seekers and those whose asylum claims have been refused, unless they have permission to work, are restricted to vocational training that does not involve paid or unpaid employment. The Home Office has stated that asylum seekers can do vocational training where it is part of a college course. It cannot be work-based, where the training is part of a job. Any work placement that is part of a college course must be unpaid.¹⁹

how can you help?

- Provide information and support in finding a job or suitable voluntary opportunities, and assist the child or young person to seek out the skills and education to obtain such employment or opportunities – for example, information on where particular jobs are advertised, how to fill in an application form and guidance on interview techniques.
- Refer the young person to agencies that provide such support. There are specific refugee agencies that focus on supporting refugees into employment (see **contact details**).
- Help young people who are entitled to mainstream benefits or to work to apply for a NINO or ask their social worker to help them.

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endnotes

1. Council Directive 2003/9/EC, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:En:PDF>.
2. *R (on the application of ZO (Somalia) and others) (Respondents) v Secretary of State for the Home Department* [2010] UKSC 36.
3. Home Office, Asylum Policy Instruction: Permission to Work, April 2014, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/299415/Permission_to_Work_Asy_v6_0.pdf.
4. Refugee Council, Applying for permission to work while claiming asylum, October 2010, available at: https://www.refugeecouncil.org.uk/assets/0001/5771/permission_to_work_briefing_oct2010.pdf.
5. Paragraphs 360-360E of the Immigration Rules, available at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11b>.
6. Section 4.1, Home Office, Asylum Policy Instruction: Permission to Work, April 2014, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/299415/Permission_to_Work_Asy_v6_0.pdf.
7. Section 3C, Immigration Act 1971.
8. Section 21, Immigration, Asylum and Nationality Act 2006.
9. Section 24, Immigration Act 1971.
10. Home Office, Illegal working factsheet, available at: <https://www.gov.uk/government/publications/immigration-bill-part-1-labour-market-and-illegal-working>.
11. Home Office, An employer's guide to acceptable right to work documents, May 2015, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/441957/employers_guide_to_acceptable_right_to_work_documents_v5.pdf.
12. Home Office, An employer's guide to acceptable right to work documents, May 2015, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/441957/employers_guide_to_acceptable_right_to_work_documents_v5.pdf.
13. Refugee Council and Equality and Human Rights Commission, Employing Refugees: The documents required as evidence of entitlement to work in the UK, November 2014, available at: https://www.refugeecouncil.org.uk/assets/0003/4097/Employing_Refugees_-_Guide_to_documents_required_Dec_2014.pdf.
14. HM Revenue and Customs guidance, Apply for a National Insurance number for a looked after child, August 2014, available at: <https://www.gov.uk/guidance/national-insurance-number-applying-for-a-number-for-a-looked-after-child>.
15. Home Office, Procedures for issuing a NINO to asylum claimants granted leave to enter or remain in the UK, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257444/ninoguidance.pdf.
16. HM Revenue and Customs guidance, Apply for a National Insurance number for a looked after child, August 2014, available at: <https://www.gov.uk/guidance/national-insurance-number-applying-for-a-number-for-a-looked-after-child>.
17. Home Office, Full guide to illegal working, May 2013, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/304793/full-guide-illegal-working.pdf and Home Office, Asylum Policy Instruction: Permission to Work, April 2014, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/299415/Permission_to_Work_Asy_v6_0.pdf.
18. Refugee Action, Asylum seekers given the right to volunteer, 1 April 2014, available at: http://www.refugee-action.org.uk/about/media-centre/our_news/963_asylum_seekers_given_the_right_to_volunteer and Home Office Asylum Policy Instruction: Permission to Work, April 2014, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/299415/Permission_to_Work_Asy_v6_0.pdf.
19. Refugee Council, Short Guide on Access to Further Education: Asylum Seekers and Refugees, August 2011, available at: https://www.refugeecouncil.org.uk/assets/001/5918/FE_for_advisers_guide_Aug_2011.

healthcare

Young refugees and migrants can have complex physical and/or mental health issues for many reasons, including significant upheaval, family separation, trauma, and social difficulties. Some children and young people have experienced torture, violence, trafficking or trauma in their home country and/or on their journey to the UK. Many have lived in, or come from, areas where there is poor healthcare provision and they may not ever have had access to basic healthcare prior to arriving in the UK.¹

Separated and unaccompanied children and young people can come up against obstacles when attempting to access appropriate healthcare and support in the UK, such as:

- difficulties in registering with a General Practitioner (GP)
- language barriers
- lack of capacity and experience amongst GPs and other medical professionals when dealing with the complex problems (both physical and mental) faced by some refugees and asylum seekers
- lack of understanding about how the UK healthcare system works and what their entitlements may be
- charges for secondary healthcare for some individuals.

Primary Healthcare

Primary healthcare services are those that a patient receives at first contact with the healthcare system and include:

- registration with, and access to, a GP
- dental treatment
- eyesight tests
- family planning services
- some mental health services
- prescriptions.

NHS England has overall responsibility for primary care services in England. Local NHS England area teams have direct responsibility for core services and regulate those who provide services. Clinical Commissioning Groups (CCGs) replaced Primary Care Trusts on 1 April 2013. Clinical Commissioning Groups are clinically led, statutory NHS bodies responsible for the planning and commissioning of healthcare services for their local area.

You can find your local area team here: <http://www.nhs.uk/Service-Search/Area-Team/LocationSearch/1839>.

You can find your local CCG here: <http://www.nhs.uk/Service-Search/Clinical-Commissioning-Group/LocationSearch/1>.

The NHS is not a 'public fund' as defined by the rules on 'no recourse to public funds'. All separated children and young people regardless of immigration status should have easy access to primary healthcare. The recent NHS guidance on patient registration states that:

Under the terms of their primary medical services contracts, GP practices cannot refuse an application to join its list of NHS patients on the grounds of race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition.

Other than that, they can only turn down an application if:

- *The commissioner has agreed that they can close their list to new patients;*
- *the patient lives outside the practice boundary; or*
- *if they have other reasonable grounds.*

In practice, this means that the GP practice's discretion to refuse a patient is limited.²

No law or regulation exists that restricts a patient's right to access primary healthcare services because of their immigration status.³

Registration with a GP

GPs are normally the first healthcare professional a separated or unaccompanied child will encounter in the UK. GP services are not chargeable.

Local authorities should ensure that the young people in their care are registered with a GP as soon as is practical. A health assessment of all looked-after separated young people supported by children's services should be carried out under the Children Act 1989.

The NHS published new guidance for GP registration and operating principles for primary care in November 2015.⁴ This makes clear that:

A patient does not need to be 'ordinarily resident' in the country to be eligible for NHS primary medical care – although they should be to access secondary (hospital) care. In effect, therefore, anybody in England may register and consult with a GP without charge.

healthcare

It is within a GP's discretion to allow anyone to register with them, regardless of immigration status or length of residence in the UK. There is no expectation that doctors check the immigration status of a patient, and no duty for them to do so. Immigration status does not affect the right of a child or young person to GP services – whether that child is an asylum seeker, refugee, has limited leave to remain or is undocumented.

If the GP practice refuses to register a patient, they must have reasonable grounds for refusal to register which are not based on race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition.⁵ A practice which is already over-subscribed, for example, may reasonably close its list to all new applicants.

If a young person is turned away, the GP should give reasons for their refusal in writing and refer the individual to another GP. Where a child or young person is having difficulty being accepted onto a GP's practice list they should contact NHS England's Customer Contact Centre. Details are available at <https://www.england.nhs.uk/contact-us/>.

A GP will look after all of an individual's health needs, and decide if they need to see another health professional, for example a hospital doctor or someone in maternity or mental health. It is not necessary to have an NHS number before registering as this will be provided once the child or young person has registered.

If an individual is staying somewhere in the UK for fewer than three months, they can ask to be registered with a GP on a temporary basis. However, GPs should offer permanent registration where possible, as in doing so they are more likely to be able to offer ongoing care.

Secondary healthcare

The law on eligibility for primary and secondary healthcare is different. Secondary healthcare, the second stage of treatment, is usually provided by a hospital.

Secondary healthcare is available on the NHS, free of charge, for anyone who is 'ordinarily resident' in the UK. A person was previously regarded as 'ordinarily resident' if she or he was lawfully living in the UK voluntarily and for a settled purpose. However, the definition of 'ordinarily resident' changed under the Immigration Act 2014 and for non-EEA nationals is now limited to people who have 'settled status' in the UK (i.e. they have indefinite leave to remain). Those who do not have settled status may in some situations be charged for services.

However, certain secondary healthcare treatments are always free of charge regardless of the immigration status of the patient:

- A&E services (not including post-acceptance as an inpatient and outpatient appointments)
- Family planning services (not including termination of a pregnancy)
- Services not provided at a hospital, or under the direction of or by a member of staff at a hospital
- Treatments of certain communicable diseases such as measles, mumps, food poisoning, malaria and TB
- Treatment for a sexually transmitted disease (including testing, counselling and treatment for the HIV virus)
- Treatment of a physical or mental health condition (as long as the patient has not travelled to the UK for the purpose of seeking such treatment) caused by
 - torture (medical or other professionals could refer for treatment under this exemption),
 - female genital mutilation,
 - domestic violence, or
 - sexual violence.

Furthermore, treatment that is 'immediately or urgently necessary' must be provided to any person even if they have not paid in advance. This is a decision to be made by a clinician. Clinicians are also under General Medical Council duties and under a duty to promote and safeguard the welfare of children.⁸ The Department of Health's guidance reiterates that only clinicians can make an assessment as to whether a patient's need for treatment is immediately necessary, urgent or non-urgent. It is further noted that in order to do this, they may first need to make initial assessments based on the patient's symptoms and other factors, and conduct further investigations to make a diagnosis. These assessments and investigations will be included in any subsequent charges.

All maternity services, including routine antenatal treatment, must be treated as being 'immediately or urgently necessary'. However, this does not mean that it will be free of charge – instead payment may be sought after treatment has been provided.⁹ It is also important that treatment should not be delayed in order to determine payment issues.

Any individual with no permission to be in the UK, or with limited leave to remain in the UK, may have to pay for their secondary healthcare unless they fall under one of the exemptions, which include:

- Those who have paid the immigration health surcharge, or who are exempt from paying such a charge (see below)
- Refugees
- Asylum seekers, including those with fresh claims¹⁰
- A person seeking, or who has been granted, humanitarian or temporary protection under the Immigration Rules
- A person in receipt of support under section 95 of the Immigration and Asylum Act 1999 (asylum-seekers and some refused asylum-seeking families)
- A person in receipt of support under section 4(2) of the Immigration and Asylum Act 1999 (refused asylum seekers)¹¹
- Victims of human trafficking (who have been referred to the National Referral Mechanism and have received a positive reasonable grounds decision)
- Failed asylum seekers who are supported by a local authority under section 21 of the National Assistance Act 1948 or Part 1 of the Care Act 2014
- Children who are in the care of a local authority and children accommodated by a local authority
- Those with enforceable EU rights and their family members – i.e. their spouse/civil partner or child(ren) for whom they have parental responsibility
- A child born in the UK to an exempt parent is exempt for up to three months while still in the UK.¹²

The NHS charging guidance makes clear that victims of trafficking who are provided treatment prior to their being referred to the competent authority for identification must have any charges that have been incurred prior to a referral refunded or, if not yet paid, cancelled, when the Competent Authority provides a positive reasonable grounds decision. Moreover, if the competent authority goes on to establish that the person is not a victim of trafficking, no treatment provided during the time that the person was suspected as being a victim of trafficking, or provided prior to being referred to the competent authority for such an assessment, will become chargeable.¹³ For further information on trafficking, please see the chapter on **trafficking**.

Individuals who are exempt at the start of treatment can continue to receive a course of treatment without charge even if they cease to be exempt at some point, apart from those who are exempt because they have paid (or did not have to pay) the immigration health surcharge.¹⁴

A young person who has exhausted their appeal rights and is a failed asylum seeker (or in the case of an individual granted limited leave, when their leave finally expires and they become 'unlawfully present') would not be eligible. This is because they are not considered to be either 'lawfully resident' or 'ordinarily resident'.¹⁵

NHS bodies can share data with the Home Office on non-EEA patients with a debt of £1000 or more that has been outstanding for three months and the Home Office can then use that data to deny any future immigration application to enter or remain in the UK that the person with the debt might make.

Doctors of the World run free clinics in London (Bethnal Green and Hackney) and Brighton for those facing difficulties accessing healthcare – details are available on their website: <https://www.doctorsoftheworld.org.uk/pages/UK-Programme>.

Help with health costs, such as prescription costs

Asylum seekers on section 95 support will be issued with an HC2 certificate. Separated and unaccompanied children and young people who are under 16, or who are between 16 and 18 and in full-time education, will qualify for an HC2 certificate. Pregnant women or those who have given birth in the last 12 months also qualify for an HC2 certificate. Qualifying for this certificate means that a person is automatically exempt from paying statutory NHS charges, including:

- Prescription charges
- Financial support for travel costs to hospitals for treatment (includes investigations and tests)
- NHS dental charges
- Eyesight tests
- Financial support to help with the cost of glasses, wigs and fabric supports.

Over 16s not in full-time education are eligible for an exemption if they are on a low income or are supported by a local authority.¹⁶ To apply for a full help certificate (HC2), you must use form HC1, which is available from local benefit offices, NHS hospitals, dentists, opticians and pharmacists. Form HC1 can also be ordered online.¹⁷ The local authority will need to provide a letter to say how much income the young person receives as part of the application process. If the young person is eligible then they will receive an HC2 certificate, which shows that they are exempt from paying for these services. Asylum seekers can also qualify for an HC2 certificate, but this is issued by the Home Office as part of asylum support.¹⁸

healthcare

Immigration health surcharge

Since 6 April 2015, any non-EEA national making an application for limited leave to enter or remain in the UK for more than six months has to pay a 'health surcharge' alongside their application fee.¹⁹ This also applies to non-EEA nationals already in the UK applying to extend their leave. The surcharge is £200 per year (apart from students and their dependants for whom the surcharge is £150 per year) for the maximum period of leave which could be granted under the Immigration Rules. So, for example, if applying for two and a half years' leave, the applicant would need to pay a health surcharge of £500. Dependents will be charged the same amount as the main applicant – therefore an application with a dependent will need to include payment for both (in the example above they will have to pay £1,000). If no fee is paid then the application will be deemed to be invalid and will not be processed.

However, certain applications are exempt from the surcharge. These include:

- A claim for asylum or humanitarian protection
- A claim under Article 3 of the European Convention on Human Rights
- An application as a victim of human trafficking

- Destitution Domestic Violence Concession
- Any application for leave to remain made a child being looked after by a local authority.²⁰

The Home Office also has discretion to reduce, waive or refund all or part of the surcharge.²¹ There is no guidance on how this discretion might be used – it will be applied case by case on an exceptional basis. If an applicant is exempt from paying a fee for their application under the fee waiver policy it may also be possible that payment of the surcharge could be waived, but there is no formal policy on this.²²

Once paid, the health surcharge covers the individual for the period of leave granted and the period of time waiting for a decision when a valid, in-time application to extend their leave has been submitted.²³ The health surcharge cannot be imposed on those who made applications for leave to enter or remain before the new system came into force on 6 April 2015.²⁴

If an application is refused, the applicant should be automatically refunded without having to take any further action.

Mental health care

The different stages of the migratory process can cause mental distress or have a negative impact on mental health. This most obviously includes any traumatic experiences in the country of origin, which may have contributed to a forced migration, and the journey to the UK. However, experiencing racism, exploitation, trafficking and discrimination in the UK can also contribute to significant mental health problems, as can other factors such as poverty and adapting to a new society.

Research has found that many young separated and unaccompanied children have had emotional or possibly mental health issues, although very few of them were receiving any kind of emotional or mental health support.²⁵ Although it should not be assumed that all these young people have mental health problems (which can be stigmatising and could lead to counter-productive generalisations), it is important to recognise that many will have had severely distressing experiences, either in their country of origin or since arriving in the UK.

There is a debate about 'pathologising' or 'medicalising' refugee and asylum seeker health, with some mental health professionals believing that the majority of refugees have

a natural response to extraordinary experiences and that response should not be treated as a psychiatric condition. Instead, these professionals argue that in such situations supportive listening is very valuable,²⁶ and that the focus should be on supporting the enhancement of protective factors, such as developing a sense of belonging, being given time and space to think about their experience, having the opportunity to form consistent relationships with adults and children, and having the chance to achieve in education and to undertake leisure activities. However, it is also important that serious mental health problems are recognised so that young people receive any specialist help that they need.

There are three main types of specialist mental health services for young refugees and migrants, although it is important to note that this should not preclude children and young people from accessing other services. GPs are often the first point of contact for children and young people and can provide initial services, as well as make referrals for more specialist provision.

1. Child and adolescent mental health services (CAMHS) are the range of government health services and professionals working in the field of child and adolescent mental health. This includes psychiatrists, social workers, nurses, occupational

therapists, psychologists, psychotherapists, counsellors, family therapists, arts therapists, primary mental health workers, and outreach workers. CAMHS teams vary in the upper age limit of their clients – some teams only take referrals from under 16s, some up to 18 and some are now considering covering over 18s.

CAMHS can help with all kinds of mental health difficulties, including but not limited to violent or angry behaviour, depression, eating difficulties, low self-esteem, anxiety, obsessions or compulsions, sleep problems, self-harming and the effects of abuse or traumatic events. CAMHS can also diagnose and treat mental health issues such as bipolar disorder and schizophrenia.

For more information on your local service contact your local GP or primary care service. Referrals are normally made through a GP but others who may be able to make a referral to CAMHS include teachers or other school staff, health visitors, school nurses, social workers and youth counselling services. Some CAMHS services accept direct or self-referrals.

2. Non-governmental specialist mental health services, specifically supporting refugees and migrants. Each agency has its own referral procedures, including differences in who is able to make a referral. Examples include:

- Freedom from Torture (see **contact details**), which provides a free service including child psychotherapy and counselling in an individual or group work setting. They have centres in London, Glasgow, Manchester, Newcastle and Birmingham.
- The Helen Bamber Foundation (see **contact details**), based in London.
- The Baobab Centre for Young Survivors in Exile (see **contact details**), based in London.

3. Emergency services – for example, hospital accident and emergency departments.

ChildLine, the Samaritans and other support services are also available to help with specific experiences, such as rape, bereavement or drug addiction. For more information, see **contact details**.

Antenatal and post-natal healthcare

A number of separated or unaccompanied girls and young women are either pregnant or young mothers. This is sometimes a consequence of sexual exploitation or rape in the country from which they have fled, on the journey to the UK or within the UK. In certain cases, support workers who

are in contact with separated girls and young women suspect they may have been trafficked to the UK and not able to self-identify as victims of trafficking. Some young women may also be in exploitative relationships or be suffering from domestic violence. Young women in this situation will almost always need extra support but may not ask for it, as they will often not feel comfortable explaining their personal circumstances, out of fear and/or lack of trust.

Information on local maternity services can be obtained from the local NHS England area team or CCG, a health visitor or GP. Maternity Action also provide detailed fact sheets on entitlements and support for young mothers and NICE have detailed guidance on antenatal care for additional services provided for women at higher risk.²⁷

Asylum seekers, refugees and those with limited leave to remain are entitled to maternity care free of charge. Undocumented migrants are entitled to access NHS maternity care but may be asked to pay for it. NHS guidance states that maternity care is 'immediately necessary' care and must not be withheld because the woman is unable to pay in advance. Maternity care includes antenatal care, birth and postnatal care and includes HIV treatment during pregnancy. This is not widely understood and the woman may need to insist that the maternity service follow the NHS guidelines.²⁸

Consent

Consent to a health assessment should follow the General Medical Council's guidance.²⁹ In the case of separated or unaccompanied children, care should be taken to ensure that valid consent has been obtained to any invasive procedures. Children over 16 are presumed in law to be competent and can consent to their own medical treatment.³⁰ A child under 16 will only be considered competent to consent to a particular intervention if he or she has '*sufficient understanding and intelligence to enable him or her to understand fully what is proposed.*'³¹

If a child is considered not to be competent, consent must be sought from a person who has parental responsibility (PR). If no one with PR can be contacted (and this is usually the case for separated or unaccompanied children as the local authority does not take on parental responsibility for the child), the person who has care of the child may in certain circumstances provide the necessary consent. Where no one is able to give consent, because, for example, '*the child is homeless or is an unaccompanied refugee*', Department of Health guidance states that it is lawful '*to provide immediately necessary treatment on the basis that it is in the child's best interests.*'

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Young people with disabilities

There is a significant lack of research on disabled asylum seekers, refugees and migrants in the UK. However, they can face multiple barriers when accessing disability services. These include difficulties with language and appropriate interpreting services, immigration status-linked restrictions on support, lack of knowledge about rights and entitlements amongst both themselves and service providers, and the stigmatisation of disability among certain cultures. There are high levels of unmet need within this population in areas such as social contact, personal care, communication and support.

Children with disabilities are provided with support mainly provide by social care support through local authorities, alongside support from schools, the NHS and voluntary agencies. The support provided by children's services is mainly through the Children Act 1989 and accommodation and support should be appropriate to the child's particular needs.

Disabled children are also eligible for services under section 2 of the Chronically Sick and Disabled Persons Act 1970, and should be assessed for services under both Acts. Each local authority has an allocated paediatric consultant to which young people with disabilities and other health issues can be referred.

Refugees and those with UASC leave not receiving support under section 20 of the Children Act 1989 and unable to work will be able to claim either Income Support or Incapacity Benefit. An individual may also be awarded Disability Living Allowance (if under 16) or Personal Independence Payment (if 16 or over) if they *'have a physical or mental disability or both'* and if the disability is severe enough for them *'to need help caring for [themselves].'*

Female genital mutilation or cutting

Female genital mutilation (FGM) includes practices such as cutting or removing the clitoris, the removal of the labia and the narrowing of the vaginal opening. It comprises all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs whether for cultural, religious or other non-therapeutic reasons. FGM prevalent in a number of countries, including some countries in the north eastern region of Africa such as Somalia, Sudan, Ethiopia, Eritrea and Yemen, and parts of Western Africa including Mali, Guinea and Sierra Leone. FGM is practised either secretly in the UK (where it is illegal under the Female Genital Mutilation Act 2003), in their home countries or in third countries where girls may be taken for so-called 'holidays' to undergo FGM. The age at which FGM takes place varies from place to place, from soon after birth, through early childhood to adolescence, and sometimes even in older women. FGM can cause a range of short-term and long-term medical problems, from difficulties in childbirth, menstrual and urinary problems to serious infections following procedures, which can in extreme circumstances cause death. Genital mutilation may leave a lasting mark on the life and mind of the woman who has undergone it. In the longer term, women may suffer feelings of incompleteness, anxiety and depression.

Girls who are at risk of FGM can be protected under the UN Convention on Refugees (1951) as it can be categorised as persecution on the grounds of a person's membership of a particular social group.

Under the Female Genital Mutilation Act 2003, it is illegal to take a child or woman out of the UK in order to arrange for FGM to take place. Despite this, there has yet to be a successful conviction of someone who has committed the crime of FGM. It is also possible to apply for a FGM prevention order.³²

how can you help?

Accessing general health services

- Help ensure the young person understands the **different health services** available and how to access them, for example, registering with a GP and making appointments. If the young person has been turned away by a GP, help them find another.
- Young people should be provided with **information**, in a language they understand, on access to healthcare.
- Young people who claim to have been victims of **torture** need information about how to contact an experienced medical expert. Early referral in such cases can be crucial for a patient's asylum case, as well as providing assessment for treatment.
- Many young people will require an **interpreter** for a consultation – inform the health service being used that an interpreter is required prior to the appointment.
- Help ensure young people are aware of **what to expect** from the different health services available, for example, what kind of advice a family planning service provides. Also explain when they should access the different services available, for example, when it is appropriate to go to accident and emergency and when to make a doctor's appointment. The system may have been very different

in the country in which the young person was previously living.

- Find out about how to apply for a **free entitlement**, for example, free prescriptions, once a person has turned 18 (or 19 if in full-time education). See health contact details for information on where to get advice.
- If a young person is **appeal rights exhausted** make sure they understand what health services they are still entitled to access without charge.

Mental health

It is recognised by mental health professionals that it is particularly helpful for young refugees and migrants to have a **specific adult that they can talk to** and who is there to support them through a difficult time. This person does not need to have professional skills in providing emotional support but needs to be someone who is interested in and sensitive to the young person's needs.

If you have concerns about the mental health of a young person you are supporting and feel that they might need specialist help, you can support them in a number of ways:

- Call **Young Minds** which provides free, confidential information for any adult with concerns about the mental health of a child or young person (see **contact details**).
- **Try to discuss your concerns** with the young person to find out if they would like some additional help in dealing with their problems. Be sensitive to the fact that the young person may feel there is a stigma attached to mental health illness.
- Obtain a **referral** to a mental health service. This is usually done through the young person's GP, but children's services, school nurses or doctors, hospital or community paediatricians and health visitors can also refer young people or give guidance on who can.
- With the permission of the young person, discuss your concerns with the **social worker** responsible for them.
- With the permission of the young person, make a referral to a **specialist mental health service**, or encourage the young person to make a self-referral. The referral procedure varies according to each agency (see **contact details**).
- Where a child or young person is in the care of a local authority, the local authority should include an assessment of their mental health within their general assessment (child in need plan, care plan or pathway plan), which should be updated regularly.
- If a child or young person has been waiting an unreasonably long time to access CAMHS, an individual might consider helping them to make a complaint. Complaints should be made to the person or organisation providing the service first, such as the GP, dentist, hospital or pharmacist. Alternatively, it is possible to complain to the

commissioner of that service – either NHS England (www.england.nhs.uk) or the area clinical commissioning group (CCG). The Patient Advice and Liaison Service (PALS) offers confidential advice, support and information on health-related matters. It can help resolve concerns or problems with using the NHS. The nearest PALS office can be found on the NHS Choices website: www.nhs.uk.

Antenatal and post-natal care

- Help ensure the young woman **understands** the various types of antenatal and post-natal care available to her and what to expect at each stage – before, during and after birth (this varies across primary care trusts) – and how to access the services she needs.
- Ensure pregnant young women understand they have **choices** – adoption, termination, having a baby – and refer to appropriate agencies to obtain this information.
- Many young women will require an **interpreter** for a consultation – inform the health service being used that an interpreter is required prior to the appointment.
- Find out about how to apply for **free entitlements and maternity and childcare benefits**. For example, pregnant women are entitled to free prescriptions and free dental treatment.
- Young women will very often need **practical support** in attending GP and hospital appointments and preparing for the labour and birth of the child. In some places British Red Cross and other NGOs may have volunteers who can help refugees and asylum seekers access the support they need. They will attend appointments with their client and also do home visits once the baby is born, giving practical support (see **contact details**).
- A young woman who becomes **pregnant after being raped** will require extra support. It may be appropriate to refer the young woman to **specialist counselling services**. You may, however, never know the circumstances in which the young woman became pregnant. In this situation, it is important not to make assumptions and be sensitive to the fact that the pregnancy may be due to being raped or sexually exploited.
- It is important to be aware that some girls and young women who are pregnant or are young mothers may have been **trafficked** to the UK (see the chapter on **trafficking**).
- Be sensitive to **cultural and religious issues** when supporting a young person. For example, a young woman may be expecting a lot of support once the baby is born because in her culture the extended family traditionally provides a lot of support. In such circumstances it is important that the young woman is prepared to have to do more herself. The young woman also may not be familiar with the medical approach to pregnancy and birth in the UK and may need some guidance.

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- If a young woman who is expecting is receiving asylum support from the Home Office, ensure that the **accommodation provided has adequate facilities for children**. This should include adequate cot, highchair and sterilisation equipment.

Disability

- Be aware that some young people with disabilities will be from countries where there is a lack of rights and support for disabled people. They may not be aware that, in the UK, disabled people should be treated as equal members of society, that they have **specific rights and entitlements**, and that there are laws to protect those rights. Encourage them to access their rights – see **contact details** for information on organisations which can assist.

Female genital mutilation (FGM)

- Whatever your concern regarding a young woman and FGM, this must be **handled sensitively**, taking into account cultural issues and ensuring the welfare of the young person is paramount.
- If you suspect that a young woman is **leaving the UK to have FGM performed** in another country – which would be against UK law – it is important to get advice from specialists on what to do. See **contact details** for organisations that can give advice.
- If you are aware that a young woman has had FGM performed and either wants to undergo corrective treatment or is having medical problems as a result of it, help the young woman access the **medical help** to which she is entitled (see **contact details** for links). If not, it may be possible to travel to another part of the country to obtain such assistance.

endnotes

1. Heptinstall, T et al. (2004). 'Asylum Seekers: a health professional perspective'. *Nursing Standard* 18 (25) pp. 44-53; Refugee Council, 'First do no harm: denying healthcare to people whose asylum claims have failed', 2006; British Medical Association, 'Access to health care for asylum seekers and refused asylum seekers'.
2. Part 2.1, NHS England, Patient Registration Standard Operating Principles for Primary Medical Care (General Practice), November 2015, <https://www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2015/11/pat-reg-sop-pmc-gp.pdf>
3. Regulation 3(7) The National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002 at <http://www.legislation.gov.uk/uksi/2002/2375/regulation/3/> & Migrant Rights Network, 'Access to Primary Health Care for migrants is a right worth defending', January 2011, at www.migrantsrights.org.uk/files/Access-to-Health-Care.pdf
4. NHS England 'Patient Registration Standard Operating Principles for Primary Medical Care (General Practice) at <https://www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2015/11/pat-reg-sop-pmc-gp.pdf>
5. Section 4 & 29, Equalities Act 2010; Section 14, Human Rights Act 1998
6. Regulation 9, National Health Service (Charges to overseas visitors) Regulations 2015 at http://www.legislation.gov.uk/uksi/2015/238/pdfs/uksi_20150238_en.pdf but also see associated guidance (chapter 1) – link at endnote 16 below
7. A full list of covered conditions is in schedule 1 of the 2015 regulations – see endnote 10 below for link
8. For further information, see GMC website and particular guidance on children - http://www.gmc-uk.org/guidance/ethical_guidance/13260.asp
9. For further information, please see Department of Health, Guidance on implementing the overseas visitor hospital charging regulations 2015, Chapters 8 and 12 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/496951/Overseas_visitor_hospital_charging_accs.pdf
10. Department of Health Guidance on Implementing Overseas Visitors Hospital Charging Regulations 2015, acknowledges fresh asylum claims to be included, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/496951/Overseas_visitor_hospital_charging_accs.pdf
11. Please note that, under the Immigration Act 2016, section 4 support will change to section 95A support in the next year. Commencement and regulations relating to this change have not been announced at the time of publication
12. Part 4 'Overseas visitors exempt from charges', The National Health Service (Charge to Overseas Visitors) Regulations 2015
13. Page 66, Department of Health, Guidance on implementing the overseas visitor hospital charging regulations 2015 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/496951/Overseas_visitor_hospital_charging_accs.pdf
14. Regulation 3, The National Health Service (Charge to Overseas Visitors) Regulations 2015
15. Section 175 of the National Health Service Act 2006 provides that those who are not 'ordinarily resident' in the UK could be charged for treatment
16. Details of the grounds for this exemption are available at: <http://www.nhs.uk/NHSEngland/Healthcosts/Documents/2014/HC1-SC-April-2014.pdf>
17. Form HC1 is available online at www.nhsbsa.nhs.uk
18. Home Office, 'Asylum Support – what you'll get' at <https://www.gov.uk/asylum-support/what-youll-get>
19. Section 38, Immigration Act 2014
20. Schedule 3, 1(d), Immigration (Health Charge) Order 2015 & Section 22(1), Children Act 1989
21. Section 8, Immigration (Health Charge) Order 2015
22. For further information, see No Recourse to Public Funds Network, 'Secondary healthcare charging reforms due to be implemented in April 2015' at <http://www.nrpfnetwork.org.uk/News/Pages/Immigration-Health-Charge.aspx>
23. In this scenario, an application would have their leave extended under section 3C or 3D of the Immigration Act 1971
24. Part 4 'Overseas visitors exempt from charges', The National Health Service (Charge to Overseas Visitors) Regulations 2015
25. For further information, please see: Department of Health (2001) 'Seeking Consent: Working with children' & Peter J Aspinall, 'The health and healthcare of vulnerable migrant children'
26. For further details, please see Royal College of Paediatrics and Child Health (1999) The Health of Refugee Children – Guidelines for Paediatricians
27. See NICE website for further information: <https://www.nice.org.uk/guidance/conditions-and-diseases/fertility-pregnancy-and-childbirth/pregnancy>
28. For further information see Maternity Action: Undocumented Migrants: maternity and benefits, May 2015 at <http://www.maternityaction.org.uk/advice-2/mums-dads-scenarios/3-women-from-abroad/maternity-rights-and-benefits-undocumented-migrants/>
29. General Medical Council Guidance on consent is available at: http://www.gmc-uk.org/guidance/ethical_guidance/consent_guidance_index.asp
30. Section 8 of Family Law Reform Act 1969
31. *Gillick v West Norfolk and Wisbech Area Health Authority* [1985] 3 All ER 402 (HL)
32. Department of Health, 'Get a female genital mutilation protection order, available at: <https://www.gov.uk/female-genital-mutilation-protection-order>

travelling overseas

Unaccompanied or separated children are likely to have restrictions on where they can travel depending on their immigration status, but the Home Office can issue travel documents for those without passports where appropriate. It can take a long time to process travel documents and therefore an application should be submitted well in advance of the date of travel.

It should be noted that an individual cannot travel in and out of the UK legally without a travel document. Neither a Biometric Residence Permit, immigration status document, ARC card nor letter confirming status from the Home Office are sufficient for travel.

Asylum seekers

When an asylum application is made, the Home Office will keep the applicant's passport, if they have one, for as long as the application or appeal is pending. If a request is made to the Home Office for the return of a passport in order to travel outside the Common Travel Area (a passport-free zone that comprises the islands of Ireland, Great Britain, the Isle of Man and the Channel Islands), the asylum application will be deemed to have been withdrawn.¹ If the applicant travels abroad without first requesting the return of their passport, the asylum application will also be treated as withdrawn upon embarkation for any destination outside the UK. Therefore, an individual awaiting the outcome of an asylum claim or appeal cannot travel abroad without being deemed to have withdrawn their asylum application.

Refugees

Recognised refugees will be issued a Biometric Residence Permit stating that they have refugee status. They are not permitted to travel on their national passport since they are no longer under the protection of their country, and cannot travel on their Biometric Residence Permit alone.

If a child is granted refugee status, they can apply for a Convention Travel Document (CTD). The document is blue. They must have permission to remain in the UK for at least six months from the date the application is submitted. It will usually be valid for the same period as the period of leave, or, if the individual has indefinite leave to remain, for ten years. It entitles the holder to travel to any country except their country of origin, from which they fled persecution. However, some countries will require CTD-holders to obtain a visa before entering the country, and enquiries should be made at

the embassy of the intended destination. A child cannot be named on the CTD of his/her parent or guardian.

Refugees cannot hold both a CTD and their own national passport. If a person wants their national passport back they would first have to return any CTD they hold, and if they chose to travel on their own national passport they would be in danger of losing their refugee status.²

Those with humanitarian protection, limited leave, or discretionary leave

Since March 2008, people with humanitarian protection or limited leave to remain who cannot obtain a passport from their country of nationality have been able to apply for a Certificate of Travel (CoT) in order to allow them to travel. The CoT is a black document.

If a child has temporary permission to stay in the UK (limited leave to remain), the CoT will usually be valid for the same period as their period of leave.

If a child or young person is applying for a CoT they must obtain a letter from their embassy or High Commission showing that their application for a passport or travel document was formally and unreasonably refused, and must present this to the Home Office along with reasons as to why the refusal was unreasonable. If they are unable to request or provide this letter, a reason must be presented to the Home Office. An example of a reason that may be accepted is if the individual was granted humanitarian protection on the basis of persecution by the authorities in their home country. This will normally be stated in the Home Office decision letter. It is important that any applicant provide as much relevant information and evidence as possible to support their application.

If the individual's country does not have an embassy in the UK, or their embassy is unable to process their passport application, it may not be necessary to prove that an application has been unreasonably refused. However, the Home Office may then issue a CoT that is valid for only one year, depending on the circumstances.

If an application for a passport is being processed but this will take an unreasonably long time, the Home Office may consider giving the individual a CoT if that individual can prove that they have an urgent need to travel for compelling and compassionate reasons, which may include essential educational or religious trips, among others.

travelling overseas

Some countries do not accept CoTs as valid travel documents. Countries that are party to the Schengen agreement – including Spain, Portugal, Germany, France, Greece and Italy – and South Africa are examples of countries that will not usually accept a Home Office CoT as a valid travel document. It is important to check with the authorities of the country the person wishes to visit before applying for a CoT.

Other travel documents

Other potential travel applications that can be made are as follows:

- One-way travel document
 - This allows for one journey out of the UK
 - It cannot be used to travel back to the UK or for any further journey
- Stateless person's travel document
 - A child or young person can apply for this if they are recognised as stateless
 - A stateless person is someone who is not considered as a national of any country under their laws
 - The document is red

Applying for travel documents

An application for a travel document should be made using the Home Office travel document application form (TD112). The form, and accompanying guidance, is available on the Home Office website.³

Section 7 of the form relates specifically to children (those under 18 years old). The parent, legal guardian, or other

person (or body) with parental responsibility for the applicant must give the necessary consent by completing part of section 7.

The rules relating to parental consent can be a problem for unaccompanied or separated children who are looked after by a local authority but are not subject to a care order and are not wards of court (an official of the court can sign for parental responsibility decisions if the child is a ward of court) because no one has parental responsibility. If the child is under 16 there is a problem as no-one is able to personally sign the consent box at 5.3 as having parental responsibility. In this scenario, a detailed letter from the child's social worker outlining, for example, that they care for the child; that there are no parents or carers to provide consent; and why obtaining a document is in the child's best interests might be useful when making such an application. Any views of the child in relation to why they want a travel document and why it is important to them would also be valuable.

If the child is aged 16 or 17 and there is no-one with parental responsibility for them, only part of section 7 has to be completed and a written letter for the absence of anyone to give consent must be provided to the Home Office at the same time as the form is submitted. This letter should provide any information known about the parents and why they are not able to consent, as well as details of who is caring for the child.

Another feature of the travel document application is the need to obtain a declaration by a professional person in section 9 of the form. The Home Office defines a 'professional person' as the following:

- An immigration adviser regulated by the Office of the Immigration Services Commissioner (OISC)
- An immigration adviser regulated under the Immigration and Asylum Accreditation Scheme

Applying for travel documents

Your status	Type of travel document	Adult fee	Child (15 or under) fee
Refugee	Convention travel document	£72	£46
Stateless	Stateless person's document	£72	£46
You want to leave and not come back	One-way document (also known as an IS137)	£72	£46
Refused a passport by your own national authorities	Certificate of travel	£218	£109

Table correct as of February 2016 – check Home Office website for up to date fees: <https://www.gov.uk/apply-home-office-travel-document/overview>

- solicitor
- bank manager
- doctor
- magistrate
- minister of religion
- police officer
- prison officer
- probation officer
- social worker
- teacher

The professional person must complete the whole section and certify and sign one photograph of the applicant with the statement 'I confirm that this photograph is a true and correct likeness of [applicant's name]'. They must also sign and date the section, as well as provide the official stamp of the organisation they work for (if they have no stamp, a letter will be needed confirming the person's professional status).

The child or young person will also need to provide the following, if they have them, when making an application (all documents submitted should be originals): photographs; immigration status documents; leave to remain letters; expired travel documents; and proof of guardianship/parental responsibility.

As noted in the table above, payment of a fee is required when applying for a travel document. For children in the care of a local authority this will need to be paid by children's services as part of their duties under section 17 of the Children Act 1989, and care-leavers should also potentially be supported to make such an application

There is no legal aid available for making a travel document application. It is important, particularly for children and young

people where consent is an issue, to obtain immigration advice before making such an application. If the child is looked-after and accommodated, any legal fees should be paid by children's services as part of their duty under section 17 of the Children Act 1989.

Travel to the country of origin

Refugees, those with humanitarian protection or those with limited leave to remain who choose to visit the country from which refuge was sought may have their leave to remain withdrawn on return to the UK. This is particularly important for those who have been granted status on the basis of their fear on return to their home country. The Home Office has powers to enable the withdrawal of protection.⁴ It is also important to note that, for a refugee, even simply obtaining their own national passport could trigger an active review of their status and could lead to the Home Office seeking to revoke their refugee status.

Young refugees should be made aware of the dangers of returning to their former home country for a visit, even after many years of living in the UK, and seek advice before making any such trip. Young people who wish to return voluntarily to their country of origin can get help with this and should obtain legal advice before doing so.

endnotes

1. Home Office, Asylum Policy Instruction: Withdrawing Asylum Claims, June 2016, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/530462/Withdrawing-Asylum-Claims-v5.0.pdf.
2. Home Office, Asylum Policy Instruction: Travel Abroad, 2013, available at: <https://www.gov.uk/government/publications/travel-abroad-process>.
3. Home Office, Application for Home Office travel document: Form TD112 BRP & Guidance Notes, available at: <https://www.gov.uk/government/publications/application-for-home-office-travel-document-form-td112-brp>. The Home Office also have a detailed guidance note in their modernised guidance section, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/488177/Home_Office_travel_documents_guidance_v6.0EXT_clean.pdf.
4. Home Office, Immigration Rule 339A, available at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11-asylum>; Home Office, Asylum Policy Instruction: Revocation of refugee status, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/493918/revocation_of_refugee_status_v4.0_EXT.pdf.

trafficking

Human trafficking is defined as:

*the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.*¹

Human trafficking therefore consists of three basic components: the action, the means, and the exploitation. However, child victims of trafficking are defined differently: as those who are recruited, transported, transferred, harboured or received for the purpose of exploitation. Consent to exploitation by a child victim of trafficking is therefore irrelevant. Child victims of trafficking are deemed not to have the legal capacity to 'consent' to their trafficking and so if they have been the victim of a relevant 'action' (recruitment, transportation, transfer, harbouring or receipt) for the purpose of 'exploitation' then any apparent acceptance of this on the part of the child is irrelevant.

Trafficked children may have been trafficked internally within the UK as well as across national borders. This is different from smuggling children into the UK, which is solely about facilitating travel to the country. However, it is important to note that it can be difficult to identify whether someone has been trafficked or smuggled in some situations and it is not always initially clear as to whether someone has been trafficked.

There is no legal definition of modern slavery but the Home Office published a modern slavery strategy which states that 'Modern slavery is a complex crime that takes a number of different forms. It encompasses slavery, servitude, forced and compulsory labour and human trafficking.'²

Children may be trafficked for various reasons, including:

- sexual exploitation
- forced labour
- domestic servitude
- unpaid work/debt bondage
- criminal activities (e.g. cannabis cultivation, begging, street crime)
- benefit fraud
- application for residence
- organ harvesting
- forced marriage

Once in the UK, many trafficked children are forced to work in private households, restaurants, factories, agriculture and domestic servitude. They may be forced to work for criminal gangs or individuals.

There are various means by which children can be trafficked into the UK. They could enter as separated children, as visitors, as students, on exchange programs, fraudulently as dependents of adults, as part of private fostering arrangements, through contracts for domestic staff, or through bogus marriage arrangements.

A child is a victim even if they have not been exploited yet, for example, because a police raid takes place before the exploitation happens. It is the purpose which is key rather than whether or not exploitation has actually occurred. Even if the UK authorities intervene and prevent exploitation taking place in the UK, victims may have experienced serious trauma in their home country or on the way to the UK and may still be in need of support.

A person may also still be considered a victim of trafficking even if the trafficking or exploitation was historic. This is because, while they may have been trafficked a long time ago or are far removed from the trafficker, they will still have been subjected to exploitation and may also still be traumatised by their experiences. This is the case whether the exploitation occurred in the UK or overseas.

The National Referral Mechanism

Following the UK government's ratification of the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT), which came into force on 1 April 2009, the government has committed itself to minimum standards for the protection of victims of human trafficking. Article 10 of ECAT requires public bodies to identify victims of human trafficking.³

The UK implemented this requirement, at least in part, by creating the National Referral Mechanism (NRM). This means there is a particular process to be followed when it is suspected that an adult or a child might be a victim of trafficking. In the case of a child, the child's best interests should be a primary consideration in the decision whether to make, or not to make, a referral to the NRM. The Home Office have provided detailed guidance for frontline staff and competent authorities.⁴

There has been a review of the NRM⁵ and pilots have been started in some areas in the UK with a view to reforming the process. In 2015 the UK government introduced the Modern

Slavery Act, which extended protection to all identified victims of modern slavery, including victims of trafficking, established the role of the Independent Anti-slavery Commissioner and

introduced the idea of independent child trafficking advocates (discussed further below).⁶

Identifying a child victim of trafficking

Child trafficking cases are often complex. A child may be unaware that they have been trafficked, or may deny past or continuing exploitation in order to protect their family or the trafficker. Identity documents – if these exist – may be false, and children are often coached by their traffickers to adopt false identities, false personal details, and to deny any abuse or mistreatment.

Such young people may have been threatened with harm to themselves or their families if they do not do as they are told, or if they tell anybody about what is happening to them. Members of their family, or the child themselves, may have agreed to pay money or work to pay off the money for the journey and so be subject to debt bondage, with threats of violence against the child or their family should they fail to comply.

Some are told by traffickers to claim asylum as unaccompanied children. Others may arrive claiming to be adults seeking asylum, or under false passports, student visas or tourist visas, which have been arranged by the trafficker. Some young people may arrive accompanied by an adult who is the trafficker. Many do not come to the attention of statutory or voluntary service providers until they have been in the country for months or years.

A trafficked child may be found in a range of different circumstances, from a police raid on a brothel to a child raising issues of concern at their school. The child may be referred to a social worker, or to the Home Office official, who should be alert to the possibility of trafficking. A suspected child victim of trafficking should be automatically referred to the local authority children's services department.

Even when they do come to the attention of statutory or voluntary sector service providers, children and young people who have been trafficked may not disclose what has happened to them and may deny that they have been exploited, or disclosure may take a long time. Children do not often self-identify as victims of human trafficking and may have been coached by their traffickers as to what to say about their identity and their circumstances.

Trafficked children and young people are often extremely vulnerable and may be traumatised. It is the responsibility of professionals who come into contact with them to provide support and protection, and those dealing with at-risk children should be aware of trafficking profiles, trafficking routes and arrangements, as well as the types of control exercised by different traffickers. However, knowledge of trafficking amongst social care professionals and the provision of support services across the UK can be patchy, with access to specialist support often determined by a child's immigration status.

It is important that professionals working with young migrants are aware of signs indicating that a child may have been trafficked. The London Safeguarding Children Board has put together guidance and assessment tools to help agencies identify and support children who have been trafficked. This includes an 'assessment framework' with different indicators to look for, such as:

- Signs of malnourishment
- Unexplained phone calls while in a placement
- Money or possessions which are unaccounted for;
- Signs of physical or sexual abuse
- Going missing from local authority care
- Fear of authority figures
- A prepared story which is very similar to that of other children
- A history with missing links and unexplained moves
- Showing fear for their family in the country of origin
- Lack of knowledge of where they are (because they are moved frequently to escape detection)

The toolkit can be found at <http://www.londonscb.gov.uk/trafficking/>.

trafficking

Identifying a victim of trafficking: what to do next

The gateway to protection and support as a victim of trafficking is identification as a victim. When a professional or practitioner has suspicions that a child may have been trafficked, there is an established process to follow to ensure the child has the appropriate support, and any prosecution of the traffickers is pursued. In the UK this process is the National Referral Mechanism (NRM) for identifying and protecting victims of trafficking.

Referral to the NRM

Referrals to the NRM are currently made by 'first responders'. First responders are public agencies or other bodies that are recognised in this role, including the police and local authorities. All first responders are undertaking a public function, so should any first responder inappropriately refuse to refer a child into the NRM (for example refusing where this is not compatible with the best interests of the child) then a challenge could be brought against the refusal by judicial review in the High Court.

The following are currently recognised as first responders in England (Bawso is a first responder in Wales and Trafficking Awareness Raising Alliance (TARA) in Scotland):

- The National Crime Agency
- Barnardo's
- Police forces
- Unseen
- UK Border Force
- Gangmasters Licensing Authority
- UK Visas & Immigration
- Refugee Council
- Local authorities
- New Pathways
- Salvation Army
- Kalayaan
- Migrant Help
- Medaille Trust
- NSPCC Child Trafficking Advice Centre

Referring a child into the NRM involves completing a referral form which will then be assessed by the relevant competent authority. There is a separate referral form for children. All

completed referral forms should first be sent by first responders to the UK Human Trafficking Centre (UKHTC), which then assigns a competent authority.

There are two competent authorities:

- UK Human Trafficking Centre - to assess cases where the victim is British or where there are no immigration issues.
- Home Office - to assess cases where trafficking may be linked to other immigration or asylum issues.

In children's cases it is not necessary to obtain a child's consent to refer them to the NRM. Although it would always be good practice for children to have consented to referral, making a referral without the consent or knowledge of the child may permit the identification of children who have been trafficked where fear of their traffickers has prevented them from acknowledging the fact. Under section 52 of the Modern Slavery Act 2015, public authorities, such as local authorities and the police, are under a duty to notify the Home Office if they have reasonable grounds to believe that someone may be a victim of modern slavery. Although the duty to notify applies to both children and adults, as children do not need to consent to enter the NRM, specified public authority agencies should generally complete a full NRM referral, rather than a notification. This enables fuller information gathering and assessment of the case to be completed.

The assessment tool, referral form, guidance and further information on trafficking can be found on the Home Office website.⁷

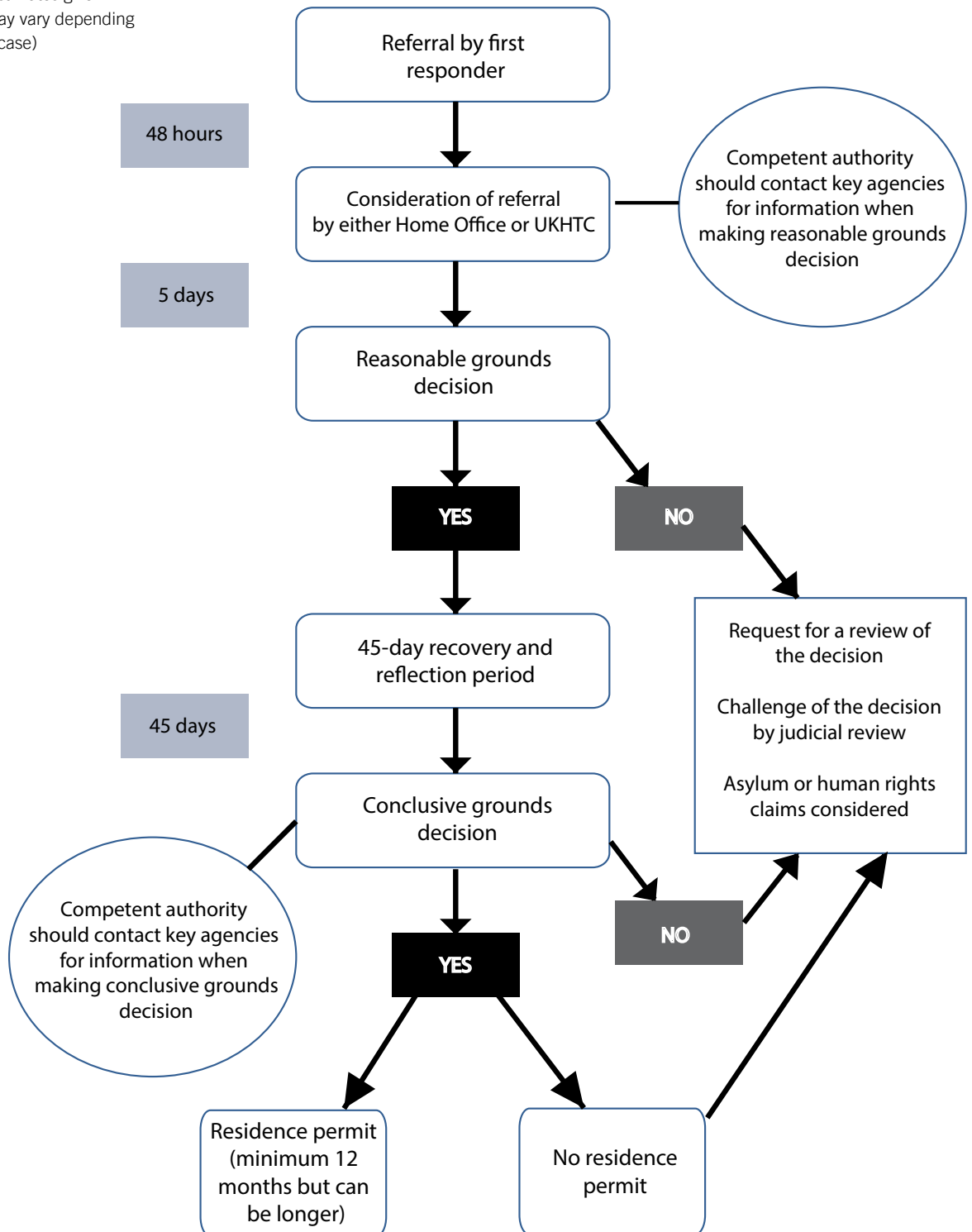
Reasonable grounds decision

Once the referral to the competent authority has been made, a 'reasonable grounds' decision (the initial decision regarding the referral) should be made within five working days, although this can be extended where necessary. This decision is not a thorough assessment of the case, but instead indicates whether the competent authority believes there to be reasonable grounds for believing that the person referred has been trafficked. It is important to note that the test at this stage is a low one - the test is 'from the information available so far I suspect but cannot prove' the individual is a victim of trafficking.

Where there are reasonable grounds for believing that the person is a victim of trafficking they will be granted a 45-day 'recovery and reflection period' to enable them to access safe accommodation and support. The standard of proof for this decision is low to ensure that where there is the possibility that

Table 3: FLOWCHART OF NATIONAL REFERRAL MECHANISM

(time estimates given here may vary depending on the case)



trafficking

a person has been trafficked, it is investigated. If there are no reasonable grounds that someone is a victim of trafficking, the competent authority should then consider whether the individual is a victim of modern slavery.

If the competent authority decides that there are no reasonable grounds, there is no right of appeal; the only way to challenge this decision is through judicial review in the High Court.

Recovery & Reflection Period

No action to detain or remove a person can be taken during the recovery and reflection period and a full needs assessment should be undertaken to ensure that the trafficked person has access to adequate support and recovery services. In the case of trafficked children, full needs and medical assessments should be undertaken when a referral to children's services is made. This support should not be delayed or reliant on any findings of the NRM. For young people over the age of 18, however, needs assessments are not automatically conducted by the competent authority and must be requested.

During the recovery and reflection period, the competent authority should carry out any evidence gathering and enquiries which may be necessary, and should, before the end of the recovery period, make a 'conclusive grounds' decision about whether or not the person is a victim of trafficking.

In general the UKHTC makes conclusive grounds decisions in cases involving British and European Economic Area citizens and the Home Office makes conclusive grounds decisions in cases where the trafficking decision may affect a person's immigration status.

Home Office guidance states that the competent authority must make every effort to secure all available information that could prove useful in establishing whether there are conclusive grounds. This includes evidence from those supporting the potential victim, the police, and the local authority. They must give due weight to the views of the local authority and any organisations supporting the potential victim, as well as take into account any medical reports submitted.

In more complex cases the reflection and recovery period may be extended while a decision is made. As with a negative reasonable grounds decision, a negative conclusive grounds decision can only be challenged by the process of judicial review in the High Court.

Residence permits

Article 14 of the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) outlines that member states should issue renewable residence permits to victims when required: for example owing to the personal situation of the individual and/or for the cooperation with investigations or criminal proceedings against the trafficker. Article 14 further states that any residence permit for child victims should be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions.

The Home Office guidance states that residence permits can be granted to trafficked children in the UK in the following circumstances:

The table below shows the reasonable grounds and conclusive grounds decisions broken down by the top five nationalities for referrals of minors for January - June 2015.⁸ There were 982 referrals in 2015 in total – these nationalities made up 68% of the total referrals. 61% of minor referrals were male.

Nationality	Referrals for January-June 2015	Positive Reasonable Grounds Decision	Positive Conclusive Grounds Decision
Albania	89	79	10
Vietnam	87	67	8
United Kingdom	67	64	56
Nigeria	17	13	0
Eritrea	16	8	2
TOTAL	276	229	76

- they have particularly compelling personal circumstances which justify a grant of leave to allow them to remain in the UK (such as medical conditions, mental health issues, need for recovery)
- they need to stay in the UK in order to pursue a claim for compensation against their traffickers
- the victim needs to stay in the UK to assist with police enquiries (the victim needs to have agreed to cooperate with the enquiry, and the police must make a formal request for them to be granted leave on this basis)

In the UK, when a child or young person receives a positive conclusive grounds decision in the NRM, the competent authority should consider whether they require a residence permit. This would be a renewable residence permit, granted for a minimum of 12 months and up to 30 months (two and a half years). However, they do have discretion to provide a permit for less than 12 months or more than 30 months should it be considered appropriate.

In most cases the child will need legal assistance to collect the evidence to show why they require a residence permit. This should be submitted with legal representations to the competent authority before a conclusive grounds decision is made. Evidence that could be submitted includes:

- any police reference numbers or evidence of ongoing investigations/cooperation
- a statement outlining what happened and any ongoing health problems
- medical evidence, including psychiatric reports, scarring reports and medication
- letters of support from support organisations, schools or colleges
- Evidence of the need for ongoing support/medical treatment
- Evidence of the lack of support available in the country of origin
- Any evidence of a compensation or damages claim being made and the progress of same

There are no appeals against negative decisions at either stage (although a person can ask to have their case reviewed) and there is limited legal representation (see below) through this process. However, if the trafficked child has not made an asylum claim, and has received a decision that there are no personal factors meriting a residence permit, they could possibly have a right to apply to challenge the decision through a judicial review.

Asylum and human rights applications

The NRM operates alongside existing European, asylum and human rights law, so those who are trafficked may make other applications to remain in the UK based on rights under these laws. If a trafficked child has also made an asylum application and they succeed on the grounds of either human rights or humanitarian protection, they should be granted the highest form of leave available.

UK case law has confirmed that both 'former victims of trafficking' and 'former victims of trafficking for sexual exploitation' are capable of being considered a particular social group because of their shared common background or past experience of having been trafficked.⁹ Risk on return will depend on the individual's circumstances and the conditions in their country of origin. Relevant factors for individuals include: age, marital status, domestic background, education, availability of employment, and family or other support networks.

With regard to country conditions, it is important to show evidence of a lack of availability of support, including accommodation, shelters and mental health provision, as well as the inability of the young person to access such resources. Another important issue both in the UK and on return is the risk of re-trafficking. Children and young adults are highly vulnerable to re-trafficking and research has found that they are frequently re-trafficked within two years of having exited the first trafficking situation.¹⁰

Even if a victim of trafficking cannot meet the definition of a refugee, they may be entitled to subsidiary protection, such as humanitarian protection, if return would result in torture or inhuman or degrading treatment due to the country conditions and their personal circumstances. There can also be a connection between the needs and entitlements of trafficked children and the child's right to a private and family life (including a durable solution and access to or continuity of rehabilitative support and education) as protected by Article 8 of the European Convention on Human Rights (ECHR).

The ECHR has also found that victims of trafficking can rely directly on Article 4 of the European Convention on Human Rights (which prohibits slavery, servitude and forced or compulsory labour) when making a claim for protection on human rights grounds and that countries must protect victims of trafficking and potential victims of trafficking.¹¹

If a child receives a negative conclusive grounds decision under the NRM they may only challenge that decision by seeking judicial review. However, if the child has made an asylum claim, they will receive a right of appeal against the asylum decision to the First-Tier Tribunal. The Tribunal should consider whether an individual claiming asylum is

trafficking

a victim of trafficking. This is relevant even if there has been a negative conclusive decision made by the competent authority.¹²

Trafficking and the Criminal Justice System

Criminalisation of victims of trafficking

Certain crimes are recognised as likely to be committed by trafficked children and young people. These include street crime and the cultivation of cannabis. However, children are not often identified as potential victims of trafficking and are instead charged with criminal offences relating to illegal activities or immigration offences. This is particularly the case for Vietnamese children who are forced to cultivate cannabis in cannabis farms across the UK. Other children are prosecuted for document offences or for crimes, such as theft or begging, despite being forced into the activities and not benefiting financially from the crimes themselves. At the initial point of contact, children may be seen as criminals, and indicators of trafficking may not be recognised and/or acted upon.

Article 26 of the Council of ECAT provides that the UK should provide for the possibility of not imposing penalties on victims of human trafficking for involvement in criminal activities where they have been compelled to participate in these. EU law also requires the UK to ensure the Crown Prosecution Service (CPS) and courts are entitled not to prosecute or punish victims of trafficking for criminal activities they were compelled to commit as a direct consequence of human trafficking.¹³

The CPS has published detailed guidance on the prosecution of victims of trafficking and notes that prosecutors should be alert to the possibility that in such circumstances, a young offender may actually be a victim of trafficking and as such the criminal offence could be consequent on, integral to or a manifestation of, their exploitation.¹⁴

The CPS must also take account of the best interests of the child as part of the decision on whether to prosecute. In addition to the usual test, CPS guidance requires prosecutors to ask themselves:

- Is there a reason to believe that the person has been trafficked? if so,
- if there is clear evidence of a credible common law defence of duress, the case should be discontinued on evidential grounds; but

- even where there is no clear evidence of duress, but the offence may have been committed as a result of compulsion arising from trafficking, prosecutors should consider whether the public interest lies in proceeding to prosecute or not.

Even if the CPS overlooks the fact that a child is trafficked or decides to prosecute anyway, the child's lawyer can raise the non-prosecution provisions on the child's behalf and ask the criminal courts to stay the prosecution as an abuse of process.¹⁵

Children who have been trafficked may be reluctant to disclose the circumstances of their exploitation or arrival into the UK for fear of reprisals by the trafficker or owner, or out of misplaced loyalty to them. This reluctance to disclose the real circumstances in which they arrived into the country may have implications for a number of youth criminal justice processes. The child may have been coached by their trafficker not to disclose their true identity or circumstances to the authorities. In some cases, they may have been coached with a false version of events and warned not to disclose any detail beyond this as it will lead to their deportation or removal.

Even if the link between the child trafficking and a child or young adult's offending history initially appears remote, defence lawyers should explore the impact of child trafficking on offending further to see if offences have been committed as the direct result of trafficking. Even in the extremely rare situation where a court could deem it appropriate to continue a prosecution against a trafficked child, child trafficking may still be relevant, since it may lower the child's culpability.

It is therefore very important that criminal defence lawyers are also familiar with the definition and dynamics of human trafficking.

Where the possibility of trafficking is raised after a child perpetrates a crime, agencies must refer the case to the competent authority, who will make enquiries to determine whether a child might have been trafficked. See the chapter on **criminal justice** for more information.

Support for trafficked children

Trafficked children should be, at minimum, supported under support under section 20 of the Children Act 1989 and should be provided with safe accommodation. If there is a risk that they will suffer significant harm if found by the trafficker, child protection procedures under section 47 of the Children Act 1989 should be followed, and they should be taken into care under section 31 of the Children Act 1989.

Support

In 2014 the Department for Education produced statutory guidance for local authorities on caring for separated or trafficked children, which explores the specialist needs of trafficked children through assessment, care planning and review. This should be read alongside other statutory guidance on care planning.¹⁶ Trafficked children may have particular needs, for example some trafficked children may need to be placed in a geographical location away from their traffickers.

Assistance and support cannot be a pre-condition of the child co-operating with a criminal investigation. Every child is different, but to meet the short and long-term needs of trafficked children they may require:

- careful planning for child-friendly interviews so any interviews take place promptly with appropriate special measures and avoid repetition
- medical assistance, including counselling or psychiatric support
- special measures during any criminal justice or court proceedings
- help finding a durable solution for their future, which takes into account their own views
- additional support with their education
- access to properly qualified interpreters and specialist English language classes
- safe and suitable accommodation, to protect them from re-trafficking and to reduce the risk of the child or young person going missing
- access to legal advice, accessible information about their case and entitlements
- sexual health or maternity medical care, where appropriate
- additional support where a child is disabled
- support to trace family members, where this is in the child's best interests.

Age disputes

Many children trafficked into and out of the UK have no identity documents or are using false documents. This means determining the child's exact age can be very difficult. Some victims of trafficking have been in the UK for long periods of time and do not know how old they are, and some are told to say they are adults in order to cross borders more easily and to attract less attention. These children will often adhere to the story given to them by their trafficker.

Some children may not understand the importance placed on age as in their country of origin it is not significant and/or not recorded officially.

Statutory guidance makes clear that in the case of victims of trafficking 'where there is uncertainty about a suspected victim's age, children's services will be responsible for assessing their age. The local authority in whose area the victim has been rescued will have responsibility for the care of the child as required by the Children Act 1989'. They should be presumed to be a child until this assessment has been completed.¹⁷ For more information, see the chapters on **age disputes** and **criminal justice**.

Missing children

A problem faced by many local authorities is that unaccompanied or separated children who may have been trafficked are at high risk of going missing from local authority care.¹⁸ The Department for Education published revised guidance in January 2014 entitled 'Statutory Guidance on Children Who Run Away and Go Missing From Home or Care' which stresses the importance of information-sharing and the need for local authorities to work with the police and other partner agencies to draw up procedures and protocols on action to take when children in care go missing. ECPAT UK has also published a report which sets out principles that should be adhered to in relation to providing safe accommodation for child victims.¹⁹

Future changes to identification and support of child victims of trafficking

The Home Office carried out a review recommending proposals for change in order to improve on the NRM and current system for victims of trafficking. This was published in November 2014 and recommended various changes, including:²⁰

- strengthening the first responder role by creating new 'Slavery Safeguarding Leads', allowing direct referral to specialist support
- establishing new multi-disciplinary panels to ensure that decision-making on cases was extended beyond UK Visas and Immigration and the UK Human Trafficking Centre in the National Crime Agency
- creating a single case working unit within the Home Office to replace the current units in UK Visas and Immigration and the National Crime Agency.

'A pilot ran from August 2015 until August 2016.²¹ The pilot operated in two locations: the West Yorkshire police force area,

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and the South West (Avon and Somerset, Devon and Cornwall, Dorset, Wiltshire and Gloucestershire) police force areas. Changes implemented in these areas included the reasonable grounds decision being undertaken by the Slavery Safeguarding Lead and conclusive grounds decisions being made by the new multi-disciplinary panels. The Home Office published guidance for the new Slavery Safeguarding Leads and for the multi-disciplinary panels in 2015 and 2016 respectively.²²

The Home Office has also piloted the provision of independent advocates to support child victims of trafficking in England and Wales. A trial ran for 12 months from September 2014 in 23 local authorities across England. An independent evaluation of the trial assessed the impact of providing child trafficking

victims with a single, consistent advocate with the capacity and expertise to promote their welfare and guide them through the various systems. A full evaluation report on the pilot found that advocates added value to existing provision, to the satisfaction of the children, and that it appeared important in ensuring clarity, coherence and continuity for the child.²³ However, the Home Office decided not to roll out the service due to the service not having an impact on children going missing and having only a limited impact on the involvement of the child with immigration and criminal systems.²⁴ At the time of publication, the government is looking at next steps with regard to child trafficking advocates and a potential second pilot.

how can you help?

- Be aware of the possibility that young people you are in contact with **may have been trafficked**, but that they may not be aware themselves that this is what has happened to them. Trafficking victims may even have a sense of loyalty towards their traffickers and try to protect them. If you have concerns, get advice from specialist agencies working with trafficked children on how to take the case forward (see **contact details** for details of relevant organisations). The Migrant Children's Project has a free advice line and can provide signposting to relevant organisations. The Refugee Council and the Children's Society both run projects working specifically with children and young people who have been trafficked. The NSPCC Child Trafficking Advice Centre also provides free advice to professionals concerned that a child or young person has been or is about to be trafficked.
- If you suspect a child is a victim of trafficking, alert the relevant local authority so they can initiate **child protection procedures**.
- Young people who have been trafficked may benefit from getting **mental health support or counselling** (see **contact details** for agencies to refer to).
- Being trafficked could be grounds to put in an **application for asylum and/or a protection claim**. If appropriate, ensure that the child or young person accesses legal advice as soon as possible.
- Try to ensure that the child or young person is **represented by legal advisers** who are known to be reputable, or have been recommended as having expertise in trafficking cases.

endnotes

1. Article 4, Council of Europe Convention on Action against Trafficking in Human Beings, 2005, available at: https://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197_en.asp#P866_102308 & Article 2, European Directive 2011/36/EU <http://eur-lex.europa.eu/legal-content/GA/XT/?uri=celex:32011L0036>
2. HM Government, Modern Slavery Strategy, November 2014 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/383764/Modern_Slavery_Strategy_FINAL_DEC2015.pdf
3. Article 10, Council of Europe Convention on Action against Trafficking in Human Beings, available at: https://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197_en.asp#P866_102308
4. Home Office, Victims of Modern Slavery: Competent Authority & frontline staff guidance, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/450842/Competent_authority_guidance_v2_0_ext.pdf and at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/488188/Victims_of_modern_slavery_-_frontline_staff_guidance_v2.0_EXT_clean.pdf
5. Home Office, Review of the National Referral Mechanism for victims of human trafficking, November 2014, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/467434/Review_of_the_National_Referral_Mechanism_for_victims_of_human_trafficking.pdf
6. Modern Slavery Act 2015, available at: <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>
7. Human trafficking/modern slavery victims: referral and assessment forms, available at <https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms>
8. See National Crime Agency, Human Trafficking statistics (National Referral Mechanism), at <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics>
9. SB (PSG - Protection Regulations – Reg 6) Moldova CG [2008] UKAIT 00002, available at: <http://www.refworld.org/docid/47837c902.html> and AZ (Trafficked women) Thailand CG [2010] UKUT 118 (IAC), available at: <http://www.refworld.org/docid/4bd58d912.html>
10. International Organization for Migration, The causes and consequences of re-trafficking, 2010 available at http://publications.iom.int/system/files/pdf/causes_of_retrafficking.pdf
11. *Rantsev v. Cyprus and Russia*, Application no. 25965/04, available at: https://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/CAR_Serbia/ECtHR%20Judgements/English/RANTSEV%20v%20CYPRUS%20%20RUSSIA%20-%20ECHR%20Judgment%20English_.pdf
12. *AS (Afghanistan) v Secretary of State for the Home Department* [2013] EWCA Civ 1469, available at: <http://www.bailii.org/ew/cases/EWCA/Civ/2013/1469.html>
13. Article 8 of Directive 2011/36/EU 'on preventing and combating trafficking in human beings and protecting its victims', available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>
14. Crown Prosecution Service, 'Human Trafficking, Smuggling and Slavery', at http://www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/#a24
15. As was the case in the child cannabis farming prosecution of *L and Others*, in which the Children's Commissioner intervened. *L and Others* [2013] EWCA Crim 991, available at: <http://www.bailii.org/ew/cases/EWCA/Crim/2013/991.html>
16. See full guidance at <https://www.gov.uk/government/publications/care-of-unaccompanied-and-trafficked-children>
17. Article 10(3) of the Council of Europe Anti-Trafficking Convention provides: 'When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age'. See also section 51, Modern Slavery Act 2015.
18. See, for example, ECPAT, Trafficked children and missing at http://www.ecpat.org.uk/sites/default/files/trafficked_children_and_missing_2.pdf & APPG for runaway and missing children and adults and the APPG for looked after children and care leavers, report from the joint inquiry into children who go missing from care, June 2012 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/175563/Report_-_children_who_go_missing_from_care.pdf
19. See full report at http://www.ecpat.org.uk/sites/default/files/on_the_safe_side.pdf
20. Home Office, Review of the National Referral Mechanism for victims of human trafficking, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/467434/Review_of_the_National_Referral_Mechanism_for_victims_of_human_trafficking.pdf
21. Home Office, Pilot evaluating the proposed reforms to the NRM, <https://www.gov.uk/government/publications/review-of-the-national-referral-mechanism-for-victims-of-human-trafficking/pilot-evaluating-the-proposed-reforms-to-the-national-referral-mechanism>
22. Home Office, NRM pilots guidance, available at: <https://www.gov.uk/government/publications/national-referral-mechanism-pilot-slavery-safeguarding-leads-ssl-and-multi-disciplinary-panel-member>
23. University of Bedfordshire, Evaluation of Child Trafficking Advocates Trial: Final Report, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486138/icta-horr86.pdf
24. HM Government, Report on the trial of independent child trafficking advocates and next steps, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486693/53019_Un-num_Report_PRINT.pdf

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For children and young people subject to immigration control, coming into contact with the criminal justice system can have serious and lasting effects beyond the norm, depending on the nature of the criminal offence with which they are charged.

Children and young people who have been trafficked still too often find themselves in the criminal justice system. There are also immigration-specific criminal offences such as using a false passport, which have serious and lasting consequences. The Immigration Act 2016 has made illegal working a criminal offence for the individual, with someone who works when they do not have permission to do so committing this offence. The biggest immigration-related risk for children and young people in the criminal justice system is deportation.

It is important to note that where a child is arrested and held in a police station, a parent or person responsible for their welfare should always be informed. A child is also entitled to an appropriate adult to support them while they are at the police station and in particular during their police interview. If the child has been supported by an organisation, the appropriate adult should be someone the child knows and trusts. A child is also entitled to an interpreter and will be offered free legal advice. Unless the child or their appropriate adult requests a particular solicitor, they will be represented by the duty solicitor who is allocated to the police station on a rota. After the interview, the police may want more time to investigate the offence or decide on what action to take; a child might be bailed to attend the police station at a later date. A child may also be asked to attend the police station voluntarily for a police interview. It is important that they have a legal representative whenever they attend the police station to be interviewed under caution.

Trafficking

A clear illustration of when immigration and criminal justice issues overlap is the scenario where a trafficked child is forced to commit a crime by their trafficker, or is otherwise compelled to commit a criminal offence as a direct consequence of having been trafficked. For further information on trafficking, please see the chapter on **trafficking**.

Criminalisation

Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) provides that

victims of human trafficking should not have penalties imposed on them for involvement in criminal activities where they have been compelled to participate in these. Article 8 of Directive 2011/36/EU requires the United Kingdom to ensure that the Crown Prosecution Service (CPS) and courts are entitled not to prosecute or punish victims of trafficking for criminal activities that they were compelled to commit as a direct consequence of human trafficking.

The CPS has published detailed guidance on the prosecution of victims of trafficking entitled 'Human Trafficking, Smuggling and Slavery'.¹ It notes that prosecutors should be alert to the possibility that a young offender may actually be a victim of trafficking, and should as such consider whether the criminal offence was consequent on, integral to, or a manifestation of their exploitation.

The CPS also has to take account of the best interests of the child as part of the decision on whether to prosecute.² In addition to the usual test, CPS guidance requires prosecutors to ask themselves:

- Is there a reason to believe that the person has been trafficked? If so,
- if there is clear evidence of a credible common law defence of duress, the case should be discontinued on evidential grounds; but
- even where there is no clear evidence of duress but the offence may have been committed as a result of compulsion arising from trafficking, prosecutors should consider whether the public interest lies in proceeding to prosecute or not.

Secondly, even if the CPS overlook the fact that a child is trafficked or decide to prosecute anyway, the child's lawyer should ask the criminal courts to stay the prosecution as an abuse of process, as was the guidance given by the Court of Appeal in the child cannabis farming appeal *L and Others* [2013] EWCA Crim 991, in which the Children's Commissioner intervened.³

Children who have been trafficked may be reluctant to disclose the circumstances of their exploitation or arrival into the UK for fear of reprisals by the trafficker or person whose control they are currently under, or out of misplaced loyalty to them. This reluctance to disclose the real circumstances in which they have arrived into the country may have implications for a number of youth criminal justice processes. The child may have been coached by their trafficker not to

disclose their true identity or circumstances to the authorities. In some cases, traffickers may continue to exert pressure over the child during criminal proceedings. Children may have been given a false version of events and warned not to disclose any detail beyond this as it will lead to their deportation and/or removal.

Even if the link between the child trafficking and a child or young adult's offending history initially appears remote, defence lawyers should explore the impact of child trafficking on offending. This is particularly important in relation to children who may not perceive themselves as victims and may not readily disclose information. In the extremely rare situation where a court could deem it appropriate to continue a prosecution against a trafficked child, child trafficking may still be relevant, since it may lower the child's culpability and provide personal mitigation. It is therefore very important that criminal defence lawyers are familiar with the definition and legal principles of human trafficking and exploitation. It is particularly important that criminal lawyers understand that in order for trafficking to be used as a defence, there must be a direct link between the trafficking and the offending. However, it is not necessary to establish the elements of the alternative defence of duress.

At the police investigation stage, clear evidence of compulsion should result in the young person not being prosecuted, and less clear evidence should prompt further information being elicited through interview. Interviewers and defence solicitors should be aware of the possibility that the appropriate adult could be involved in the trafficking process.

It is very common in child trafficking cases for the police and CPS to dispute the child's age, believing them to be older. This is because children have often travelled to the UK on false documentation that suggests that they are older or have been told by their traffickers to tell authorities that they are older. The physical appearance of trafficked children may also make them appear older than their chronological age. The CPS guidance states that:

If the victim states they are a child, they should be viewed as such until their age can be verified by identification or an independent age assessment carried out by the local authority or a court determination.⁴

The courts also have a duty to make due inquiry about the age of a defendant and take note of any evidence provided (section 99(1) of the Children and Young Persons Act 1933). There is also a presumption that the victim is treated as a child where there are reasons to believe that they are under 18 years old (Article 10(3) of the Council of Europe Convention on Action against Trafficking in Human Beings).

Overturning a trafficked child's conviction

A child may have a right of appeal against conviction. In the case of *L, HVN, THN & T v R* [2013] EWCA Crim 991 three child victims of trafficking from Vietnam had their criminal convictions quashed by the Court of Appeal.⁵

If a child has pleaded guilty or has been convicted of a criminal offence and it is later realised that the offence was one committed as the direct result of child trafficking, then they should appeal their conviction. Legal aid is available for criminal defence solicitors to represent child trafficking victims seeking to overturn their convictions. Alternatively, where the child has already appealed their conviction, the Criminal Cases Review Commission could be approached with a view to having the conviction overturned. The Criminal Cases Review Commission receives a high volume of applications, so if an application needs to be expedited (for example because a child or young person is in custody or is facing deportation) then this should be clearly set out in the covering letter of the application.

The CPS guidance notes that, where evidence of trafficking comes to light after charge, prosecution or conviction, then prosecutors should seek relevant adjournments and make proper enquiries/refer through the National Referral Mechanism (NRM). See the chapter on **trafficking** for further details on the NRM. Where identifiers of trafficking are noted after a child perpetrates a crime, agencies must also refer the case to the Competent Authority, which will then determine whether a child has been trafficked.

Limited legal aid is available for solicitors to provide advice for applications to the Court of Appeal for out-of-time appeals or the Criminal Cases Review Commission, subject to means.

Prosecuting traffickers

All public bodies have a positive obligation under Article 4 of the European Convention on Human Rights (prohibition on slavery and servitude, which includes trafficking) to refer instances of human trafficking to the police, so that the police can investigate. The police have a similar positive obligation to investigate reports of human trafficking and protect victims.

In the case of a victim of child trafficking the best interests of the child will be a primary consideration in all decisions relating to them and the child's own views should be taken into account. It will be for the police and the CPS to decide in a particular case how the best interests of the child and the child's views weigh in relation to the decision to investigate and prosecute a case of child trafficking. However the police and CPS should be adequately trained to recognise

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and navigate the needs of trafficked children - for example, traumatised or young children may be unwilling to give evidence and others may feel loyalty to their traffickers. Any criminal justice activity should be backed up by adequate support and counselling for the child arranged through multi-agency co-operation.

Children who have been victims of child traffickers may be requested by the police to act as witnesses in the prosecution of the people who were responsible or involved with the trafficking. Many victims have had traumatising experiences and may be very fearful of the traffickers as a result of abuse and threats, and giving evidence will be a difficult and stressful experience. Children must therefore be treated with great sensitivity in this situation. It is important to prioritise what is best for the child, which may mean that it is inappropriate for them to continue to be involved with the prosecution.

The Ministry of Justice has produced joint guidance on Achieving Best Evidence in Criminal Proceedings,⁶ which includes guidance on interviewing and on using special measures in court. Trafficked children as witnesses, and to some extent as defendants, in criminal proceedings should receive the full benefits of this guidance and these special measures (as set out in Parts 2 and 29 of the Criminal Procedure Rules). Child witnesses can receive pre-trial therapy to support them through the process and the CPS and Department of Health have produced joint guidance on this.⁷

Deportation

The threat of deportation can arise in various circumstances for young people with different types of immigration status, from someone who is an 'overstayer' whose immigration status has not been resolved, to someone who has been granted indefinite leave to remain.

Young people aged 17 and over may face deportation if they are convicted of a serious offence where the sentencing judge has recommended their deportation.⁸ The Home Office may also pursue deportation where it considers deportation to be conducive to the public good. Automatic deportation under the UK Borders Act 2007 does not apply to those under the age of 18 at the date of conviction but this does not prevent deportation under the Immigration Act 1971, in cases where the deportation is considered conducive to the public good.

The decision to deport an individual under the Immigration Act 1971 following criminal conviction will be made on grounds of public policy, health or safety. Cases are referred to the Criminal Casework Directorate of the Home Office by the police, the courts and the Prison Service. The

circumstances in which deportation may be considered are where:

- There has been a court recommendation for deportation
- For non-EEA nationals: a custodial sentence of 12 months or more either in one sentence, or as an aggregate of two or three sentences over a period of five years
- For EEA nationals: a custodial sentence of 24 months or more
- An immigration, violent or drugs offence has been committed.

Following conviction, the Home Office will contact the individual explaining that they are liable for deportation. The individual can respond to this with evidence supporting their case to remain in the UK. It is strongly advisable that this is done with legal assistance. The Home Office will respond to this with their decision about deportation.

The process of appealing a decision to deport was changed significantly by provisions in the Immigration Act 2014 and introduction of the 'deport first, appeal later' policy. As of 20 October 2014, an individual can only appeal the following decisions:

- Refusal of an asylum claim
- Refusal of a humanitarian protection claim
- Refusal of a human rights claim
- Revocation of asylum/protection status.⁹

Furthermore, for those who are liable to deportation under the Immigration Act 1971 (court recommended following conviction or deportation conducive to public good), the Immigration Act 2014 allows the Home Office to withdraw a person's right to an in-country human rights appeal. Those who are liable to deportation will not have an in-country right of appeal unless removal will lead the individual to suffer 'a real risk of serious irreversible harm'.¹⁰ This means that the person is expected to pursue their appeal from outside the UK. However, the exception to an in-country right of appeal is discretionary, and if used by the Home Office, the individual is not prevented from raising a judicial review against this decision, meaning that this will still be heard in country.

There have been some decisions from the higher courts since the changes in the Immigration Act 2014. The Court of Appeal has recently stated that the correct test to apply is whether removal of an individual for the duration of an appeal will breach the individual's human rights, not whether it will cause 'serious irreversible harm'.¹¹ However, the court still found that there was a strong public interest in removing

foreign criminals pending their appeals and found that the government approach was compliant with the procedural safeguards of Article 8 of the European Convention on Human Rights.

A decision to deport an individual following criminal conviction can be challenged on a number of grounds, including if they:

- face a real risk of harm if returned to country of origin, or are a refugee
- face a breach of rights protected by the European Convention on Human Rights
- would suffer separation from immediate family, or can show long residence in the UK - the stronger the individual's ties are to the UK, the more difficult it is for the Home Office to justify deportation
- have EEA nationality - there are increased levels of protection for EEA nationals making it harder for the Home Office to deport
- are under 18 years of age at the time of conviction – more serious grounds are required for the Home Office to deport minors
- face extradition or have been ordered to serve the sentence in a psychiatric institute under certain provisions of the Mental Health Act.

Many appeals are made on the basis of an individual's right to respect for private and family life under Article 8 of the European Convention on Human Rights. The court must consider the interests of the individual in terms of the extent of their ties to the UK through, for example, family and friends. This is particularly relevant if the individual has their own children in the UK. In any such decision, the best interests of the child must be a primary consideration (see *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4). In practice, decision-makers will consider an individual's overall character and conviction of a serious crime will mean that very strong evidence will need to be presented to outweigh this.

Bail for Immigration Detainees have produced a number of fact sheets on appeals relating to deportation, including for EEA and non-EEA nationals.¹³

how can you help?

Be alert to the possibility of child trafficking

In some circumstances, such as the discovery of children working in cannabis factories, be aware that any children involved may have been trafficked, and that consequently, appropriate steps will need to be taken in order to safeguard them. Steps should be taken to refer the child to the appropriate bodies, including the National Referral Mechanism (NRM).

Support the individual to collect evidence to support their case

Whether in relation to proving they have been trafficked, or in relation to a young person with a conviction, collecting strong evidence to support their case can be essential to successfully arguing in court. Different professionals working with a child may be privy to information that has not been shared elsewhere because of the nature of their interaction or rapport with that individual.

Where a child or young person has been informed that they are liable for deportation

Ensure that they have access to appropriate legal advice. Contact solicitors to enquire whether legal aid is available (it may be available for part of the case if they face any risk on return, or if there is a judicial review, for example). If their case is not (or not exclusively) about risk on return but instead centres on the strength of connections in the UK, legal aid may not be available. In this situation, ask solicitors about whether an application can be made to the Legal Aid Agency for what is known as exceptional case funding, based on the obstacles facing the young person in pursuing their case and any vulnerabilities. In the case of a young person who has previously had involvement with a local authority (see the chapter on **children's services support**), consider whether the local authority may have a duty to pay for legal advice. Otherwise consider whether there are any means of paying privately for legal advice.

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endnotes

1. Crown Prosecution Service publications, available at: http://www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/#a24.
2. Article 3, United Nations Convention on the Rights of the Child.
3. *L and Others* [2013] EWCA Crim 991, available at: <http://www.bailii.org/ew/cases/EWCA/Crim/2013/991.html>.
4. Crown Prosecution Service publications, available at: http://www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/#a24.
5. Full case is available at: <http://www.bailii.org/ew/cases/EWCA/Crim/2013/991.html> and also see Coram Children Legal Centre's case note on the decision, available at: <http://www.childrenslegalcentre.com/userfiles/file/L%20v%20R%202013%20EWCA.pdf>.
6. Available at: https://www.cps.gov.uk/publications/docs/best_evidence_in_criminal_proceedings.pdf.
7. Crown Prosecution Service, Provision of therapy for child witnesses prior to a criminal trial, available at: <https://www.cps.gov.uk/publications/prosecution/therapychild.html>.
8. Section 3(6), Immigration Act 1971, available at: <http://www.legislation.gov.uk/ukpga/1971/77/section/3>.
9. Section 84, Nationality, Immigration and Asylum Act 2002, as amended by section 15, Immigration Act 2014, available at: <http://www.legislation.gov.uk/ukpga/2014/22/section/15/enacted>.
10. Section 94B, Nationality, Immigration and Asylum Act 2002, as amended by section 17, Immigration Act 2014, available at: <http://www.legislation.gov.uk/ukpga/2014/22/section/17/enacted>.
11. *R (On the Application Of Kiarie) v Secretary of State for the Home Department* [2015] EWCA Civ 1020.
12. Bail for Immigration Detainees fact sheets available at: http://www.biduk.org/sites/default/files/BID%20Factsheet%205_%20Deportation%20Appeals_an%20overview%20March%202015_pdf%20version_0.pdf; http://www.biduk.org/sites/default/files/BID%20Factsheet%206%20Deportation%20Appeals%20Deportation%20of%20EU%20nationals_pdf%20version_0.pdf.

return

At present, government policy is to return people to their countries of origin when their application for asylum has been finally determined and they have exhausted all their appeal rights. If an unaccompanied child is granted limited leave to remain until he or she is 17 and a half, no removal directions will be set before he or she turns 18. However, after the young person's 18th birthday, if no extension to leave has been granted and the appeals process has been exhausted, the Home Office will expect, and take steps to ensure, that the young person will be returned.

It is government policy only to return unaccompanied children (under 18) to their countries of origin if there are **safe and adequate reception arrangements** in place for them there – usually taken to mean that they have family who could care for them, although this could include a well-functioning social service system in the country of origin. To date, the adequacy of these arrangements has rarely been considered and unaccompanied children whose asylum applications have been refused have been granted limited leave to remain until they are 17 and a half under the Immigration Rules as a matter of practice.

Children who are refused outright because they are over 17 and a half, but under 18 years of age, should have their removal deferred until their 18th birthday unless the safe and adequate reception arrangements test has been met. This should be made clear in the reasons for refusal letter.

Where there is an outstanding asylum claim agencies must not contact the child's family without the informed consent of the child who has sought legal representation. Sadly, there have been a number of cases in which a separated child has been at risk of harm from family members, or their family have been complicit in the harm that a child has suffered. This harm may be the basis of, or a factor in, the child's international protection claim and to contact a child's family without a proper assessment of risk may place the child in danger. The child's family could also be put at risk by any premature contact or enquiries.

Return of an asylum seeker to a safe country

In some circumstances the Home Office may attempt to send an asylum seeker to another safe country to have their asylum claim processed. The Home Office considers a 'safe third country' to be a country:

- of which the individual seeking asylum is not a national or a citizen; and

- in which the person's life or liberty is not threatened by reason of race, religion, nationality, membership of a particular social group, or political opinion.

It is also a country from which a person will not be sent to another state in contravention of his or her rights under the Refugee Convention. Removal to a safe third country must also not breach the European Convention on Human Rights.

The Home Office has published guidance on how it processes and deals with safe third country cases.¹ This guidance should be treated with extreme caution as although it was published on the Home Office website on 15 November 2013, it does not appear to have been amended since 2009. It predates the entry into force of the most recent European Union Regulation 604/2013, commonly known as 'Dublin III', which came into force on 19 July 2013 and establishes a method for deciding which EU country should process a claim for asylum.² For further information on third country cases and Dublin III, please see the chapter on the **asylum process**.

Voluntary return

For separated children and young people who are thinking about returning to their country of origin voluntarily, Refugee Action previously ran the Assisted Voluntary Return (AVR) programme under the name Choices. However, Choices closed in late 2015 and has been taken back into the Home Office. It is not currently clear how the voluntary return program will now run. However, non-vulnerable migrants who have not claimed asylum are no longer able to access AVR. The UK government has limited information on its website regarding voluntary departure and assisted voluntary return.³

Assisted Voluntary Return

The long-term plan appears to be to combine the old AVR programme with voluntary departure. At the time of writing, there are transitional arrangements in place, which state that a child or young person may be eligible for AVR where they:

- are waiting for a decision on an asylum application
- have been refused asylum and have appealed, or are appealing, against the decision
- have been given limited leave to remain in the UK
- have not claimed asylum but are a victim of human trafficking or smuggling
- are under 18 and weren't accompanied by an adult when they arrived in the UK.

return

A child or young person is not eligible for AVR if they:

- are currently being investigated by the police or detained by the Home Office
- have been given a prison sentence that is 12 months or longer
- have been convicted of an immigration offence and given a deportation order
- have already been granted humanitarian protection, indefinite leave to remain or refugee status
- are an European Economic Area (EEA) or Swiss national.

The Home Office have an AVR team in-house that can be called Monday to Friday 9am to 5.30pm. There is an application form which can be submitted to apply for AVR but at the time of publication, this form was not available online and could only be obtained by telephoning the AVR team and requesting a copy. In any event, the Home Office specifically states that the person can be forced to return to their home country if they withdraw their AVR application or do not follow the application process. Moreover, contacting the Home Office without making an application may well affect any outstanding or future claims for protection as personal details will likely be collected when an initial inquiry is made. There do not appear to be any safeguards in place to prevent this information being recorded and shared within the Home Office. There is also no clear guidance on how a child's best interests are to be determined.

The current amounts that may be provided by the Home Office for AVR are as follows:

- up to £2,000 which can be used to find somewhere to live, find a job or start a business in your home country
- help applying for travel documents
- help booking a flight
- help at the airport.

It should be noted that this none of this assistance is assured and it is likely the Home Office will determine what level of support will be provided and possibly request evidence of or information about what the money is to be spent on and why specific support with documents/flights is needed. Home Office Guidance states that if an AVR application is refused or a child is ineligible, they should normally be offered the opportunity to return voluntarily separately from the AVR programme.⁴

Voluntary Departure

The other option offered by the Home Office for return is Voluntary Departure. An individual must be over 18 to be eligible for Voluntary Departure. The circumstances in which a separated young person is eligible for Voluntary Departure, along with being over 18, are as follows:

- the young person has been refused leave to remain in the UK
- the young person is in a family group with a child under 18 that includes a person who is in the UK illegally
- the young person has withdrawn, or wants to withdraw, an application to extend leave to remain in order to return to their home country.

There is no clear information on the type of support or help that can be provided although the Home Office does state that there may be help to meet the costs of the flight. The Home Office Voluntary Departures team runs this part of the returns process and specifically asks for information, including Home Office reference, personal details, address and travel documents. Again there is no further information on how this information is used and shared. In the absence of clear information, it is best to assume that any information provided to the Voluntary Departures team will be recorded on the Home Office case information database relating to the young person and will therefore be accessible to all who have access to the system.

Enforced return

The possibility of being returned once 18, together with the probability of being detained as part of the process, is one of the main anxieties young people have as they turn 18. With the exception of safe third country cases (see the chapter on the **asylum process**), removal proceedings normally begin when a negative decision is given on an asylum application and all appeals have been exhausted (or it has been decided that there is no case to appeal) and/or the time limit of leave to remain has come to an end and no extension has been granted. According to the Home Office guidance, when the voluntary removal stage has failed, or is not considered appropriate either because there is a lack of cooperation or because the young person poses a high risk to themselves or others, enforced return will be considered.

Although an individual who is appeal rights exhausted is liable to detention at any time, removal proceedings are started when the Home Office serves removal directions in the form of a notice stating the time and place where the person must go in order to leave the country. If the Home Office suspects

that the person may not comply with removal, it is entitled to detain that individual in preparation for removal. There is no time limit on how long someone can be held in immigration detention although the Home Office may not lawfully detain a person 'pending removal' for longer than a reasonable period. The Home Office has a duty under section 55 of the Borders, Citizenship and Immigration Act 2009 to safeguard and promote the welfare of the child and the detention of children has been successfully challenged on these grounds.

The experiences of some young people prior to their forced removal from the UK have been very disturbing. Young people have been picked up by immigration officials without warning and have had no opportunity to gather their personal belongings before being detained and removed. Social workers may have no idea that this has happened and are often left not knowing for sure whether the young person has been returned, whether they have gone missing or have absconded to avoid immigration control.

Detention

Most Home Office detention facilities are now called 'immigration removal centres' and this is where people can be taken prior to being removed. The Home Office generally seeks to remove people as quickly as possible once they have been detained. However, there are often delays because of problems with arranging travel documents with countries of return.

Home Office policy states that unaccompanied children must not be detained other than in very exceptional circumstances and they must not be held in an immigration removal centre in any circumstances. The Immigration Act 2014 states that an unaccompanied child can only be detained in a short-term holding facility for a maximum of 24 hours, and only if there are directions for removal and they are in force within that time period. In the context of detention the Home Office defines a child as a person who has:

- Credible and clear documentary evidence to demonstrate that he or she is under 18 years of age; or
- Has been subject to a lawful age assessment by a local authority and found to be under 18 years of age.

Detention of children can also occur in 'age dispute' cases, where a child has stated that they are under 18 and the Home Office decides that their physical appearance and demeanour 'very strongly suggests that they are significantly over 18 years of age' or the local authority assesses them to be over 18. The Home Office guidance and instructions on detention include a section on age dispute cases. The Refugee Council noted in 2013 that it had secured the

release of 36 children held as adults, a number of whom were under the age of 16. There may be many more individuals who have not been assisted and remain in detention. Such statistics raise significant concerns about the detention of these children, which is unlawful and can cause serious harm and lead to the child's asylum claim being determined wrongly under adult procedures.

For young people who have turned 18 and have been refused asylum or any other form of status, and who have exhausted the appeals process (including those who have been refused an extension to their limited leave), there is a likelihood that they will be detained prior to removal.

Immigration detainees have the right to apply for bail if they have been in the UK for more than seven days. While in detention they also have a right to receive visitors, make and receive telephone calls, and send and receive faxes.⁵ Detainees can also sign up for legal advice through the Detention Duty Advice Scheme.

Re-entry after return

The way in which an individual without leave to remain in the UK returns can affect their ability to apply in the future to re-enter the UK. Under the Immigration Rules, an individual who has previously overstayed, breached a condition of leave, been an illegal entrant, used deception, and was over 18 at the time of the most recent breach will automatically be refused entry clearance (the Rules say that entry clearance 'should normally' be refused). However, an individual who has overstayed / breached a condition of leave/ been an illegal entrant/used deception (and was 18 or over at the time of his most recent breach) will automatically be refused entry clearance unless the individual:

- overstayed for 90 days or less and left voluntarily at the expense of the Home Office (no automatic ban)
- left the UK voluntarily at own expense (1 year ban)
- left the UK voluntarily at expense of Home Office less than 6 months after notice of removal (2 year ban)
- left the UK voluntarily at expense of Home Office more than 6 months after notice of removal (5 year ban)
- removed or deported from the UK (10 year ban)
- used deception in an entry clearance application (10 year ban)

Therefore, depending on the future intentions of a young person, the length of time before they can be considered for entry clearance may be a factor in any decision relating to return.

how can you help?

- **Information on return for over 18s:** Young people over 18 should be made aware of what happens during the returns process and the possibility that they may be detained. A sensitive approach is needed. Encourage young people who may be about to be returned and wish to return voluntarily to obtain advice. As this is a very difficult issue for many young people to deal with, if the young person wishes, it is advisable for a social worker or another supportive adult to attend any advice meetings to support them. Young people who have been refused asylum or any other form of status, and who have exhausted the appeals process (including those who have been refused an extension to their limited leave to remain), should be aware that they are liable to detention and removal at any time. For example, they are liable to be detained or removed if they are picked up by the police for a minor offence or when they are reporting to the Home Office (to comply with an ongoing reporting requirement) or if a removal direction has been issued. Young people should not be discouraged from reporting, however, as failure to report regularly is considered by the Home Office as a sign of 'absconding' or non-compliance, and can itself be a reason for detention.
- **Voluntary return of under 18s:** Children who want to return to their home country can be assisted to return but much more work should be done to establish whether or not the child is giving informed consent to engage with that process and is able to make an informed choice. The social worker in the UK should be involved with this process, as should other carers and the minors themselves. Any decision to return should only be taken in the best interests of the child, taking into account his or her wishes, the suitability and wishes of the parents or guardians in the home country, the child's emotional and psychological needs of the child, and his or her history, as well as a number of other factors. This requires a full family assessment in the country of origin before any return is approved and completed. This may also require consideration of whether DNA tests would assist to determine familial relationships. However these should not be instigated unless there are serious concerns about the risks to the child in being placed with adults who are suspected of not being the child's relatives and should not be instigated without a clear evaluation of the risks to the child and others involved in such a process. Trafficking indicators or concerns should also be considered if relevant. Children should also be made aware that a request for assisted voluntary return may be held to undermine their asylum claim if they choose later to proceed with this. However, an adverse finding by the Home Office of this nature could be challenged, as a child expressing a wish to go home may not have any sense of the risk involved or what the implications are in being introduced to such a process at a premature stage – it is normal for a child to want to be reunited with his or her parents.
- **Confidentiality:** Be clear on what is and is not confidential between you and the young person. Young people should be encouraged to ask their social worker what information is made available to the Home Office, particularly when or if a Home Office official makes a request of the social worker or care provider. Professionals should also carefully consider their duty of confidentiality to a child.
- **Emotional support:** Preparation for possible return should involve a holistic, careful and longer-term engagement with the child or young person, with a view to allowing them to think about what this might be like in a constructive way, planning around reintegration with family and community if possible, and working with them around fears and anxieties. Help to prepare the young person emotionally for the possibility of being returned and remember that, even when practical solutions are beyond the power or remit of a supporting adult, listening is helpful in itself. Emotional support should be an ongoing activity with the young person, not just a one-off conversation. This could take various forms, such as spending time listening to the young person's worries, practical assistance to help them deal with their concerns, encouraging young people to exercise and meet up with friends, and referring them to specialised mental health support services where necessary.
- **Innovative approaches to support:** Young people are often returned with very little clothing or money. Think of innovative ways to support them. For example, are there opportunities to use the leaving care grant flexibly? Could it be given to a young person who is being returned to ensure they have some money for subsistence and accommodation on their return?
- **Preparation for return:** Preparation for the possibility of voluntary or enforced return should include encouraging the young person to keep some money and important personal possessions on them at all times. This should include important telephone numbers both in the UK (for example, phone numbers for their social worker and legal representative) and in the country they may be returned to, and a phone card to use to call people if they are detained. Young people should also be encouraged to consider the practical implications of detention and impending removal and be helped to think how they can, for example, access money from their bank account (if they have one) if they are removed.
- All relevant documentation on the young person's case should be gathered, and copies kept where possible - including original statements, interview, refusal letters, subsequent determination(s) from the Tribunal and further correspondence. If possible ensure you have access to a legal adviser willing and able to represent and assist if necessary.

endnotes

1. UK Visas & Immigration, Safe Third Country Cases, November 2013, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257399/safethirdcountrycases.pdf
2. Dublin III Regulation, June 2013, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF>
3. UK Visas & Immigration, Return through voluntary departure, available at: <https://www.gov.uk/return-home-voluntarily/voluntary-departure>; Assisted Voluntary Return, available at: <https://www.gov.uk/return-home-voluntarily/assisted-voluntary-return>
4. UK Visas & Immigration, Processing Children's Asylum Claims, July 2016, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537010/Processing-children_s-asylum-claims-v1.pdf
5. BiD, How to get out of detention guide, March 2016, available at: <http://www.biduk.org/sites/default/files/English%20Notebook%20March%202016.pdf>

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Accession countries

The 10 accession countries which joined the European Union (EU) on the 1st May 2004 are: the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, the Slovak Republic, Slovenia, Cyprus and Malta. The government introduced the Worker Registration Scheme for nationals from eight of the ten accession countries (known as the 'A8' countries), the two countries not affected being Cyprus and Malta. This scheme was closed in April 2011.

Bulgaria and Romania joined the EU in January 2007 and may also be referred to as accession countries or 'A2' countries.

Accommodated

The status of a child whose housing and other daily needs are provided by the Local Authority under section 20 of the 1989 Children Act. An accommodated child is also known as a 'looked-after child' (LAC) and there are a range of duties and standards of care owed to these children. Some duties continue after the child turns 18.

Accompanied asylum-seeking child (AASC)

According to the Home Office, an accompanied asylum-seeking child is a child who:

- is applying for asylum in their own right; and
- forms part of a family group; or
- is separated from both parents and is being cared for by an adult who by law has responsibility to do so or is in a private fostering arrangement.

Administrative removal

An individual may be 'administratively removed' from the UK if they fail to comply with conditions of leave to enter or remain or no longer have leave to remain in the UK. The spouse, civil partner or child under 18 of a person in respect of whom removal directions have been given may also be administratively removed.

Age-disputed

An age-disputed child is an asylum applicant whose claimed date of birth is not accepted by the Home Office and/or by the Local Authority which has been approached to provide support. This term is usually used to refer to people who claim to be children, but who are treated as adults by the Home Office and/or the Local Authority. Whether an individual is treated as an adult or as a child has significant implications for the way in which the person's claim for asylum is treated, and the level of support received.

Antenatal care

The care women can expect to receive from their midwives and doctors during their pregnancy. This may mean hospital care, outpatient appointments and care during delivery of the baby, although maternity care is also provided at the primary care level.

Application Registration Card (ARC)

Asylum applicants should receive this card to show they are claiming asylum. Many new asylum applicants will receive this at the Asylum Screening Unit while others will receive a letter asking them to attend an appointment to have their card made. Applicants can use their ARC to show that they have applied for asylum. It is also used as evidence of identity and holds identifying information including fingerprints and reporting arrangements in a microchip within the card. It is a credit card sized document carrying the name of the asylum applicant, date of birth, nationality, the place and date of issue, information regarding dependents, the language spoken and whether the holder is entitled to work or study.

Article 3 ECHR

Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (ECHR) states that 'no one shall be subjected to torture or to inhuman or degrading treatment or punishment'. States who are signatories to the ECHR cannot depart from this principle for any reason or in any circumstances. Where an asylum seeker can make out a case that he or she would be subjected to torture or inhuman or degrading treatment or punishment if returned to their country, they cannot be removed, even if their Refugee Convention claim fails.

Article 8 ECHR

Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (ECHR) states that 'Everyone has the right to respect for his private and family life, his home and his correspondence'. States who are signatories to the ECHR can depart from this principle if it is in accordance with the law and is necessary in the interests of national security, public safety, economic wellbeing of the country, prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. The government would have to show this interference of family or private life is proportionate in order to meet one of these reasons.

Asylum

One of the words used to mean 'refuge' in accordance with the criteria set out in the United Nations Convention Relating to the Status of Refugees 1951 (Refugee Convention).

Asylum and Immigration Tribunal (AIT)

The AIT was established by the Asylum and Immigration (Treatment of Claimants etc) Act 2004 and heard appeals against decisions made by the Home Office in asylum, immigration and nationality matters. It was abolished on 15 February 2010. Its functions were transferred to the new Asylum and Immigration Chamber of the First-tier Tribunal created by the Tribunals, Courts and Enforcement Act 2007.

Asylum appellant

A person whose application for asylum has been turned down but who has an appeal pending against the decision to refuse to grant status.

Asylum intake unit

Asylum seekers who have not declared at port of entry can go to the Asylum intake unit in Croydon to make an in-country application for asylum. Children may often attend their local reporting centre for their initial meeting depending on their distance from Croydon.

Asylum seeker

A person who has applied to the government of a country other than their own for protection or refuge ('asylum') because they are unable or unwilling to seek the protection of their own government.

Asylum support

Destitute adult asylum seekers and their families are not eligible to receive mainstream welfare benefits, but can apply to the Home Office for accommodation and/or support with subsistence. This support was previously overseen by the National Asylum Support Service and referred to as NASS, but it is now often referred to as 'Home Office support' or 'Asylum Support'.

Border Force

The Border Force is the part of the Home Office now responsible for border control at ports, following the abolition of the UK Border Agency.

British citizenship

British citizenship provides the right to live in the UK and leave and re-enter at any time. Today, British citizenship can be acquired by birth (if at the time of birth either parent is a British citizen settled in the UK), descent (for a person born abroad, if either parent is a British citizen at the time of birth), registration or naturalisation.

Case owner

A case owner was the name for the Home Office official responsible for an asylum seeker's case throughout the process – from application to the granting of status or removal. There is no longer a Case Owner for each asylum applicant.

Case resolution directorate

The case resolution process was set up to deal with unresolved cases of those who claimed asylum before April 2007. These include cases that have not been fully determined, applications for further leave, cases awaiting appeal or those who have exhausted their appeal rights but who remain in the UK. These cases are known as 'case resolution' (formerly 'legacy') cases. The majority of these have now been resolved, but outstanding cases are being dealt with by the Home Office's Case Assurance and Audit Unit.

Certificate of travel

A certificate of travel, also known as the 'Home Office travel document' can be issued to people who have humanitarian protection or a form of limited leave to remain or discretionary leave. A certificate of travel is not valid to travel to the person's country of origin and is not accepted by a number of countries, including many EU countries.

Certified - 'clearly unfounded'

When the Home Office believes that the asylum seeker comes from a safe country and would not face persecution or a breach of their human rights if they returned, it deems it a "clearly unfounded" case. This is a very high threshold – it has been noted as higher than "it is very likely to fail".

Common travel area

The common travel area includes the United Kingdom, Republic of Ireland, Channel Islands and Isle of Man. Except in limited circumstances, the movement of a person who is 'subject to immigration control' between these places is not immigration-controlled.

Competent authority

A competent authority is an organisation or person who has been granted legally delegated or invested authority, capacity, or power to perform a designated function. In the case of the National Referral Mechanism for victims of trafficking, these are the Home Office and the UK Human Trafficking Centre.

Convention travel document (CTD)

This is a blue travel document issued by the Home Office to people with refugee status and who have at least 6 months permission to stay in the UK remaining. An application with a payment of a fee must be submitted and accepted. The CTD is valid for all countries, except a person's country of origin.

Deportation

When a person is removed on the grounds of public policy, health or safety. An individual may be deported if he or she is convicted of a criminal offence and receives a custodial sentence of 12 months or more.

Deportation is not the same as the 'administrative removal' of those who are simply 'unlawfully present in the UK'.

Discretionary leave (DL)

Time-limited permission to stay, granted when an individual is not granted asylum, humanitarian protection or leave under the immigration rules. It is less common now but is often the name used for other forms of leave granted, such as leave outside of the rules or other forms of limited leave to remain.

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Dispersal

Dispersal is the process by which the Home Office moves an asylum seeker to accommodation outside London and the South East of England. They are first moved to initial accommodation while their application for asylum support is processed. Once the application has been processed and approved they are moved to dispersal accommodation elsewhere in the UK. This should only happen to adult asylum seekers but see 'Transfer of Responsibility' for further information on children being moved local authority areas.

Dublin III Regulation

The Dublin III Regulation provides EU member states with a mechanism for allocating responsibility to a single member state for processing an asylum claim.

Eligible children

One of the four categories of children entitled to leaving care services under the Children Act 1989 as amended by the Children (Leaving Care Act) 2000. Eligible children are children who are aged 16-17 and who have been looked after by a local authority for at least 13 weeks since they were 14 years old and who continue to be looked after.

ESOL (English for speakers of other languages)

English for Speakers of Other Languages, the principal form of publicly funded English language provision in the UK. ESOL courses cover:

- speaking and listening
- reading and writing
- vocabulary
- punctuation and grammar

Eurodac

Eurodac is a large database of fingerprints of applicants for asylum and illegal entrants found within the EU. The database helps the effective application of the Dublin Convention on handling claims for asylum. By comparing fingerprints, member states can determine whether an asylum applicant or a foreign national found illegally present within a member state has previously claimed asylum in another member state or whether an asylum applicant entered the Union territory unlawfully.

European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (ECHR)

The ECHR is a human rights treaty which was incorporated into UK law by the Human Rights Act 1998. Asylum seekers are entitled to protection under Article 3 ECHR and cannot be returned to a country where their right to protection under this Article would be breached.

European Economic Area (EEA)

Countries that are members of the European Union together with Iceland, Liechtenstein and Norway.

Exceptional leave to remain (ELR)

ELR was granted to asylum seekers who the Home Office decided did not meet the definition of a refugee as defined in the Refugee Convention, but should be allowed to remain in the UK for other reasons. It was abolished on the 1 April 2003 and was replaced by two types of leave: discretionary leave and humanitarian protection.

Executive agency

An executive agency is a public institution that delivers government services for the United Kingdom government, Scottish Executive, Welsh Assembly or Northern Ireland Executive. An agency does not set the policy required to carry out its functions - these are determined by the department that oversees the agency.

Failed asylum seeker

Someone who has applied for asylum, been refused and has no appeal, or appeal right, currently pending.

Family Returns Process

The process introduced by the UK government from February 2011 to manage the return of those families who have exhausted their right to remain in the UK.

Family reunion

Family reunion is the policy enabling people with refugee or humanitarian protection status to bring their immediate family members (husband/wife, dependent children under 18 years of age) to join them in the UK.

Fast-track procedure

The fast-track procedure was used to determine asylum applications from people who the Home Office assess to be 'suitable'. A case was considered suitable for the fast-track process where it appeared to the Home Office that the asylum claim could be decided 'quickly'. This procedure was found to be unlawful in 2015 and is no longer running.

First reporting event

Asylum applicants used to be asked to attend this event after their screening interview. This has been replaced for children by the UASC case review events.

First-tier Tribunal (Immigration and Asylum Chamber)

The First-tier Tribunal was established on 15 February 2010, alongside the Upper Tribunal (Immigration and Asylum Chamber) as part of the Unified Tribunals framework created by the Tribunals, Courts and Enforcement Act 2007. The new chambers replace the former Asylum and Immigration Tribunal.

The First-tier Tribunal (Immigration and Asylum Chamber) is an independent Tribunal dealing with appeals against decisions made by the Home Secretary and his/her officials in immigration, asylum and nationality matters.

Former relevant children

One of the four categories of children entitled to leaving care services under the Children Act 1989 as amended by the Children (Leaving Care) Act 2000. Former relevant children are young people aged 18-21 who have been either eligible children or relevant children. A young person over 21 who is still receiving support from a local authority with education or training will be a former relevant child until the end of his/her programme of study.

Former unaccompanied asylum-seeking child

This term refers to those who arrived in the UK as unaccompanied asylum-seeking children but who have now reached 18 and who are therefore no longer children according to the law.

Further education

Further education courses can be studied at schools, colleges, and from home through distance learning. They are for people who are 16 years old or over, and include:

- academic courses, including GCSEs, AS and A Levels, and Scottish Highers
- work related courses, for example National or Scottish Vocational Qualifications (NVQs or SVQs)
- basic skills courses, including English language, literacy and numeracy
- courses that do not lead to a formal qualification
- Access courses
- continuing or adult education

HC1 form

Application form for help with medical costs

HC2 certificate

Certificate which allows someone to claim free prescriptions and some dental and optical services.

High Court

The High Court can consider applications against determinations made by the lower courts in England and Wales. This normally takes the form of a statutory review which is a paper-based examination made by a single judge, who will determine whether the law has been correctly applied.

Higher education

Higher education courses are provided by colleges and universities and can also be accessed from home through distance learning. They include the following:

- National Vocational Qualifications (NVQ 4 or 5) linked to a degree, a Diploma of Higher Education (DipHE) or other job-related courses, such as a Diploma in Social Work (DipSW)
- most foundation degrees
- Higher National Diplomas (HND) and Higher National Certificates (HNC)
- undergraduate degrees, such as Bachelor's degrees (including BA, BSc, BEng, BDS, LLB) and undergraduate Master's degrees (including MSci, MPharm)
- postgraduate qualifications, for example Master's degrees, postgraduate certificates and diplomas, PhDs

Human Rights Act 1998

The Human Rights Act incorporates the European Convention on Human Rights (ECHR) into the UK law.

Humanitarian protection

Humanitarian protection is a form of immigration status. It is granted by the Home Office to a person who it decides has a need for protection because there is a serious risk that their rights under Article 3 ECHR would be breached, they would be unlawfully killed or they would face the death penalty. It is granted for five years in the first instance.

Illegal entrant

A person who has entered the UK in breach of immigration law, for example, because they have entered the country without passing through immigration control (a clandestine entrant) or because they have lied about their intentions on entering the country (for example, someone with permission to enter as a student, but whose real intention is to work). This is sometimes the correct term for people who are described in the media as 'illegal immigrants' - a term that has no meaning in immigration law.

Immigration Enforcement

This is the part of the Home Office responsible for enforcing immigration law in the UK.

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Immigration judge

Immigration judges are the judges who sit on the First-tier and Upper Tribunals (Asylum and Immigration Tribunal). They hear appeals against decisions made by the Home Office in asylum, immigration and nationality matters.

Immigration removal centre

Immigration removal centres (previously Immigration Detention Centres) are mainly used, people who do not have leave to remain or an application for leave to remain pending or who are being forcibly removed from the UK following an unsuccessful asylum application. It is government policy not to detain children wexcept in 'exceptional' circumstances. Despite this, many are detained either as part of a family or because their age is disputed by the Home Office.

Immigration Rules

The Rules made by the Secretary of State for the Home Department (the Home Office) under statutory powers to control the entry and stay in the United Kingdom of non-British nationals.

Immigration Service (IS)

The previous name of the part of the Home Office that regulates entry into the UK at ports, screens asylum seekers, manages asylum cases and contact with asylum seekers, and enforces removal of people who do not have permission to remain in the country.

In-country applicant

Individuals who get into the country first (either clandestinely or on another basis, such as a visitor) and then claim asylum 'in country' are known as 'in-country applicants', as distinguished from 'port applicants', who lodge their claim for asylum at a port (a point of entry to the UK - either airport, sea port or train terminal in the case of Eurostar).

Indefinite leave to remain (ILR)

Indefinite Leave to Remain (ILR) is a form of immigration status given by the UK Border Agency. ILR is also called 'permanent residency' or 'settled status' as it gives permission to stay in the UK on a permanent basis. Prior to the 30th August 2005, those recognised as refugees were always given ILR at the time of their status being accepted. This has now changed and refugees are only granted a period of 5 years leave to remain called refugee leave.

Judicial review

A legal mechanism by which statutory agencies (among others) may be challenged on how they have applied their processes or interpreted or applied the law relating to their legal duties. The decisions of government departments, local authorities or the lower courts can be challenged, and challenges can sometimes be made to Home Office decisions by using judicial review.

Kinship care

Care of a child by a close relative other than a parent, for example a grandparent, sibling, aunt or uncle or step-parent.

Lawfully present

A person who:

- has current permission to remain in the UK;
- is awaiting a decision on an in-time application for an extension of that permission;
- is appealing against a decision to refuse an extension; or
- is awaiting the outcome of such an appeal.

The person will only become unlawfully present when any appeal has been finally determined and they have exhausted any appeal rights.

Leave to enter

The permission given by an immigration office at a port of entry to the UK to enter the country. Leave to enter is usually limited as to time (for example, a typical tourist visa gives permission to enter the country for six months) and may also contain conditions such as a prohibition on working or on claiming 'public funds'.

Leave to remain

The permission given by the Home Office to someone granting permission to stay in the UK or extending permission to stay in the UK. Leave to remain can also be limited as to time and may contain various prohibitions (on working or claiming 'public funds'). Time-limited leave to remain may also explicitly allow the recipient to work or claim benefits, such as children granted leave as an unaccompanied minor.

Legacy case

The term used to describe older asylum applications, most of which were filed before March 2007, which the Home Office claims to have predominantly resolved. Outstanding cases are now dealt with by the Case Assurance and Audit Unit.

Legal Aid Agency

The body that replaced the Legal Services Commission, which was set up under the Access to Justice Act 1999 to administer public funding for legal help and representation. The Legal Aid Agency (LAA) issues contracts to solicitors' firms and advice agencies to conduct legal work, including asylum and immigration work.

Legal representative

A legal representative is a barrister or a solicitor, solicitor's employee or other authorised person who acts for an applicant or appellant in relation to the claim.

Limited leave

The permission that is given to enter or remain in the UK for a specified period of time, sometimes with other conditions attached.

Local authority

Overall administrative body for a geographic area.

'Looked-after' children (LAC)

Children who are being accommodated by a local authority, generally under section 20 of the Children Act 1989, or who are subject of a care order under section 31 of the Children Act 1989. Children who receive assistance under section 17, even if this includes the provision of accommodation, are no longer 'looked-after' children since 7th November 2002.

Merton compliant

A term used to describe a local authority age assessment that has been conducted in accordance with the case law on age assessment and is therefore fair and lawful. The term derives from the Merton judgment of 2003 which gives 'guidance as to the requirements of a lawful assessment by a local authority of the age of a young asylum seeker claiming to be under the age of 18 years.'

Modern slavery

The Home Office states that modern slavery 'is a complex crime that takes a number of different forms. It encompasses slavery, servitude, forced and compulsory labour and human trafficking.' The UK government passed the Modern Slavery Act in 2015.

National Asylum Allocation Unit (NAAU)

A child's asylum claim is referred to the NAAU following the welfare interview. The unit will allocate the case to the appropriate Home Office case working team.

National Asylum Support Service (NASS)

See Asylum Support.

National Referral Mechanism (NRM)

The National Referral Mechanism (NRM) is a framework for identifying victims of human trafficking and ensuring they receive the appropriate care. Authorised agencies, such as the police, the Home Office, social services and certain NGOs, who encounter a potential victim of human trafficking can refer them to the competent authority (CA). The initial referrer is known as the 'first responder'. In the UK, the CAs are UKHTC and the Home Office.

National Transfer Scheme

The National Transfer Scheme is a voluntary arrangement between local authorities in relation to the care of unaccompanied children who arrive in the UK and claim asylum. There is an interim transfer protocol which sets out responsibility for an unaccompanied child and how transfers are to occur.

Naturalisation

Naturalisation is the process of becoming a British national.

New Asylum Model (NAM)

The New Asylum Model was introduced by the Home Office for new asylum claims made from April 2007. NAM entailed a 'case owner' from the Home Office who was responsible for processing the application from beginning to end. The New Asylum Model is no longer in effect.

Non-compliance refusal

A 'technical' refusal of an asylum claim on the ground that the applicant has not complied with a direction given by the Home Office - for example, the asylum application form has not been returned within the specified time or the applicant has failed without good reason to attend a Home Office interview. An asylum seeker refused on non-compliance grounds can still appeal against the refusal.

Non-suspensive appeals (NSA)

When a claim for asylum falls under the non-suspensive appeals process it means that the applicant only has the right to appeal against a negative Home Office decision once outside of the UK.

Office of the Immigration Services Commissioner (OISC)

The Commissioner regulates the provision of immigration advice in the UK.

Ordinarily resident

A person is found to be 'ordinarily resident' if they are living voluntarily in a country for settled purposes 'as a part of the regular order of his life for the time being.' The residence has to be lawful and not in breach of the immigration laws. The concept of 'ordinary residence' is different from 'habitual residence' which is used to determine a person's entitlement to certain benefits.

Overstayer

A person who was lawfully in the UK but whose leave to remain has now expired and who did not apply for an extension of that leave while it was still current. Overstayers are in breach of the Immigration Rules and are liable to being removed.

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The Palermo Protocol

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000

Panel of Advisors

The Refugee Council, the largest voluntary organisation in the UK supporting asylum seekers and refugees, provides services to children through its Panel of Advisors. Its role is to help a child gain access to legal representation and other support. Any agency dealing with any unaccompanied child should check that the referral has been made.

Points-based immigration system

The system used by the Home Office for applicants who wish to enter the UK for work, training or study. Tier 4 regulates children between age 4 and 17 who wish to enter the UK to study.

Port applicant

Individuals who lodge their claim for asylum at a port (a point of entry to the UK - either airport, sea port or train terminal in the case of Eurostar) are called 'port applicants' and are distinguished from those who get into the country first (either clandestinely or on the basis of another reason, such as a visitor) and then claim asylum 'in country'.

Primary care

Healthcare in the UK is divided into 'primary' and 'secondary' services. Primary care is the first point of professional contact for patients in the community and includes, among others, general practitioners (GPs), dentists and opticians.

Private fostering

Private fostering is an arrangement where a child under 16 years of age, or 18 if they are disabled, is being cared for and accommodated by someone who is not their parent, guardian or close relative (grandparent, sibling, aunt, uncle or step-parent) for a period of at least 28 days.

Public funds

Asylum seekers and many other categories of entrant into the UK are prohibited from accessing public funds. The Immigration Rules define public funds as: Income Support, income based Job-Seekers Allowance, Attendance Allowance, Severe Disablement Allowance, Carer's Allowance, Disability Living Allowance; Council Tax Benefit, Housing Benefit, Child Benefit, State Pension Credit, Child Tax Credit, Working Tax Credit, and emergency housing (for example, under the homelessness provisions of the Housing Acts). This does not include provision from local authorities' children's services under the Children Act 1989, or funds for education. Refugees and those granted humanitarian protection are entitled to access public funds, as are unaccompanied asylum-seeking children given UASC leave.

Qualifying children

One of the four categories of children entitled to leaving care services under the Children Act 1989 as amended by the Children (Leaving Care) Act 2000. Qualifying children are children under 21 and who have ceased to be looked after, accommodated or fostered after the age of 16.

Qualifying period

The period of time which you must have been living legally in the UK before you can apply for permanent residence or naturalisation.

Refugee

A refugee is a person who 'owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to or owing to such fear, is unwilling to avail himself of the protection of the country ...' as set out in the Refugee Convention 1951.

Refugee Convention

Refugee Convention means the United Nations Convention relating to the Status of Refugees 1951 and the 1967 Protocol. These are the key international legal instruments which define who is a refugee and sets out their rights and the legal obligations of states.

Refugee leave/refugee status

Refugee status is awarded to someone the Home Office recognises as a refugee as described in the Refugee Convention. Time-limited permission to stay granted to those recognised as refugees in the UK since the 30th August 2005. Refugee leave is granted for a period of five years after which the refugee is eligible to apply for indefinite leave to remain.

Relevant children

One of the four categories of children entitled to leaving care services under the Children Act 1989 as amended by the Children (Leaving Care Act) 2000. Relevant children are children aged 16-17 who are no longer looked after by a local authority, but who were looked after for at least 13 weeks after the age of 14 and have been looked after at some time while they were aged 16 and 17.

Removal

Removal is a process whereby immigration officers enforce return from the UK to another country.

Removal centre

See 'immigration removal centre'.

Removal directions

The determination by the Home Office that the young person has no further valid claim preventing their compulsory return to their country of origin. A date will be set for his/her removal.

Reporting

Most adult asylum seekers who are not detained are expected to report to a reporting centre or police station.

Resettlement scheme

The UK government has introduced resettlement schemes in recent years, including the Syrian Vulnerable Person Resettlement Programme, a scheme to resettle children and adults from the Middle East and North Africa region, and a scheme to resettle unaccompanied children from Greece, Italy and France.

Safe third country

The Home Office deems certain countries to be places where a refugee is safe from persecution – for example, all EU states, Canada, the USA, Switzerland and Norway. If an asylum seeker travels through any of these states en route to the UK, she or he may be returned there on grounds of having travelled through a safe third country – although see Dublin Regulation for further information on return to EU states.

Screening interview

A screening interview is a meeting between asylum seekers and immigration officers to establish: identity, route to the UK, liability to return to a third country, eligibility for Home Office support, liability to prosecution, and liability to detention. During the interview asylum seekers have their photo and fingerprints taken and are issued with an asylum registration card. The screening interview has been replaced a welfare interview for child asylum seekers.

Secondary care

Healthcare in the UK is divided into 'primary' and 'secondary' services. Secondary care is specialised treatment, which is normally carried out in a hospital.

Section 4 support

Section 4 of the Immigration and Asylum Act 1999 gives the Home Office power to grant support to some destitute asylum seekers whose asylum application and appeals have been rejected. Support granted under Section 4 is also known as 'hard case' support.

Separated children

Separated children are children under 18 years of age who are outside their country of origin and separated from both parents or previous/legal customary care giver. Separated children are typically asylum seekers, but not in every case.

Smuggling

Smuggling is the transport of a person (with their consent) to another country through illegal means. The vast majority of people entering the UK unlawfully are smuggled rather than trafficked, although there can be a grey area. People smuggling is the facilitation of illegal entry, in breach of immigration law, either clandestinely or through deception of the use of false documentation. In this sense 'smuggling' refers to the illegal transport of a person or persons across state borders, which results in a benefit for the smuggler.

Standard acknowledgement letter (SAL)

In some cases, the Home Office will not be able to issue an asylum registration card. Instead, a standard acknowledgement letter may be given which acknowledges an asylum application.

Statement of evidence form (SEF)

A form which unaccompanied children applying for asylum use to set out their grounds for claiming asylum. The form was previously used for all asylum seekers.

Statutory service

A statutory service is a service that is required to exist by law, for example the NHS.

Student finance

Student finance is provided by the UK Government, as a loan, to assist in the payment of tuition fees and living costs during the period of studying. It includes the student loan, tuition fee loan, and grants if, for example, an individual is disabled or supporting dependants. Student finance is not public funds as defined in paragraph 6 of the Immigration Rules.

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Subject to immigration control

'Subject to immigration control' has two different meanings depending on the context in which it is used. Section 13(2) of the Asylum and Immigration Act 1996 defines a person subject to immigration control as 'a person who ... requires leave to remain in the United Kingdom (whether or not such leave has been given)'. Under section 115 of the Immigration and Asylum Act 1999, however, the term is used to determine entitlement to various non-contributory benefits.

The categories of persons who are subject to immigration control under s.115 include:

- persons who require leave to enter or remain in the United Kingdom but do not have it, e.g. asylum seekers on temporary admission;
- persons who have limited leave to enter or remain in the United Kingdom which is subject to a public funds condition, e.g. persons granted leave to enter as a student

People granted refugee status and those refused refugee status but granted limited leave to remain (humanitarian protection or UASC leave) are not subject to immigration control within the meaning of s.115 and are therefore entitled to receive the benefits listed above.

Substantive interview

The 'substantive interview', or 'asylum interview', is when the asylum applicant gets an opportunity to describe to the Home Office what has happened to them and what it is they fear in their own country.

Temporary admission (TA)

When somebody applies for asylum they can either be detained or given 'temporary admission' while a decision is pending on whether to give them 'leave' or permission to enter or remain. Someone given 'temporary admission' is served with an IS96 by the Home Office. For immigration purposes, someone with temporary admission has not yet been given permission or leave to enter the UK. They are, therefore, liable to detention at any stage while on temporary admission. Conditions of temporary admission may be that the person resides at a particular address and reports to the Home Office after a specified time.

Trafficking

Trafficked children are those who are recruited, transported, transferred, harboured or received for the purpose of exploitation.

UK Border Agency (UKBA)

The UK Border Agency is the former name of the Government body responsible for asylum issues, managing immigration control in the UK, including applicants for permission to stay, citizenship and asylum. Previously called the Border and Immigration Agency.

UK Border Force

This Government body is the law enforcement command within the Home Office responsible for border controls and immigration control.

UK Human Trafficking Centre (UKHTC)

The UKHTC is a multi-agency unit that provides a point of co-ordination for the development of expertise and cooperation to combat the trafficking of human beings. UKHTC is also a competent authority.

UK Visas and Immigration (UKVI)

This is the current name of the Government body responsible for asylum issues and making decisions about applicants for permission to stay, citizenship and asylum. UKVI is often referred to as the 'Home Office'.

Unaccompanied asylum-seeking child (UASC)

The definition for immigration purposes of an unaccompanied asylum-seeking children is given by the Home Office as 'a person under 18 years of age or who, in the absence of documentary evidence establishing age, appears to be under that age' who 'is applying for asylum in their own right; and is separated from both parents and not being cared for by an adult who by law or custom has responsibility to do so'. The Home Office uses the acronym UASC.

UASC case review events

This is an event that occurs after the welfare interview, 10 days after a case is allocated to a case working team (see NAAU). This is carried out with the child, social worker, legal representative and representative from the Children's Panel. The purpose is to explain the process, ensure the child has legal representation, check on the status of the SEF and issue paperwork.

UASC leave

This is the Home Office name for leave granted to children under 352ZC-F of the Immigration Rules – leave granted on the basis that the applicant is a child and that there are no safe, adequate reception arrangements in the home country. Leave is granted until the child is 17 and a half years old or for two and a half years, whichever is less.

UNICEF

United Nations Children's Emergency Fund

UNCRC

United Nations Convention on the Rights of the Child

Undocumented migrant

An undocumented migrant is a person who is present in the UK without appropriate legal permission to remain.

UNHCR

United Nations High Commissioner for Refugees

Upper Tribunal (Immigration and Asylum Chamber)

The Upper Tribunal was established on 15 February 2010, alongside the First-tier Tribunal (Immigration and Asylum Chamber) as part of the Unified Tribunals framework created by the Tribunals, Courts and Enforcement Act 2007. The new chambers replace the former Asylum and Immigration Tribunal. Its purpose is to hear and decide appeals against decisions made by the First-tier Tribunal in matters of immigration, asylum and nationality.

'White list' countries

The 'white list' was formally abolished in 1999. However, the term continues to be used informally referring to countries whose nationals in general are considered not to be at threat of persecution.

further reading

Useful resources

Migrant Children's Project (MCP)

Based in the Coram Children's Legal Centre, the MCP provides resources for professionals and families in relation to legal issues affecting refugee, asylum and migrant children.

The MCP website has fact sheets on a variety of topics including: immigration, asylum, nationality, support for children and care-leavers, age disputes, legal advice & representation, trafficking, education, work, healthcare, best interests, detention, information sharing and family tracing & reunion.

Email: mcp@coramclc.org.uk

Website: www.childrenslegalcentre.com

Refugee Council: How Can We Help You

This part of the Refugee Council website contains information on the asylum process, support and entitlement.

Website: www.refugeecouncil.org.uk

Immigration Law Practitioners Association (ILPA) Information sheets

ILPA provides information sheets on a range of issues relating to immigration and asylum.

Website: www.ilpa.org.uk

The Electronic Immigration Network

EIN's website is a resources database useful for anyone seeking information about an asylum or immigration issue. Membership is required to access all the resources.

Tel: 0161 359 2014

Email: info@ein.org.uk

Website: www.ein.org.uk

Free Movement Blog

This blog is run by Colin Yeo, a barrister at Garden Court Chambers, and provides regular updates and commentary on all aspects of immigration and asylum law.

Website: www.freemovement.org.uk

UK Human Rights Blog

This blog has been run since 2010 by Adam Wagner, a barrister at 1 Crown Office Row, and provides regular updates and posts on various legal areas.

Website: www.ukhumanrightsblog.com

Rights Info

This website uses infographics, stories and social media to explain and promote human rights.

Website: <http://rightsinfo.org/>

Asylum Help advice and information

Asylum Help is part of Migrant Help, which provides free independent advice and guidance in many languages to asylum seekers across the UK.

Website: www.asylumhelpuk.org/

Citizens Advice Bureau Advice guide

Provides online advice and guidance on a wide range of issues, including access to benefits, work, debt, housing and law and rights.

Website: www.adviceguide.org.uk

Home Office policy

All policy and guidance issued by the Home Office is available on the gov.uk website. This includes asylum policy instructions on children's asylum claims, age disputes, family reunion, tracing and trafficking.

Website: www.gov.uk/topic/immigration-operational-guidance

General reading

Growing up in a hostile environment

Kamena Dorling, Coram Children's Legal Centre, 2013

Available free at: www.childrenslegalcentre.com

Navigating the system: Advice provision for young refugees and migrants

Kamena Dorling & Anita Hurrell, Coram Children's Legal Centre, 2012

Available free at: www.ilpa.org.uk

Not so straightforward: the need for qualified legal support in refugee family reunion

British Red Cross

Available free at: www.redcross.org.uk

Cut off from justice: the impact of excluding separated migrant children from legal aid

The Children's Society, 2015

Available free at: www.childrenssociety.org.uk

Not just a temporary fix: durable solutions for separated migrant children

The Children's Society, 2015

Available free at: www.childrenssociety.org.uk

Family Friendly? The impact on children of the family migration rules

The Office of the Children's Commissioner, 2015

Available free at: www.childrenscommissioner.gov.uk

Working with refugee children: current issues in best practice

S. Bolton, K. Kaur, S. Luh, J. Peirce and C. Yeo, Immigration Law Practitioners' Association (ILPA), 2012

Available free at: www.ilpa.org.uk

Resource Guide for Legal Practitioners Working with Refugee Children

Tsangarides and L. Woodall, Immigration Law Practitioners' Association (ILPA), 2011

Available free at: www.ilpa.org.uk

Being children and undocumented in the UK: a background paper

Sigona and V. Hughes, Compas, Oxford University, 2010

Available free at: www.compas.ox.ac.uk

Asylum process

Many useful briefing notes can be found on the Immigration Law Practitioners Association website at www.ilpa.org.uk

Put yourself in our shoes: considering children's best interests in the asylum system

Law Centres Network, 2015

Available free at: www.lawcentres.org.uk

How children become 'failed asylum-seekers'

Kent Law Clinic, 2014

Available free at: www.kent.ac.uk

Children's best interests: A primary consideration?

Greater Manchester Immigration Aid Unit, 2013

Available free at: www.gmiau.org.uk

Into the unknown: Children's journeys through the asylum process

The Children's Society, 2012

Available free at: www.childrenssociety.org.uk

Landing in Kent: The experience of unaccompanied children arriving in the UK

The Office of the Children's Commissioner, 2011

Available free at: www.childrenscommissioner.gov.uk

Lives in the Balance: The quality of immigration legal advice given to separated children seeking asylum

Refugee Council, 2011

Available free at: www.refugeecouncil.org

further reading

Care & support

Working together to safeguard children: A guide to inter-agency working to safeguard and promote the welfare of children

UK Government, 2015

Available free at: www.gov.uk

Care of unaccompanied and trafficked children: Statutory Guidance for local authorities on the care of unaccompanied asylum seeking and trafficked children

Department of Education, 2014

Available free at: www.gov.uk

'I don't feel human': Experiences of destitution among young refugees and migrants

The Children's Society, 2012

Available free at: www.childrenssociety.org.uk

Levelling the playing field: A UNICEF UK report into the provision of services to unaccompanied or separated migrant children in three local authority areas in England

L. Brownlees and N. Finch, UNICEF, 2010

Available free at: www.unicef.org.uk

Age assessments

Happy Birthday? Disputing the age of children in the immigration system

Kamena Dorling, Coram Children's Legal Centre, 2014

Available free at: www.childrenslegalcentre.com

Age assessment guidance and information sharing pro forma for social workers

Association of Directors of Children's Services, 2015

Available free at: www.adcs.org.uk

Age assessment Joint Working Guidance

Association of Directors of Children's Services & Home Office, 2015

Available free at: www.adcs.org.uk

Age Assessment of Unaccompanied Asylum Seeking Children: All Wales Multi-Agency Toolkit

Wales Strategic Migration Partnership, 2015

Available free at: <http://www.wsmmp.org.uk/>

Age Dispute Project Resources

Refugee Council, 2014

Available free at: www.refugeecouncil.org.uk

Age Assessment Practice Guidance: age assessment pathway for social workers in Scotland

Scottish Refugee Council & Glasgow City Council, 2012

Available free at: www.migrationscotland.org.uk

The fact of age: a review of case law and local authority practice

Office of the Children's Commissioner, 2012

Available free at: www.childrenscommissioner.gov.uk

Young Lives in Limbo: the protection of age disputed young people in Wales

Welsh Refugee Council, 2011

Available free at: www.welshrefugeecouncil.org

Work, education & training

UKCISA website

UKCISA provides comprehensive information to students and professionals on all issues relating to further and higher education, including eligibility for fees and student support.

Available from www.ukcisa.org.uk

Student Action for Refugees (STAR) website

STAR provides information on universities offering financial bursaries and support for young refugees and migrants

Available free at: www.star-network.org.uk

Employing refugees: the documents required as evidence of entitlement to work in the UK

Refugee Council, 2014

Available free at: www.refugeecouncil.org.uk

A lot to learn: refugees, asylum seekers and post-16 learning

Refugee Council, 2013

Available free at: www.refugeecouncil.org.uk

Full Guide for employers on preventing illegal working in the UK

Home Office, 2013

Available free at: www.gov.uk

'I just want to study – Access to Higher Education for Young Refugees and Asylum Seekers

Refugee Support Network, 2012

Available free at: www.refugeesupportnetwork.org

Something to smile about: Promoting and supporting the educational and recreational needs of refugee children

S. Walker, Refugee Council, 2011

Available free at: www.refugeecouncil.org.uk

Short Guide for Advisers on Access to Further Education

Refugee Council Briefing, 2011

Available free at: www.refugeecouncil.org.uk

healthcare

Maternity Action

Maternity Action provides a series of information sheets with guidance on maternity rights and benefits for pregnant women and new mothers according to their immigration status. These include rights and benefits for refused (failed) asylum seekers, refugees, undocumented migrants, EU and EEA nationals (including A8 and A2), UK citizens and permanent residents, women with no recourse to public funds and trafficked women.

Available free at: www.maternityaction.org.uk

Centre for the study of Emotion and Law

Charitable research centre that provides research, reports and training resources on how health and emotion impact vulnerable migrants in the immigration system

Available free at: www.csel.org.uk

Overseas visitors and primary care

British Medical Association, 2016

Available free at: www.bma.org.uk

Access to Healthcare in the UK

Doctors of the World, 2015

Available free at: www.doctorsoftheworld.org.uk

Patient Registration: Standard Operating Principles for Primary Medical Care (General Practice)

NHS England, 2015

Available free at: www.england.nhs.uk

Guidance on implementing overseas visitors' hospital charging regulations

Department of Health, 2015

Available free at: www.gov.uk

Health of Migrants in the UK: What do we know?

The Migration Observatory, 2014

Available free at: www.migrationobservatory.ox.ac.uk

further reading

Female Genital Mutilation: caring for patients and safeguarding children

British Medical Association, 2011

Available free at: www.bma.org.uk

trafficking

Time to deliver: considering pregnancy and parenthood in the UK's response to human trafficking

Anti-Trafficking Monitoring Group, 2016

Available free at: www.ecpat.org.uk

Evaluation of independent child trafficking advocates trial: final report

Home Office, 2015

Available at: www.gov.uk

NCA Strategic Assessment: The nature and scale of human trafficking in 2014

National Crime Agency, 2015

Available free at: www.nationalcrimeagency.gov.uk

Proposal for a revised NRM for children

Anti-Trafficking Monitoring Group, 2014

Available free at: www.ecpat.org.uk

Still at risk: A review of support for trafficked children

Refugee Council & The Children's Society, 2013

Available free at: www.refugeecouncil.org.uk

Watch over me - A system of guardianship for child victims of trafficking

ECPAT, 2011

Available free at: www.ecpat.org.uk

London Safeguarding Trafficked Children Guidance and Toolkit

London Safeguarding Children Board, 2011

Available free at: www.londonscb.gov.uk/trafficking/

Understanding child trafficking and private fostering

ECPAT, 2011

Available free at: www.ecpat.org.uk

The National Referral Mechanism (NRM) NSPCC fact sheet

National Society for the Prevention of Cruelty to Children (NSPCC), 2011

Available free at: www.nspcc.org.uk

The trafficking of children into and within the UK for benefit fraud purposes

Child Exploitation and Online Protection Centre (CEOP), 2010

Available free at: www.ceop.police.uk

Detention, deportation & removal

Bail for Immigration detainees (BID)

This charity exists to challenge immigration detention in the UK. It has published a large number of reports and fact sheets for those working with or in immigration detention.

Available free at: www.bid.org

Detention Action

This charity campaigns to end immigration detention without time limit and for those claiming asylum, as well as providing support to people in Immigration Removal Centres. It has published a number of reports on immigration detention.

Available free at: www.detentionaction.org.uk

After Return: Documenting the experiences of young people forcibly removed to Afghanistan

Refugee Support Network, 2016

Available free at: www.refugeesupportnetwork.org

Immigration detention in the UK

Migration Observatory, 2015

Available free at: www.bid.org

Fractured Childhoods: the separation of families by immigration detention

BID, 2013

Available free at: www.bid.org

After Return No Longer A Child: Examining the transition to adulthood and its consequences for former unaccompanied minors from Afghanistan who face forced removal from the UK

Catherine Gladwell, Forced Migration Review, 2013

Available free at: <http://www.fmreview.org/detention/gladwell.html>

Expecting Change: the case for ending the detention of pregnant women

Medical Justice, 2013

Available free at: www.medicaljustice.org.uk

Not a minor offence: unaccompanied children locked up as part of the asylum system

Refugee Council, 2012

Available free at: www.refugeecouncil.org.uk

HM Chief Inspector of Prisons reports on Immigration Removal Centres

Available free at: www.justice.gov.uk/about/hmi-prisons/

contact details

Children's organisations

Coram Children's Legal Centre (CCLC)

Coram Children's Legal Centre provides legal advice and representation to children, their carers and professionals throughout the UK, in immigration, education and child law. The Migrant Children's Project aims to help non-immigration specialist professionals protect and uphold the rights and entitlements of asylum-seeking, refugee and migrant children.

Migrant children's advice line: 0207 636 8505 (tues-thurs)

Child Law Advice Service (CLAS) advice line: 0300 330 5480 (family law) and 0300 330 5485 (education)

General number: 020 7713 0089

Email: mcp@coramclc.org.uk

Website: www.childrenslegalcentre.com

CLAS website: www.childlawadvice.org.uk

Coram Voice

Coram Voice is a major children's advocacy organisation for children living away from home or in need, and provides a national helpline. They also provide community advocacy, independent visits and complaints and secure accommodation reviews.

Head Office: 020 7833 5792

Freephone: 0808 800 5792 (for children and young people)

Email: info@coramvoice.org.uk

Website: www.coramvoice.org.uk

Coram Academy for Adoption & Fostering (CoramBAAF)

CoramBAAF is a membership organisation which works to improve outcomes for children and young people in care by supporting the agencies and professionals who work with them. Its activities include finding families for children, offering training and advice, and publishing guides on issues relating to adoption, fostering and children in the care system.

Head Office: 020 7520 0300

Advice Line: 0300 222 5775 (9-1pm, Mon-Fri)

Email: advice@corambaaf.org.uk

Website: www.corambaaf.org.uk

The Children's Society

The Children's Society runs a number of projects across the UK for refugee and migrant children, including the provision of advocacy and advice for children and young people. The Children's Society also runs children's centres in the South West of England.

Head Office: 020 7841 4400

Email: supportercare@childrenssociety.org.uk

Website: www.childrenssociety.org.uk

Just for Kids Law

Just For Kids Law provides advocacy, support and assistance to young people in difficulty (particularly those children in trouble with the law, looked-after children and those at risk of exclusion from school). They provide legal representation and other support, including advocacy, for those children and young people. They also push for change through strategic litigation and policy work.

Head Office: 020 3174 2279

Email: info@justforkidslaw.org

Website: <http://www.justforkidslaw.org/>

The Office of the Children's Commissioner

The Children's Commissioner has a statutory duty to promote and protect the rights of all children in England in accordance with the UNCRC. She runs Help at Hand, the national advice line for children and young people who are in care, leaving care, living away from home or working with children's services.

Advice Line: 0800 528 0731

Email: help.team@childrenscommissioner.gsi.gov.uk

Website: www.childrenscommissioner.org.uk

Barnardo's

Barnardo's is a large UK children's charity. It runs projects for children and young people seeking asylum who arrive here on their own. They also have a trafficking advocacy service and were involved in the Independent Child Trafficking Advocacy pilot.

Regional offices: http://www.barnardos.org.uk/what_we_do/barnardos_today/contact_us/national_regional_offices.htm

Head Office: 020 8550 8822

Email: info@barnardos.org.uk

Website: www.barnardos.org.uk

Save the Children UK

Save the Children is a large global children's charity, working to eradicate child poverty in the UK. They run programs and campaigns on achieving this aim.

Save the Children Tel: 020 7012 6400

Email: supporter.care@savethechildren.org.uk

Website: www.savethechildren.org.uk

National Youth Advocacy Services (NYAS)

NYAS is a UK charity providing children's rights and socio-legal services. It offers information, advice, advocacy and legal representation to children and young people up to the age of 25, through a network of advocates throughout England and Wales. NYAS is also a Community Legal Service.

Tel: 0151 649 8700

Freephone: 0800 808 1001 (for children and young people)

Email: help@nyas.net (helpline)

Email: info@nyas.net

Website: www.nyas.net

Become

Become supports and empowers children in care and young care leavers through engagement, organising work experience and providing support and guidance. They also influence legislation, policy and practice.

Head Office: 020 7251 3117

Email: advice@becomecharity.org.uk

Website: www.becomecharity.org.uk

Scottish Child Law Centre

SCLC has a legal advice line in relation to children and young people living in Scotland on the subjects of education, health, social work, separation, residence, contact, children's rights, youth offenders and access to files.

Tel: 0131 667 6333

Email: advice@sclc.org.uk

Website: www.sclc.org.uk

Asylum and immigration

Migrant Children's Project

The MCP works to promote and protect the rights of children and young people affected by UK immigration control. The advice line is available for advice regarding any issue affecting migrant children and young people, including those in a family unit. There are a number of fact sheets on the website and the project is also responsible for this guide.

Advice line: 020 7636 8505 (tues to thurs)

Email: mcp@coramclc.org.uk

Website: www.childrenslegalcentre.org.uk

Seeking Support: www.seekingsupport.co.uk

contact details

Refugee Council

The Refugee Council provides advice and support to asylum seekers and refugees and campaigns and lobbies on refugee issues. They provide training to local authorities and outside organisations on a number of issues relating to asylum seekers and refugees. They also have an Age Dispute and Detention Project, and projects for both trafficked girls and young women, and trafficked boys and young men. Regional office and advice line details are available on the website.

Main switchboard: 020 7346 6700

Children's Section: 020 7346 1134

Email: children@refugeecouncil.org.uk

Website: www.refugeecouncil.org.uk

Panel of Advisers, Children's Section (Refugee Council)

The Children's panel has a team of 'Panel Advisers', including a drop-in team who work in the Croydon Refugee Council office in London helping separated children who may have newly arrived or are in crisis. They also operate drop-in services outside London: in Kent, Luton, Birmingham and Leeds.

Children's panel advice line: 020 7346 1134

Email: children@refugeecouncil.org.uk

Website: www.refugeecouncil.org.uk

Migrant & Refugee Children's Legal Unit (MiCLU)

MiCLU promotes the rights of migrant and refugee children in the UK. They provide legal advice and representation, conduct strategic litigation, provide training and carry out policy work and research.

Tel: 020 7288 7672

Email: miclu@islingtonlaw.org.uk

Website: miclu.org

British Red Cross

The British Red Cross is a volunteer-led humanitarian organisation that helps people in crisis. It supports refugees in a number of ways, from providing emergency provisions for those facing hardship to giving orientation support and friendly advice to the most vulnerable. There is a network of branches and around 1,000 centres across the UK. (See also the **contact details** section on family tracing.)

Switchboard: 0344 871 11 11

Email: information@redcross.org.uk

Website: www.redcross.org.uk

Asylum Aid

Asylum Aid is a charity which provides free legal advice and representation to refugees and asylum seekers. They also have a Refugee Women's Resource Project which specialises in providing support to women refugees and asylum seekers.

Tel: 020 7354 9631

Advice Line: 020 7354 9264

Email: info@asylumaid.org.uk

Website: www.asylumaid.org.uk

Asylum Support Appeals Project (ASAP)

ASAP specialises in asylum support law and provides free legal representation and advice to those appealing against the Home Office's decision to refuse or withdraw their support.

Email: see contact form on website

Advice Line: 020 3716 0283 (open Mon, Wed, Fri, 2-4pm)

Website: www.asaproject.org

Refugee Action

Refugee Action is a national charity that works with refugees to build new lives. They provide outreach, support and advice services to asylum seekers in the UK.

Head Office: 020 7952 1511

Email: info@refugee-action.org.uk

Website: www.refugee-action.org.uk

Migrant Help / Asylum Help

Migrant Help is a UK charity offering support, guidance and accommodation to vulnerable migrants across the UK. They work with victims of human trafficking, detained foreign nationals, EEA nationals and others. Asylum Help is part of Migrant Help and provides advice and support in relation to the asylum system and making applications for asylum support.

Tel: 01304 203 977 (head office)

Asylum Help Tel: 0808 8000 630 (the asylum helpline has different numbers for different languages, please see asylum help website)

Email: info@migranhelpuk.org / info@asylumhelpuk.org

Website: www.migranhelpuk.org / www.asylumhelpuk.org

Joint Council for the Welfare of Immigrants (JCWI)

JCWI is an independent national charity working to ensure justice and fairness in immigration, nationality and asylum law and policy. They provide direct legal advice and assistance to those affected by UK immigration control.

Tel: 020 7251 8708

Email: info@jcwi.org.uk

Website: www.jcwi.org.uk

Praxis

Praxis operates a walk-in advice service and operates projects which seek to address the fundamental human rights of new migrants.

Tel: 020 7729 7985

Email: admin@praxis.org.uk

Website: www.praxis.org.uk

Dost Centre

Dost is a one-stop service that aims to improve the quality of life of children and young people aged 11-25 who are refugees, asylum-seeking, trafficked, undocumented, or newly arrived in the UK. They run a youth club every Thursday and can be referred to for support.

Tel: 020 8472 8947

Email: See contact form on website

Website: dostcentre.org.uk

Young Roots

Young Roots is a charity that works with young refugees, asylum seekers and vulnerable migrants. They run the Rise Up Project, which supports 11-21 year olds in North London and Croydon.

Tel: 020 8684 9140

Email: info@youngroots.org.uk

Website: www.youngroots.org.uk

Asylum Welcome

Asylum Welcome is a charity based in Oxfordshire. They provide support to asylum-seeking children and young people, including advice, support and assistance.

Tel: 01865 722 082

Email: youth@asylum-welcome.org

Website: www.asylum-welcome.org

contact details

Welsh Refugee Council

The Welsh Refugee Council empowers refugees and asylum seekers to rebuild their lives in Wales, providing advice, information and support in four offices in Cardiff, Newport, Swansea and Wrexham.

Tel: 029 2048 9800

E-mail: info@welshrefugeecouncil.org

Website: www.welshrefugeecouncil.org.uk

Scottish Refugee Council

The Scottish Refugee Council provides advice, information and assistance to asylum seekers and refugees living in Scotland. It also provides specialist services in areas such as destitution, family key work, women's issues, community development and the media and the arts. They also deliver, in partnership with Aberlour Childcare Trust, the Scottish Guardianship service – which ensures that every unaccompanied or separated child in Scotland has a guardian to assist them through the asylum process and beyond.

Tel: 0141 248 9799

Email: info@scottishrefugeecouncil.org.uk

Website: www.scottishrefugeecouncil.org.uk

Scottish Guardianship Service

The Scottish Guardianship Service works with children and young people who arrive in Scotland unaccompanied and separated from their families. The service supports unaccompanied asylum seeking and trafficked children and young people. Guardians support the young people by helping them navigate the immigration and welfare processes, help them to feel supported and empowered throughout the asylum process, assist them to access the help they need when they need it, and help them to make informed decisions about their future.

Tel: 0141 445 8659

Email: guardianship@aberlour.org.uk

Website: www.aberlour.org.uk

Young Persons' Project (Scotland)

The YPP is part of the Legal Services Agency in Glasgow, Scotland. They provide legal advice and representation to migrant children and young people based in Scotland. They also have an advice line for professionals working with migrant children and young people.

Tel: 0141 353 3354

Email: lsa@btconnect.com

Website: www.lsa.org.uk

Youth-led organisations

Let us Learn

Let us Learn is a youth-led movement campaigning for access to higher education for all young people in the UK. Let us Learn develop young leaders to campaign for change and raise awareness of immigration status issues and their effect on access to higher education.

Tel: 020 3174 2279

Email: info@justforkidslaw.org

Website: www.justforkidslaw.org

Brighter Futures London

Hosted by Praxis, Brighter Futures London is a self-advocacy group for active young asylum seekers, refugees and migrants. They are young leaders, united and committed to improve the quality of life for other young asylum seekers and refugees.

Tel: 020 7749 7614

Email: emma.gardiner@praxis.org.uk

Website: <http://www.brighter-futures.org.uk/>

Nationality and statelessness

Children's Pro Bono Legal Service

This project is part of Coram Children's Legal Centre. It provides pro bono advice and representation on non-complex nationality applications.

Advice line: 0207 636 8505 (tues-thurs)

Email: cpbls@coramclc.org.uk

Website: www.childrenslegalcentre.com

Project for the Registration of Children as British Citizens (PRCBC)

The Project for the Registration of Children as British Citizens (PRCBC) focuses on the right to British citizenship for children and young adults. PRCBC provides legal advice and representation, as well as providing training and advocating on the right to British citizenship.

Email: prcbc2013@aol.com

Website: https://prcbc.wordpress.com/

Liverpool Law Clinic Statelessness Project

This is a pro bono project providing free advice and legal representation to those who are stateless and need to make an application for leave to remain on this basis.

Email: fmeyler@liverpool.ac.uk

Website: www.liverpool.ac.uk/law/liverpool-law-clinic

Legal advice

Immigration Law Practitioners' Association (ILPA)

ILPA is an association of around 1,000 members including lawyers, advice workers, academics and law students. ILPA provides information on immigration law, offers training courses, and is regularly consulted by the Government on key issues relating to immigration, refugee and nationality law.

Tel: 020 7251 8383

Email: info@ilpa.org.uk

Website: www.ilpa.org.uk

The Office of the Immigration Services Commissioner (OISC)

OISC is an independent public body responsible for regulating immigration advisers by ensuring they are fit and competent and act in the best interest of their clients. The website provides information on how to make a complaint about a legal advice provider and also a database of OISC-registered organisations.

Tel: 0345 000 0046

Email: info@oisc.gov.uk

Website: www.oisc.gov.uk

Law Society

The Law Society represents solicitors in England and Wales. Its website contains a searchable database to help find a solicitor, and also provides advice on what to expect, guides to common legal problems and what to do if things go wrong. Further guidance covers paying for legal services, specialist solicitors, lawyers for businesses, complaints, directories and frequently asked questions. The Law Society itself cannot help with legal problems.

Tel: 020 7242 1222

Website: www.lawsociety.org.uk

Solicitors Regulation Authority

The SRA sets standards, monitors the performance of organisations, drafts rules of professional conduct, administers the roll of solicitors, sets requirements for CPD and provides the public with information about solicitors and their standards.

Tel: 0370 606 2555

Website: www.sra.org.uk

contact details

Legal Ombudsman

The Legal Ombudsman deals with complaints about solicitors and in an independent and impartial service set up to resolve legal service disputes. The service is free.

Helpline: 0300 555 0333

Email: enquiries@legalombudsman.org.uk

Website: www.legalombudsman.org.uk

Law Centres Network

The Law Centres Network is a not-for-profit legal practice providing free legal advice and representation to disadvantaged people. The Law Centres Network website offers a search facility to find your local law centre.

Tel: 020 3637 1330

Website: www.lawcentres.org.uk

Citizens Advice Bureau

The Citizens Advice service provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities. Advice covers everything from benefits and employment rights to housing and legal matters, and is available from over 3,000 locations including in bureaux, GP surgeries, hospitals, colleges, prisons and courts, face-to-face and by telephone. Most bureaux offer home visits and some also provide email advice. To search for a local bureau go to the website.

Advice line Wales (chargeable): 03444 111 444

Advice line England (chargeable): 03444 111 445

Website: www.citizensadvice.org.uk (includes advice guide)

The Law Society of Scotland

The Law Society of Scotland represents and regulates solicitors in Scotland. It sets and upholds standards to ensure the provision of excellent legal services and provides a search engine for finding solicitors in Scotland.

Tel: 0131 226 7411

Email: lawscot@lawscot.org.uk

Website: www.lawscot.org.uk

Health

Freedom from Torture

Freedom from Torture is dedicated to the treatment of torture survivors. It offers medical consultation and examination, and psychological treatment and support. It has a Children, Young People and Families Team, and each year treats several hundred children in London. Offices are located in London, Manchester, Newcastle and Glasgow. Referral forms are available on the website.

London tel: 020 7697 7777

North West: 0161 236 5744 / northwest@freedomfromtorture.org

North East: 0191 261 5825 / northeast@freedomfromtorture.org

Scotland: 0141 420 3161 / scotland@freedomfromtorture.org

West Midlands: 0121 314 6825 / westmidlands@freedomfromtorture.org

Yorkshire & Humberside tel: 0113 887 9502

Website: www.freedomfromtorture.org

Helen Bamber Foundation

The Helen Bamber Foundation works with survivors of genocide, torture, trafficking and rape to deliver legal support, health and psychological care, social welfare and rehabilitation.

Phone: 0203 058 2020

Email: reception@helenbamber.org

Website: www.helenbamber.org

Doctors of the World

DOTW provides essential medical care to excluded people at home and abroad. They run a clinic and advocacy programme that provides medical care, information and practical support to vulnerable people – the clinic is in Bethnal Green and there are also pilot projects in Hackney and Brighton.

Clinic Advice Line: 020 7515 7534

Office: 020 70789629

Email: clinic@doctorsoftheworld.org.uk

Website: www.doctorsoftheworld.org.uk

Young Minds

Young Minds provides a free, confidential information and advice service to parents or carers with concerns about the mental health of a child or young person.

Young Minds Parent Helpline: 0808 802 5544

General enquiries: 020 7089 5050

Website: www.youngminds.org.uk

Maternity Action

Maternity Action works to end inequality and promote the health and well-being of all pregnant women, their partners and children from before conception through to the child's early years. Advice is available on its website, including a number of fact sheets.

Tel: 020 7253 2288

Advice line: 0845 600 8533

Email: info@maternityaction.org.uk

Website: www.maternityaction.org.uk

Medical Justice

Medical Justice is an organisation working with people in immigration detention. They offer medical advice to immigration detainees and write medico-legal reports to be used in asylum claims. They also campaign and carry out research to bring about policy change.

Tel: 020 7561 7498

Email: info@medicaljustice.org.uk

Website: www.medicaljustice.org.uk

Black Women's Health and Family Support

BWHAFS provides information, support and counselling to women affected by female genital mutilation. It is based in London, and offer support to women across the UK.

Tel: 0208 980 3503

Email: bwhafs@btconnect.com

Website: www.bwhafs.com

FORWARD (The Foundation for Women's Health Research and Development)

Provides advice and information on female genital mutilation, and publishes information for professionals, community workers and the general public. They also offer training on FGM and child protection, and work with FGM practicing communities to support and promote the health of African girls and encourage the abandonment of FGM.

Helpline: 020 8960 4000

Email: forward@forwarduk.org.uk

Website: www.forwarduk.org.uk

contact details

Education

Child Law Advice Service

CLAS is part of Coram Children's Legal Centre and provides legal advice and information on family, child and education law. The website has 'how-to' guides and information pages. There is also a dedicated advice line for education law matters.

Education advice line: 0300 330 5480

Website: www.childlawadvice.org.uk

UK Council for International Student Affairs

UKCISA is the UK's national advisory body serving the interests of international students and those who work with them. They provide information on their website, including on eligibility for student finance, and also offers advice by telephone.

Advice Line: 020 7788 9214

Switchboard: 0207 288 4330

Website: www.ukcisa.org.uk

Article 26

The Article 26 Project, part of the Helena Kennedy Foundation, works in partnership with UK universities to provide support for students seeking asylum who wish to access higher education.

Email: article26@hkf.org.uk

Website: www.hkf.org.uk

Buttle UK

Buttle UK offers packages of support to children and young people to enable them to complete their education or training in a safe and supportive environment, whether at school, college, university or trying to access employment.

Tel: 020 7828 7311 (England); 028 87746778 (Northern Ireland); 01505 850437 (Scotland); 029 2054 1996 (Wales)

Email: info@buttleuk.org

Website: www.buttleuk.org

Advisory Centre for Education (ACE)

ACE is a national charity that provides advice and information to parents and carers on a wide range of school-based issues including exclusion, admissions, special educational needs, bullying and attendance.

General Advice Line: 0300 0115 142 (Monday-Wednesday 10am-1pm)

Email: enquiries@ace-ed.org.uk

Website: www.ace-ed.org.uk

Rights Respecting Schools (run by Unicef UK)

The Rights Respecting Schools Award is a Unicef UK programme that aims to put children's rights at the heart of schools in the UK. Schools that choose to work towards the award are provided resources and guidance for embedding children's human rights in the ethos of the school.

Email: Contact form on the website

Tel: 0207 375 6059

Website: <http://www.unicef.org.uk/rights-respecting-schools/>

Hope for the Young

Hope for the Young is a charity that promotes education and helps young people to achieve their potential through financial and psychological support. Services include education funds and mentoring support.

Tel: 0203 488 1676

Email: Contact form on the website

Website: www.hopefortheyoung.org.uk

Trafficking & child protection

End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes (ECPAT)

ECPAT is a network of organisations and individuals working together to eliminate the sexual exploitation of children, through campaigning, monitoring and research. It also provides training. ECPAT UK is the UK national representative of the network.

Tel: 0207 607 2136

Email: info@ecpat.org.uk

Website: www.ecpat.org.uk

Child Exploitation and Online Protection Centre (CEOP)

CEOP is dedicated to eradicating the sexual abuse of children. As well as conducting intelligence work, training, education and public awareness specialists work together to raise the knowledge, skills and understanding of parents, children, young people and a wide and diverse stakeholder community.

Tel: 0870 000 3344 / 0370 496 7622

Email: missingpersons@nca-ceop.gsi.gov

Website: www.ceop.police.uk

National Society for the Prevention of Cruelty to Children (NSPCC) & Childline

The NSPCC is a charity specialising in child protection and the prevention of cruelty to children. In addition to its general helpline, it has a dedicated Child Trafficking Advice Centre (CTAC).

Childline: 0800 1111

Helpline/CTAC: 0808 800 5000

Email: help@nspcc.org.uk

Website: www.nspcc.org.uk / <https://www.childline.org.uk/>

Samaritans

Samaritans provides confidential non-judgemental emotional support, 24 hours a day for people who are experiencing feelings of distress or despair.

Tel: 116 123

Email: jo@samaritans.org

Website: www.samaritans.org

Salvation Army

The Salvation Army has a 24 hour confidential referral helpline relating to modern slavery and trafficking for both individuals and professionals.

Tel: 0300 303 8151

Website: www.salvationarmy.org.uk/human-trafficking

Family reunion & tracing

British Red Cross – International Tracing and Message Services

To trace family members when separated as a result of conflict, political upheaval, natural disaster or migration, and relay family messages where normal lines of communication have broken down.

Tel: 0344 871 1111

Website: <http://www.redcross.org.uk>

Missing People

Missing People provides support for missing children, vulnerable adults and families left in limbo. It offers the families of missing people specialist advice and practical support as well as searching assistance.

Missing Persons Helpline: Freephone 116 000

Email: 116000@missingpeople.org.uk

Website: www.missingpeople.org.uk

contact details

Disability

Equality and Human Rights Commission

The EHRC is a statutory body with the responsibility to protect, enforce and promote equality across the seven "protected" grounds - age, disability, gender, race, religion and belief, sexual orientation and gender reassignment. It does this by enforcing the law, influencing the development of law and policy, and promoting good practice. It has offices in London, Manchester, Glasgow and Cardiff.

Tel: 0161 829 8110 (Manchester); 0207 832 7800 (London); 02920 447 710 (Cardiff); 0141 228 5910 (Glasgow)

Email: Form on the website

Website: www.equalityhumanrights.com

Equality Advisory & Support Service

The EASS advises and assists individuals on issues relating to equality and human rights, across England, Scotland and Wales. They can also accept referrals from organisations which, due to capacity or funding issues, are unable to provide 'in-depth help and support' to local users of their services local users of their services.

Advice Line: 0808 800 0082

Email: Form on the website

Website: www.equalityhumanrights.com

Disability Rights UK

DRUK provides information to disabled people and their families, carers and advisers on their rights and access to benefits. They also undertake research and aim to shape policy at both a local and national level.

Tel: 020 7250 8181

Email: enquiries@disabilityrightsuk.org

Website: www.disabilityrightsuk.org

Scope

Scope aims to make this country a place where disabled people have the same opportunities as everyone else. They provide support, information and advice to disabled people and their families. They also raise awareness and campaign on disability rights.

Advice Line: 0808 800 3333

Email: helpline@scope.org.uk

Website: www.scope.org.uk

Disability Law Service (DLS)

DLS provides information and advice to those with disabilities and their carers. They provide advice and representation in the areas of community care law; employment law; disability discrimination; and welfare benefits.

Advice Line: 020 7791 9800

E-mail: advice@dls.org.uk

Website: <http://www.dls.org.uk/>

Detention and return

Bail for Immigration Detainees (BID)

BID is an independent charity that exists to challenge immigration detention in the UK. It works with asylum seekers and migrants, in removal centres and prisons, to secure their release from detention. They have an advice line and various fact sheets on detention, including for detainees.

Helpline: 020 7456 9750 (10am-12pm, Mon-Thurs)

Email: enquiries@biduk.org

Website: www.biduk.org

The Association of Visitors to Immigration Detainees (AVID)

AVID is a national umbrella charity for groups visiting immigration detainees. They can put you in touch with your local visitors groups.

Tel: 0207 281 0533

Email: enquiries@aviddetention.org.uk

Website: www.aviddetention.org.uk

Right to Remain

Hosted by Praxis, Right to Remain works with groups across the UK supporting people to establish their right to remain and to challenge injustices in the immigration and asylum system. They have a toolkit which provides a comprehensive guide to the UK immigration and asylum system.

Tel: 07756 562 384 (send a text or leave a message)

E-mail: contact@righttoremain.org.uk

Website: www.righttoremain.org.uk

Gatwick Detainees Welfare group

GDWG is a charity that provides emotional and practical support to asylum seekers and immigration detainees held at Tinsley House and Brook House removal centres.

Tel: 01293 657 070

E-mail: info@gdwg.org.uk

Website: www.gdwg.org.uk

Home office, government and tribunal

General enquiries

UK Visas & Immigration is part of the Home Office is responsible for considering applications for citizenship, asylum, and permission to enter or stay in the United Kingdom. The website has a contact form which you can fill out.

Website: www.gov.uk

Application Registration Cards (ARC)

For ARC enquiries, bookings and changes, please contact the Central Events Booking Unit (CEBU). The address is PO Box 222, Liverpool, L69 2TY.

Telephone: 0300 123 2235

Website: www.gov.uk

Employer Checking Service

A service that allows employers to check the eligibility of their current and potential employees to work in the UK.

Sponsors' and Employers' helpline: 0300 123 4699

Email: BusinessHelpdesk@homeoffice.gsi.gov.uk

Website: www.gov.uk

First-tier Tribunal (Immigration and Asylum Chamber) (FTTIAC)

The FTTIAC hears appeals against decisions made by the Home Secretary and her officials in asylum, immigration and nationality matters.

Tribunals Customer Service Centre: 0300 123 1711

Email: customer.service@hmcts.gsi.gov.uk

Website: www.gov.uk

Jobcentre Plus

Jobcentre Plus is a government agency that provides help and advice on jobs and training for people who can work and financial help for those who cannot.

Tel: 0800 055 6688 / 0345 604 3719

Website: www.gov.uk

Email: info@aviddetention.org.uk

Website: www.aviddetention.org.uk

Website: www.ukcisa.org.uk

notes

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Coram Children's Legal Centre

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