

Seeking Support

A Guide to the Rights and Entitlements
of Separated Children



Fourth Edition 2012

Acknowledgements

The first and second editions of this publication (previously entitled ‘Young Refugees’) were written by Elli Free and published by Save the Children. The Rights and Entitlements Guide was developed as part of Save the Children’s work with separated children seeking asylum, and aimed to ensure that separated children are more effectively cared for and supported as a result of the professionals who work with them knowing about, and fighting for, their rights and entitlements. Thank you to Save the Children who facilitated the handover of this guide for the third edition.

Thanks also to all those at the Coram Children’s Legal Centre who have been involved in producing the 4th edition of this guide, in particular Rachael Marsh, Syd Bolton, Alison East, and Hazel Kent, and to Stephen Jones for layout and typesetting.

We would also like to express our gratitude to the professionals who gave their advice and expert opinions on what should be included in the guide, and commented on various drafts: Judith Dennis at the Refugee Council; Steve Symonds and Lisa Woodall at Immigration Law Practitioners Association; Baljeet Sandhu at Islington Law Centre; Catherine Gladwell at Refugee Support Network; and Kalvir Kaur at ECPAT UK.

The production of this guide, and the work of the Migrant Children’s Project in general, would not have been possible without support and funding from the Paul Hamlyn Foundation and Unbound Philanthropy, to whom we are very grateful.

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List of abbreviations

ARC	Application Registration Card	LAC	Local authority circular
ASU	Asylum Screening Unit	LA	Local authority
CAMHS	Child and adolescent mental health services	LSC	Legal Services Commission
CTD	Convention Travel Document	LSCB	Local Safeguarding Children Board
CLR	Controlled Legal Representation	NHS	National Health Service
CRD	Case Resolution Directorate	NINO	National Insurance number
DLR	Discretionary leave to remain	NSA	Non-suspensive appeal
EEA	European Economic Area	OISC	Office of the Immigration Service Commission
ECHR	European Convention on Human Rights	SAL	Standard acknowledgement letter
ELR	Exceptional leave to remain	SEF	Statement of Evidence Form
ESOL	English for speakers of other languages	SRA	Solicitors Regulatory Authority
FGM	Female genital mutilation	UKBA	UK Border Agency
FRE	First reporting event	UN	United Nations
FTT IAC	First Tier Tribunal (Immigration and Asylum Chamber)	UNHCR	United National High Commissioner for Refugees
JR	Judicial Review	UNCRC	UN Convention on the Rights of the Child
HP	Humanitarian protection	YPLA	Young People’s Learning Agency
ILR	Indefinite leave to remain		

what is this guide about?

This is a guide to the rights and entitlements of separated children in England, and provides advice 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/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 become separated in the UK after informal foster arrangements or a family break down. 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 get separated from their parents/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

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 they are referred to as 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 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 are non-devolved, the policy noted 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) are 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 at 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/customary care-giver. Support for these children often differs to that available to separated children - for example, assistance from social services under the *Children Act 1989* is more limited. However, a child who are 'accompanied' may still be a 'child in need' and any concerns or difficulties around support, healthcare and education and should be referred to the local authority or relevant agency.

How to use this guide

Please note also that much of the terminology used in this Guide is explained in the Glossary.

This fourth edition of the guide has been comprehensively updated and expanded from the first, second and third editions published in 2003, 2005 and 2009 respectively. 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 on the Seeking Support website at www.seekingsupport.co.uk. Please check the website to see if chapters have been updated – if they have, you can then print them out and replace the relevant chapter in this guide. If you would like to be notified of updates, please sign up to the Coram Children's Legal Centre Migrant Children's Project newsletter at www.childrenslegalcentre.com.

introduction

Statistics are available for a specific group of separated children: ‘unaccompanied asylum-seeking children’, and in 2010, 1,595 separated children had applied for asylum in the UK year (down from 3,175 and 4,285 applications in 2009 and 2008). A further 475 individuals applied for asylum in 2010 as children but their ages were disputed¹. The majority of separated young people seeking asylum under 18 are 16–17 years old.

Much less is known about the numbers of separated migrant children who have not applied for asylum but who are subject to immigration control in a variety of circumstances – one recent report has estimated that there are around 155,000 undocumented children (including those in families) in the UK². Some may have been trafficked for the purposes of sexual or labour exploitation, or for benefit fraud, and some children may have been brought to the UK for adoption or private fostering, and subsequently abandoned when the arrangement fails.

Separated children face many difficulties in England, 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, school and college places, and a lack of understanding about how ‘the system’ works
- 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 application and appeals procedures

Separated children have little control over many areas of their lives, in large part due to the reasons noted above, but they are often vulnerable children in need of support.

There is a statutory duty upon agencies, including local authorities and the UK Border Agency, to safeguard and promote the welfare of *all* children³, yet access to support and care is often determined by a child’s immigration status. By law, separated 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 often do not receive the services that they need.

There are also limited advocacy services available to separated children. It is hoped that this guide will increase awareness among professionals about the rights and entitlements of separated children and help those advocating on their behalf to ensure that these rights and entitlements are met.

It is important, however, to recognise that there are limitations to the advice and support that any individual can provide. 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 (see the **Asylum Process** chapter for more information about legal representation).

endnotes

1. Home Office, *Control of immigration: quarterly statistical summary fourth quarter 2010*, available at <http://www.homeoffice.gov.uk/science-research/research-statistics/migration/migration-statistics1/>
2. ESRC Centre on Migration, Policy and Society, University of Oxford, *Working Paper No. 78: Being children and undocumented in the UK: A background paper*, 2010, at www.compas.ox.ac.uk
3. Under section 11 of the Children Act 2004 and section 55 of the *Borders, Citizenship and Immigration Act 2009*

types of immigration status

There are a variety of circumstances in which children and young people are within the jurisdiction of the UK without a settled immigration status and/or in need of protection. Some may have arrived on their own and will be seeking leave to remain or to challenge removal in their own right. Some children may have been born here, some may have been brought into the UK and abandoned, or been part of a private fostering arrangement that has broken down. Others may have been trafficked for labour or sexual exploitation, or may have fled to the UK either at their own instigation or at the wishes of their parents, guardians, or carers for safety and freedom from persecution or for other reasons.

Whatever their reasons for being in the UK, 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 UK¹ – in other words, permission to stay in the country. The immigration status of separated children can sometimes affect their rights and entitlements, and this section provides a brief summary of some of the existing types of status most relevant to separated children.

Asylum seekers

Asylum seekers are people who flee their home country, often because major conflicts have taken place or because serious human rights abuses occur, and seek refuge or asylum in another country by lodging an asylum application. It is the responsibility of the UK Border Agency (UKBA), an executive agency of the Home Office, to make the initial decision on asylum applications.

Refugees

A person who has claimed asylum is recognised as a refugee when the Government decides that they meet the definition of refugee under the United Nations (UN) *Convention relating to the Status of Refugees* (1951) (amended by the 1967 protocol). Under this Convention, a refugee is a person who has a **well-founded fear of persecution** under one or more of the reasons set out in the Convention, namely their **race, religion, nationality, political opinion** or because they fall within a **particular social group** (for example, people who have a well-founded fear of being persecuted because of their gender or sexual orientation).

A person granted refugee status will be given leave to remain for five years, subject to review at the expiry of and during those five years where there is a 'significant' and non-temporary change in the country of origin, making return possible. The burden of showing that a person is no longer a refugee falls on the UK Border Agency².

After five years people with refugee status or humanitarian protection can apply to stay permanently. Permanent status is also called 'indefinite leave to remain' or settlement. Individuals must apply before their leave runs out using a form called SET (Protection Route)³.

Few separated children who apply for asylum are currently granted refugee status in the first instance – less than 20% of initial decisions in 2010⁴.

Humanitarian protection

Humanitarian protection may be granted where an asylum seeker is refused refugee status because the UK Border Agency (UKBA) does not accept that the person meets the strict criteria laid down in the UN *Convention relating to the Status of Refugees*, but still decides that it is too dangerous to return them back to their country of origin because they face a serious risk to their life or person. This would be for one of the following reasons: the death penalty; unlawful killing; torture; inhuman or degrading treatment or punishment. Returning people to face such treatment is contrary to the UK's obligations under Article 3 of the *European Convention on Human Rights* (ECHR).

Persons who are granted humanitarian protection will also normally be granted leave for five years. At the end of the five years, the individual will need to apply for indefinite leave to remain (ILR) before his or her leave expires (see above). Very few separated children are currently granted humanitarian protection – only 1% of initial decisions in 2010⁵.

Discretionary leave to remain

If the Home Office does not accept that an unaccompanied child should be granted either refugee status or humanitarian protection, then discretionary leave is usually granted where adequate reception arrangements in their country of origin are not available. The majority of separated children seeking asylum are granted discretionary leave. Since April 2007, discretionary leave has usually been granted for either three years or until the young person reaches 17½, whichever period is shorter, although there may be some exceptions. (Prior to April 2007, the period of discretionary leave was for the shorter period of three years or until the child reached 18).

Other persons may also be granted discretionary leave for three years, such as those whose claims do not fall within either the Refugee Convention or the ECHR, and are not otherwise excluded from protection, but where there is some other compelling reason why leave should be granted – for example, medical reasons.

types of immigration status

Applications can be made to extend discretionary leave and this should be done before the leave expires. The claimant's situation will be reviewed, with a further three years leave granted if considered appropriate⁶.

Undocumented migrants

Many children may be living in the UK without a regular immigration status, and may be referred to as 'undocumented' or irregular migrants. For the Home Office there are three distinct categories of undocumented immigrants:

1. illegal entrants;
2. overstayers; and
3. failed asylum seekers⁷.

Some children may have come to the UK as visitors, and remained in the country beyond the date on which their leave expired⁸. These are known as 'overstayers' and often children and young people may not realise that they have no leave to remain until they reach 18, after which it may be very difficult to obtain leave. Others may have entered the UK unlawfully (as 'illegal entrants') and never acquired any form of regular immigration status. Local authorities are under a duty to safeguard and promote the welfare of all children in their care⁹, and this includes ensuring that they obtain a durable immigration status where appropriate.

In the UK, most irregular migrants will not be able to regularise their status easily, if at all. A child may subsequently be allowed to remain in the UK under another immigration category or on compassionate grounds. For example, children and young people who have been in the UK for many years may have developed such ties in the UK and would face such difficulties adjusting to life abroad that it would be right and fair that the child or young person is allowed to stay in the country. In this context the UK Border Agency can grant discretionary leave to the young person, as to send them back to their country of origin would breach their right to private and/or family life, protected by Article 8 of the *European Convention on Human Rights*. In some cases an individual might seek to remain in the UK on the basis that removal would lead to a rapid deterioration in their health, where, for example, treatment for their illness is not available in their home country. A very high threshold must usually be met for these applications to be successful¹⁰.

EU migrants

A child has EU (European Union) nationality if he or she is a national (citizen) of one of the 27 member states of (countries belonging to) the European Union¹¹. EU children are free to travel to the UK without restriction and if a 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 he or she might be categorised, for example, are they '**habitually resident**', or do they have the '**right to reside**'?

endnotes

- 1 Section 3 of the *Immigration Act 1971*
- 2 UK Border Agency Asylum Policy Instruction on Refugee Leave, at www.ukba.homeoffice.gov.uk
- 3 See Refugee Council Help and Advice, *Applying for settlement after five year permission to stay granted after August 2005*, July 2010 at www.refugeecouncil.org.uk
- 4 Home Office, *Control of immigration: quarterly statistical summary first quarter 2011*
- 5 Home Office, *Control of immigration: quarterly statistical summary first quarter 2011*
- 6 UK Border Agency Asylum Policy Instruction on *Discretionary Leave*, at www.ukba.homeoffice.gov.uk
- 7 ESRC Centre on Migration, Policy and Society, University of Oxford, *Working Paper No. 78: Being children and undocumented in the UK: A background paper*, 2010, at www.compas.ox.ac.uk
- 8 As visitors they cannot remain in the UK for more than six months (para 42 of the Immigration Rules) – and leave in this capacity cannot generally be extended.
- 9 Section 11 of the Children Act 2004
- 10 *N v United Kingdom [GC]* Application no 26565/05. The judgment in this case found that even in cases where the individual is likely to face a slow and painful death due to the lack of availability of medical assistance overseas, other than in exceptional cases, the removal of such a person to their home country would not breach Article 3 of the ECHR.
- 11 EU countries are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom. Iceland, Norway and Liechtenstein are European Economic Area members; Switzerland has an association agreement with the EU – so citizens of these countries also have rights under EU law

asylum process

This section provides a brief outline of asylum procedures at the time of publication, November 2011. For more detailed information on immigration and asylum procedures, see the chapters of this guide entitled **Further Reading** and **Contact Details**, which provide details of organisations available to provide advice to professionals and/or directly to people seeking asylum. Also, 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.

Asylum procedures are complex and over the years have been further complicated by the regularity of changes to the

legislation. There have been six major pieces of asylum and immigration legislation since 1999, the most recent being the *Borders, Immigration and Citizenship Act 2009*. Section 55 of this Act requires all immigration staff to safeguard and promote the welfare of children who are in the UK.

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 advisor or solicitor.

Applying for asylum

Applications for asylum, and other forms of protection in the UK, are normally decided by a case-owner in the UK Border Agency (UKBA) (except some trafficking cases, which might not be decided by the UKBA – see chapter on **Trafficking**). The UKBA² is an executive agency of the Home Office that deals with asylum, immigration and nationality issues. The Home Office is a department of the UK government.

Since 5th March 2007, the UKBA has processed all asylum claims under what was introduced as the 'New Asylum Model', a new system designed to provide a faster and more streamlined process³. A feature of this new system was to be that a single case owner should have responsibility for a claimant throughout the asylum process, from their application through to the consequent granting of status or removal (although it should be noted that this is not happening in all cases). Existing claims still not dealt with by 2007 were transferred to the Case Resolution Directorate, which is covered in further detail below.

Unaccompanied children, like adults, may apply for asylum at ports of entry, such as airports, or after entry, usually at the asylum screening unit, which is located in Croydon. Some may be arrested or detained before they claim asylum. As unaccompanied children are deemed to be vulnerable they can also apply at local immigration service enforcement offices. When applying for asylum, they will undergo a **screening process**, which will include being finger-printed unless they are under five⁴ (if the child is under 16, there

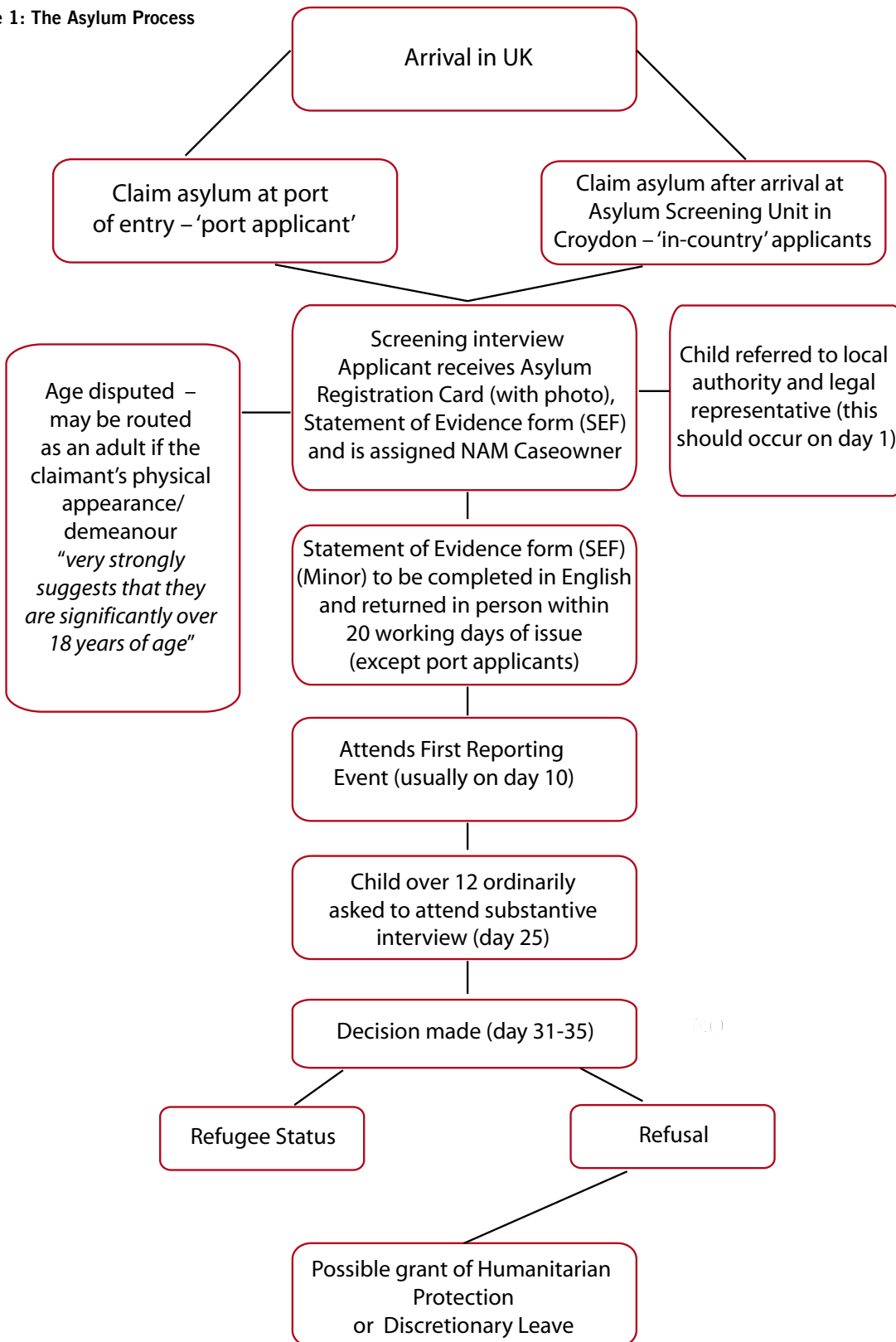
must be a Responsible Adult present when they are being fingerprinted - please see later in this chapter for more information on the role of a Responsible Adult). The child is also photographed and asked questions about how they travelled to the UK, details of their family history and (very briefly) about why they have come to the UK. A Welfare Pro-Forma will be completed on their behalf to ensure that the child is fit to be interviewed but a Responsible Adult is not required to be present during this interview. **Screening 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.** If this occurs then the information can not be used in the asylum decision and may be unlawful⁵.

During the fingerprinting process the child's prints (if they are over 14) will be checked on an EU database called Eurodac, which makes it possible to compare their fingerprints against those in the central database to determine whether the individual had previously lodged an asylum application in another Member State. If that is found to have occurred, the claim will be dealt with by the Third Country Unit (this is discussed in more detail later in the chapter)⁶.

During the screening 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

asylum process

Table 1: The Asylum Process



asylum process

The Panel of Advisors

The Refugee Council provides services to separated children through the Children's Panel of Advisors – 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 child 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 chapter on **Age Disputes**).

All unaccompanied children should be referred to the Panel by the UK Border Agency. However, the details provided are often insufficient for the Panel to make contact with the child and therefore other agencies are encouraged to refer children to the Panel as well. If a request for help is urgent or the child is particularly vulnerable, then the panel recommends that this be made clear when the child 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 0500⁷.

Rights (ECHR) (Third Country cases will not receive an ARC). A Standard Acknowledgement Letter (SAL) 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-sized document printed on special security paper and containing a unique number. It is normally valid for two months, to enable arrangement for the claimant to be issued with an ARC.

Children aged 12 or over must be issued with a letter to report to a case owner in ten working days for the First Reporting Event - the social worker can contact the case-owner to arrange for this event to be by phone if appropriate. All children will also receive a Statement of Evidence Form (Self Completion), (ASL1957), which is the asylum application form that should be filled in with the support of a legal representative and submitted to the case owner within 20 working days. 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.

The Refugee Council's Panel of Advisors must be informed of an unaccompanied child's application within 24 hours of the application being made⁸. On entry, all individuals will also be issued with a document called an IS96, which gives temporary admission to enter the UK.

Legal representation

A young person will need to find a legal representative to make his or her case for asylum to the UKBA - under the UK Immigration Rules the UKBA are required to ensure that a child has legal representation⁹- and it is recommended that this be done before applying for asylum. If the child does not have suitable legal representation, case owners must notify

the Refugee Children's Panel, who will try to find it. 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), which is responsible for ensuring that immigration advisers fulfil the requirements of good practice (please see later in this chapter for what should be expected of a legal representative).

Once a legal representative has been appointed, he or she will complete a Legal Help form to cover the costs of the asylum application up to the decision on the claim¹⁰. The legal representative will prepare the application on behalf of the separated child, take down the child's instructions by filling in a 'statement of evidence form' and, in most cases, a separate statement will be prepared to support the application. When that is finalised, it should be submitted to the UKBA by the legal representative by the date given on the form – normally within 20 working days of making an asylum claim. 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 screening and substantive interviews with a child (a legal representative will not be funded to attend an interview with an adult).

asylum process

Legal funding

Publicly funded legal advice and representation is available for asylum cases, as it is for other areas of the law. In England and Wales the legal aid fund is called the Community Legal Service Fund and is administered by the Legal Services Commission (LSC). Free assistance is available throughout the asylum process (except at the appeals stage, which is covered below) for asylum seekers who either have a very low, or non-existent income. Funding is not, however, available for the First Reporting Event or any subsequent Reporting Events¹¹. The LSC will only fund advisers with whom it has a contract to provide specialist immigration advice. The legal adviser does the work, and the LSC pays the legal adviser for that work.

Legal aid is mainly provided through Legal Help and Controlled Legal Representation (CLR). Legal Help is provided for advice and assistance for anything other than litigation. CLR is provided for the immigration and asylum appeals before the First Tier Tribunal (Asylum and Immigration Chamber) and Upper Tier Tribunal (see section on Appeals). Judicial review cases and appeals to the Court of Appeal may be funded by a Public Funded Certificate (this is often called certificated work).

Eligibility for funding

Access to public funding is generally subject to a means and a 'merits' test. For looked after children "it is considered that for all cases it would be inequitable for foster carers'/ social workers' income and capital to be aggregated with that of the child"¹². So if a child is supported and accommodated by a local authority (see chapter on **children's services support**) then they will 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. 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 there is always likely to be 'sufficient benefit' to the client from receiving specialist advice and representation on his or her asylum claim to pass the merits test for this stage.

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 funding¹³. 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 aid¹⁴. A child must not be expected to pay for their own travel.

It should be noted that Legal Help is also available to assist children and young people to apply for an extension of their leave - for example, discretionary 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.

Interviewing children

All children aged 12 or over will normally be interviewed about the substance of their asylum application¹⁵. 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 a claimant is at risk of persecution (for one of the five reasons outlined in the *Refugee Convention*) and/or ill treatment (article 3 of the *European Convention on Human Rights*). Interviewing children is difficult and most 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 child case owner, and

must be accompanied by a responsible adult. If needed, an interpreter must be present. If the child is tired or distressed, the interview should be suspended¹⁶.

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. Home Office policy states that a legal representative can also play the role of a responsible adult. However, it is crucial that a legal representative is present to advocate on behalf of, and represent, the child

asylum process

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.**

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 UKBA may refuse an asylum application on ‘non-compliance’ grounds¹⁷. Every effort should be made to avoid that, by communicating with the case owner at the earliest opportunity when a difficulty is identified.

The asylum decision

The UKBA’s stated aim is to resolve initial asylum decisions within 35 working days and to complete any subsequent appeals within a further 80 working days. The decision should be taken by a case owner trained to deal with children’s claims. When a claim has been decided, the case owner must notify the claimant, local authority (where they have been notified of the case) and legal representative of the decision. If the decision is not delivered in a face to face meeting by the case owner, the child’s legal representative should communicate the decision. If an advocate 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 be notified of the decision by the case owner.

The outcome will be one of the following:

- grant of asylum (refugee status)
- refusal of asylum but grant of humanitarian protection, or
- refusal of asylum and humanitarian protection but grant of discretionary leave to remain
- refusal of any leave.

The appeals process

Where an asylum claim has been unsuccessful, the claimant may be entitled to appeal against the decision. This includes the right to appeal (in some circumstances) against a decision where a limited form of leave to remain is granted, after refusal or refugee status or other humanitarian protection status. Young people whose asylum application is refused outright also have the right to appeal.

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). 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 (Immigration and Asylum Chamber) (FTTIC).
- If the appeal is dismissed, the claimant can apply for permission to appeal to the Upper Tribunal. If this is dismissed, a challenge can be made to the Court of Appeal, but this becomes more difficult.

The time limits on lodging an appeal remain the same: within ten working days of receiving a decision or within five working days for people in detention. In the detained fast track, an appeal must be lodged within two days. It should be noted that the time limit for lodging an appeal is not the same as the time limit for making a permission to appeal application. If the appeal cannot be made ‘in-country’ (i.e. within the UK) it should be lodged within 28 (calendar) days of departure. Late appeals may be allowed to proceed in special circumstances.

Outright refusal of an asylum claim

Young people may be refused asylum. Even if they are granted humanitarian protection or discretionary leave it should be noted that this is *still* a refusal of their asylum claim, and they may have the right to appeal this decision (see below for information on appealing in the event of receiving discretionary leave).

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’ (which can happen to people from Non-suspensive Appeal (NSA) countries – see below), in which case an appeal can be made from outside of the UK. However a decision to certify can be challenged by judicial review (see below) and, if successful, this will allow for an appeal in-country.

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Discretionary leave to remain/Humanitarian Protection – the right to appeal and extension applications

Most children refused asylum are granted discretionary leave to remain, which is provided to these children if there are no adequate reception arrangements available for their return to their country of origin. Such a grant of discretionary leave to remain will be for three years or until the young person reaches 17½, whichever is sooner. A young person who receives discretionary leave or humanitarian protection has the right to apply for an extension of leave, and 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 discretionary leave to remain (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 or granted humanitarian protection.

However, since April 2003, such appeals are only possible if more than 12 months' leave has been granted¹⁸. Therefore, someone who arrives, for example, at 17, and receives discretionary leave up until they reach the age of 17½ will not be entitled to appeal against the decision, as they will not have received more than 12 months' stay. If, however, an extension application of that leave is made (on form HPDL prior to leave expiring), an appeal can be lodged against the refusal of that application, whereby the asylum claim can be raised.

Failure to apply for an extension 'in time' (i.e. before the current leave expires) means the young person becomes an 'overstay' and will have no right to appeal, although it may be possible to challenge a decision to remove them from the UK.

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, or an application may be treated as a fresh claim for asylum because new evidence has been provided to support the claim. However, it is particularly important to note that if an extension is applied for 'in time', the applicant continues to have discretionary leave until a decision on their extension is made and they become appeal rights exhausted. Out of time applicants do not enjoy such protection.

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), so long as the grant of humanitarian protection is for 12 months or more.

Another point to remember is that if a child is refused discretionary leave to remain because he/she is an age dispute case, the First-tier Tribunal (Immigration and Asylum Chamber) can arrive at a finding of age during the appeal, which may result in a more favourable approach being taken to his or her asylum claim (as the Court will have to consider child-specific issues), or the young person being granted discretionary leave because there are no adequate reception arrangements in their country of origin.

Legal funding for Appeals

Once a case proceeds to appeal, publicly funded legal representation is available under Controlled Legal Representation (CLR) to those that meet the Legal Service's Commission's means and merits tests. Again the child is likely to satisfy the means test if they are in local authority care or supported by the UKBA. The merits test for CLR is much more stringent than at the Legal Help stage¹⁸, but unaccompanied asylum seeking children are likely to meet the criteria¹⁹.

Please note, a *former* unaccompanied asylum seeking child (i.e. they are now over 18) who is appealing against a refusal of extension of discretionary leave may be refused representation as an adult where they could have obtained it as a child.

If the appeal is dismissed by the FTT IAC, the legal representative will need to consider the merits for a challenge of the FTT IAC decision/determination to the Upper Tier Tribunal. The determination can only be appealed if there is a material error of law in the Immigration Judge's decision. There is a very strict funding regime applied when the case arrives at this stage²⁰. 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 may be by way of Judicial review (JR).

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 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

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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 Services Commission for a public funding certificate (unless the JR proceedings are to be privately paid or pro bono). Such an application will be subject to a means and merits test.

An interim order may be granted by the Judge as he or she sees fit until the outcome of a claim - for example, a local authority may be order to accomodate the young person until the issue of age is determined.

Travel costs

Travel costs to visit a legal representative can be reimbursed if the client's case is supported through legal help, although this does not happen routinely. The legal representatives who do this reimburse the client on production of travel receipts, which they claim back from the LSC. 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 an individual is receiving asylum support (NASS), travel will be arranged or expenses reimbursed by UK Border Agency for substantive interviews, appeal and bail hearings and appointments at Freedom from Torture. Expenses for visiting legal representatives are not usually covered²¹.

'Legacy cases'

In 2007, the Home Office fully introduced a new system for dealing with asylum cases (The New Asylum Model), and a separate Case Resolution Directorate (CRD) within the Home Office was set up to process any cases that on 5 March 2007 were not fully determined, applications for further leave to remain, cases awaiting appeal and cases where appeal rights were exhausted but applicants are still in the UK. Young people whose cases were being decided by the Case Resolution Directorate are likely to have received letters from the Home Office, an example of which can be found at www.ukcisa.org.uk/about/manual/case_resolution.php.

The Case Resolution exercise was not a general amnesty, and decisions to grant leave to remain or refuse an application were made by the UKBA in line with its standard criteria, taking into account UKBA delays and 'an individual assessment of the prospects of enforcing removal'. The CRD's objective was to clear the backlog of cases no later than summer 2011. In 2011 it was announced that the CRD would be closing, although this did not mean that all cases have been concluded. Included in the outstanding cases are a number of cases in which the CRD has been unable to trace the individual claimant and where the UKBA is unable to take any action to conclude the case. These cases are being held in a 'controlled archive', and it is intended that work will continue to seek to trace and conclude these cases. At the time of writing there were 21,000 other cases which had not been concluded and were not in the controlled archive²².

In April 2011 there was a transition from CRD to a new, smaller team called the Case Assurance and Audit Unit, based in the North West, which will be responsible for residual work on:

- cases the UKBA has been unable to trace and may have left the country (the CRD controlled archive);
- cases that have been reviewed but not fully concluded.

If you believe that your or your client's case is being handled by CAAU please write to:

- Case Assurance and Audit Unit
Department 87
PO Box 306
Liverpool
L2 0QN

Or email: CAAU_Enquiries-@ukba.gsi.gov.uk

The CAAU does not deal with remainder legacy cases dealt with by teams in Scotland & Northern Ireland, or Wales & the South West region. Also, individuals facing difficulties getting through to the CAAU can contact their Local Immigration Team, who should help facilitate dialogue with this Unit. Local immigration teams are listed by region on the UKBA website at:

UKBA -> About Us -> Our work in your Region.

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'Safe third country'/Dublin II Cases

If a person comes through what is described as an European Union (EU) 'safe third country' (the EU states are: Austria, Belgium, Bulgaria, 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 take responsibility for their asylum claim. In such instances, the individual in question would be returned to that country.

In cases involving **adult asylum claimants** the claimant can be returned to the EU safe third country if they simply passed through that country and did not necessarily claim asylum and could reasonably have done so. However, what must be understood clearly (and is often missed by advocates) is that **children can only be returned to an EU safe third country if they have made a claim for asylum there** – unless there is documentary evidence or statements from the child suggesting that they have family in a safe third country.

Therefore, the EU safe third country rule applies to unaccompanied children if they claimed asylum in that EU country. However, even if an **unaccompanied child** is logged as having made a claim for asylum in this EU country there may be exceptional reasons as to why his/her claim for asylum should be decided in the UK. For example, where an claimant for asylum is a separated child, the responsible EU safe third country will be that in which a member of his or her family is legally present, so long as that would be in the best interests of the child, otherwise the claim will be determined in the first country in which the child claimed asylum.

Furthermore, the decision-maker is under a duty to have regard to the need to safeguard and promote the welfare of the child²³ whilst Article 3 of the *Convention on the Rights of the Child* stipulates that the best interests of the child must be a primary consideration in all actions concerning children. The representative of the child should, therefore, always consider challenging a decision to return to a safe third country if this is felt not to be in their best interests.

The UKBA must write to the child and/or their representative informing them that enquires are being made to a safe third country regarding which Member State is responsible for processing their asylum claim. The letter should offer the child the opportunity to state any reasons why they should not be returned. If a referral has been made and UKBA considers

removal to be appropriate, they must serve the third country certificate, the Member State's acceptance letter, and other standard removal documents such as the IS.87 and the factual summary. There should be a minimum of 5 working days between the serving of the Removal Directions and the date of removal²⁴.

The UK Border Agency Third Country Unit (TCU) is responsible for making all decisions on safe third country grounds. Most of its cases fall under the arrangements provided by the Dublin Convention or the Dublin II Regulation (the 'Dublin arrangements'). For further information, see the UK Border Agency Asylum Policy Instruction on *Safe Third Country Cases* (see **Further Reading**).

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 list²⁵.

There have been a number of challenges against the return of adults and children especially to Greece because of the poor reception arrangements and conditions in place for children pending the assessment of an asylum claim and European Court of Human Rights rulings that the asylum claimant was not able to access a fair and just asylum process. Concerns have also been raised generally about the lack of safeguards in the Dublin II process which does not currently require the agencies caring for a child to speak to the future carers in the third country. In September 2010, the government suspended returns to Greece²⁶.

Age disputes

Young people's ages are regularly disputed either by the UKBA or a local authority. Assessing a person's age is often difficult where young people arrive either without any identification documents or with false ones.

Often UKBA staff decide whether a person is under or over 18 by an assessment of their physical appearance and demeanour. A young person whose age is being disputed by immigration will be issued with an IS.97M document providing reasons for the age dispute.

Where an individual's age is disputed, a referral should be made to a social worker for an age assessment as a child in need. Currently, on-site social work teams are only available at Dover, Gatwick, Heathrow, and Croydon ASU. In locations where there is no on-site social worker team, the individual must be notified that they have the right to approach a local authority for an age assessment or can be referred to the local authority by the UKBA.

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Until a lawful 'Merton compliant' age assessment is completed (see the chapter on **Age Disputes** for further discussion of the meaning of 'Merton compliant'), the claimant is safeguarded by the child asylum process. For example, they are allocated a child-trained case owner.

Where the UKBA believe that *'the applicant's physical appearance /demeanour very strongly suggests that they are significantly over the age of 18'* the applicant will be treated as an adult and the claim is decided through the adult process. Often no referral is made to a local authority and the applicant is supported by the UKBA, which is responsible for supporting asylum seeking adults and families, and will follow the adult asylum procedures²⁷.

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 UKBA 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 UKBA 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.

Fast-tracking and NSA countries

Unaccompanied children are not part of the fast-tracking procedure²⁸. However, if their age is disputed and they are treated as an adult, they may find themselves going through this system. Fast-tracked asylum applicants are held in detention throughout the asylum process (including appeals). The procedures of the asylum claim and the decision process are accelerated. In the fast track procedure an asylum applicant will be interviewed the day after their arrival, a decision will be made by the UKBA the following day, and the applicant has two days to appeal the decision.

People may be fast-tracked through the asylum process if the UKBA believe that applicant's claim can be decided quickly. There is a list of countries on what is called the 'fast-track suitability list', in order to direct cases to the fast track process and speed up the decision-making process. The list can change; countries can be added and deleted. Some categories of asylum-seekers from countries on the list are not put through the fast-track process. For example, it is often considered inappropriate to fast-track women from certain countries.

The 'fast track suitability list' includes (but is not restricted to) non-suspensive appeal (NSA) countries. NSA countries are those countries from which claims for asylum or human rights claims will be certified as 'clearly unfounded' and the applicant will be denied a right of appeal in the UK. This system was brought in to speed up the asylum process for people from countries that the Home Office deems to be 'safe'.

Detained Fast Track operates in Harmondsworth Immigration Removal Centre, for men, and Yarl's Wood Immigration Removal Centre, for women.

Detention

Current government policy is to detain unaccompanied young people only in exceptional circumstances and not for more than 24 hours²⁹. However, young people are often detained when their age has been disputed by immigration officers and they are treated as adults. In 2010, the Refugee Council worked with 53 age-disputed individuals who had been detained as adults, of which over half were subsequently released as children³⁰. Such statistics raise significant concerns about the detention of these children, which is unlawful and can cause serious harm and can also 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 discretionary 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 days³¹. While in detention they also have a right to receive visitors, make and receive telephone calls, and send and receive faxes.

Reporting

The reporting system is part of the Home Office's plan to keep track of people as they go through the asylum process. 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 of temporary admission, or once an individual has been refused asylum. In addition, since 4 February 2005, all asylum seekers over 16 may be required to register with the police, although this does not happen a lot in practice. There are no set criteria for who

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is asked to report, or how often they are required to report. For example, some people are asked to report weekly, others monthly. Usually it only affects young people over 16, though there have been cases where children under 16 have been expected to report. The reporting centre should be within a 25-mile radius or up to 90 minutes' travelling time from where the person lives. The law allows for people with time-limited leave to be asked to report, although guidance on this has not yet been published.

There have been incidents where advocates have been successful in changing the reporting requirements of young people, for example, because of the distance they may have to travel or potential interference with college (for more information see '[how can you help?](#)' section below. Advocates should always consider challenging a requirement for the child to report).

There is no specific entitlement to travel expenses to cover the cost of reporting. However, children's services should

take this into account when deciding how much money a young person needs to live on. Young people who are 18 or over who transfer to asylum support can apply to get travel expenses from the UKBA to cover transport to the reporting centre. The Home Office may make a payment towards this if the individual is in receipt of asylum support or, if they are not, there is an 'exceptional need'.

For those children with discretionary leave, the UKBA has issued guidance to its staff outlining that Case Owners 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 17½ - a telephone update should take place every six months "in order to ensure that UKBA hold the most up to date information on the child and are also aware of any safeguarding concerns that the social services department may have"³².

how can you help?

Legal representation and advice

- 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 Community Legal Service website (see [Contact Details](#)). Anecdotal evidence suggests that some legal representatives who are regulated are not providing a good-quality service and in some cases act in an unscrupulous manner, including 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 LSC, by submitting an application for extension. The legal representative can also apply for funds in order to obtain expert reports, such as a psychological/psychiatric report and a country expert report. However, funding is restricted by the LSC at legal help stage and costs must be justified before being granted for reports.
- If you have **concerns** about a child or young person's legal representative you should discuss these with them (and their panel adviser at the Refugee Council if they have one). Concerns should be raised with the legal representatives and complaints can be made on behalf of the young person through the OISC (see [Contact Details](#)) or, if against a solicitor to the Legal Complaints Service. See later in this chapter 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 recent restrictions on legal help 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 have failed the merits test, they must provide written reasons for the refusal of CLR 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 LSC. Please note that because one representative considers that a case would fail the CLR merits test does not mean an alternative representative will necessarily make the same judgement. The legal rep should offer to help the person complete the CW4.
- The National Immigration and Asylum Team will review the application, and if the review recommends that

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CLR be granted, the applicant will be sent a letter confirming this, which will provide authority for a legal representative to grant CLR – see *Legal Services Commission Guidance on applications for a review of a refusal of funding in Immigration CLR matters* at http://www.legalservices.gov.uk/docs/cls_main/Review_of_refusal_of_CLR_231109.pdf

- 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. If a legal representative withdraws from the case and the young person is unrepresented at appeal, you can attend the Court but should not advise - inform the Court that the young person is not represented and the Judge will decide how best to proceed.

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 and First Reporting Event notification at the initial screening interview with immigration?
- 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 screening 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 screening 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. Therefore if the young person has a valid reason for not attending the interview it is important that the UK Border Agency knows about it and can take it into account when making their decision. If a young person knows in advance of the interview that they are not able to attend, it is important that the UK Border Agency is aware so it can try to reschedule the date.
- Make sure where appropriate that the immigration officer conducting the interview is the **same sex** as the young person, if the young person would prefer that. This is particularly important if the young person has **sensitive issues** to discuss as part of their asylum claim.
- 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 UK Border Agency 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, during any appeals, and in meetings with their legal representative.
- Find out if the young person would prefer to have an interpreter of the **same 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.

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- 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 that there is full understanding between the child and interpreter any discrepancies or contradictions in their case cannot be blamed later on a problem with the interpreter.

'Safe third country'/Dublin II 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**. Note particularly that the third country may not be aware that the claimant has been identified as a child in the UK and there may be **no reception arrangements set in place**. The separated child's legal representative should be contacted as soon as notification is received about the proposed removal of a child.
- Encourage the social worker to **provide translated information** relating to the care of the young person that can be passed on to future carers.
- 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.

Detention of under 18s

- Unaccompanied children under 18 should not be detained, apart from in exceptional circumstances, and then for no longer than 24 hours. If a young person under 18 is being detained alert the centre to it and actively pursue the release of the young person. If a young person is in detention, which might occur if there has been an age dispute, immediately request a copy of the IS97M providing reasons for the age dispute and, if no assessment has previously been conducted, inform the local children's services department, which is unlikely to be aware of the young person. They will carry out an age assessment and, where the assessment decides the young person is under 18, secure their release at the earliest possible opportunity. They should then carry out a child in need assessment and support the young person under the *Children Act 1989* (see chapter on **Children's Services Support** for more information). If an unaccompanied young person is in detention you should also contact the Refugee Council's Children's Panel, who may be able to help, as well as other organisations supporting detainees, such as Bail for Immigration Detainees (BID) and the Association of Visitors to

Immigration Detainees (AVID) (see **Contact Details**).

- Liaise with the young person's **legal representative** to ensure they are actively pursuing the young person's release and any outstanding asylum issues. If the young person has no legal representative, then it is very important for him or her to get a reputable one. (see **Contact Details**)

Detention of over 18s

- Immigration detainees have the right to apply for **bail** if they have been in the UK for more than seven days. If the legal representative refuses to apply for bail, or they have no legal representative, then the young person may want to apply for bail on their own. Bail for Immigration Detainees may provide support - see their information sheets on the BID website for details on applying (see **Contact Details**).
- The detained young person has a **right to receive visitors, make and receive telephone calls**, and send and receive faxes while in detention. Ring the removals centre and speak to the young person. Find out how they are coping, if they would like you to visit, if there is anything in particular you could help them with and if they need anything, such as any personal belongings or a phone card. You may need to check with the detention centre to see what you may not be permitted to take in. Check that they have sought medical assistance from medical practitioners in the detention centre if they feel unwell. Contact the removals centre and find out about visiting times and identification required to gain access. Contact the visitor group attached to the detention centre (see AVID contact details for more information on this). These are independent organisations offering support to detainees by providing them with a volunteer visitor. Visitor groups can sometimes help find a legal representative, or provide phone cards and toiletries. They often prioritise support for vulnerable young people.
- Social workers should encourage the young person to **complain** to the Home Office and/or the various private agencies contracted by the Home Office to run the removals centres and return people, if they have been mistreated by any of these agencies. Adults can complain on behalf of a young person.

Reporting

- If a young person is having difficulty meeting the reporting requirements placed upon them by the UK Border Agency (UKBA), it may be possible to negotiate with the UKBA to review this. Speak to the child or young person's case owner. It may be useful to point out that the child is looked after by the local authority as a persuasive point to remove or change reporting restrictions.

what makes a good legal representative?

A good legal representative for separated children is one who:

- has a thorough knowledge of national and international asylum law and policy
- understands the special rules, procedures and policies that apply to separated children
- 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
- is able to assess the young person's understanding of the asylum process, their maturity and capacity to provide accurate information, and is able to give instruction 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
- Understands the importance of appealing before the child reaches 18 and does not regard the granting of discretionary leave as a 'victory'.

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 application process
- how the asylum application and appeals process works (including answering any questions a young person may have on asylum 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 his or her asylum case (unless the maturity of the child makes it inappropriate to do so) and find supporting documentation about the situation in the child's home country
- verify the statement with the child at each stage and give the child a copy of the statement, in the child's preferred language, if possible
- don't rush the child and communicate with the child at a pace that he or she 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 they have a 'responsible adult' with them during a screening interview and a substantive asylum interview with the Home Office
- arrange for an independent interpreter, where appropriate, to attend a substantive asylum interview at the Home Office
- ensure the young person has correct immigration ID papers and that they are kept safely
- keep up to date with the progress of an asylum application, 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 asylum application
- if required, help the child to apply for an appeal after a refusal or when a form of temporary status is given that does not recognise the child as a refugee (in particular, if discretionary leave to remain is given as this will be a refusal of the child's claim). Make sure the appeal is submitted in time. Also, if appropriate, 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 asylum process
- confirm in writing any action plan and any advice given to the young person
- if the asylum process timeframe is not flexible enough 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

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 guidelines on *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 so as 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 are 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 well-being, 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, 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. Often 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.

asylum process

endnotes

- 1 See Office of the Immigration Services Commissioner website <http://oisc.homeoffice.gov.uk/>
- 2 The UKBA previously was called the Border and Immigration Agency, and before that the Immigration and Nationality Directorate
- 3 Refugee Council, *New Asylum Model: Overview and implications of the Government's new asylum model*, August 2007, at www.refugeecouncil.org.uk
- 4 UK Border Agency, *Asylum Process Guidance, Processing an Asylum Application from a Child*, Section 6.3, available at www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/
- 5 AN&FA [2011] EWHC 2541 (Admin)
- 6 UK Border Agency, *Asylum Process Guidance, Processing an Asylum Application from a Child*, Sections 6.3 and 6.6
- 7 UK Border Agency, *Asylum Process Guidance, Processing an Asylum Application from a Child*, Section 5.3
- 8 See <http://www.refugeecouncil.org.uk/howwehelp/directly/children> for more information
- 9 Immigration Rules para 352ZA.
- 10 In 2004, the LSC introduced limits on the amount of time a legal adviser could spend on a legal aid case. These limits could only be extended with the LSC's permission and were known as the hourly rates regime. The hourly rates regime has now been replaced by 'fixed fees' for new cases under the Graduated Fee Scheme (GFS). As a result, there has been a huge cut on legal aid funding for asylum applications. The funding regime is complex and legal representatives will only be paid a fixed fee for the work, unless the legal representative can illustrate that the case is exceptional. Separated children **do not** fall within GFS scheme and continue to be governed by the hourly rate scheme
- 11 UK Border Agency, *Asylum Process Guidance, Processing an Asylum Application from a Child*
- 12 Para 29.11.2, Immigration 'Decision-making guidance to the Funding Code' November 2010, at [www.legalservices.gov.uk/docs/cls_main/Funding_Code_Chapter_29_Immigration_-_Nov_2010_\(498kb\).pdf](http://www.legalservices.gov.uk/docs/cls_main/Funding_Code_Chapter_29_Immigration_-_Nov_2010_(498kb).pdf)
- 13
- 14 ILPA, *Working with Refugee Children*, 2011, p 149
- 15 UK Border Agency, *Asylum Process Guidance, Processing an Asylum Application from a Child*
- 16 UK Border Agency, *Asylum Process Guidance, Processing an Asylum Application from a Child* - this is currently being challenged in the Courts so it is advisable to seek legal advice on this issue.
- 17 UK Border Agency, *Asylum Process Guidance, Processing an Asylum Application from a Child*
- 18 See Section 83 of *Nationality, Immigration and Asylum Act 2002*.
- 19 If the merits of succeeding are moderate or better then CLR will be granted. See Legal Services Commission Funding Code, Criterion 13.4, at www.legalservices.gov.uk. 'Where a representative is able clearly to identify the 1951 Refugee Convention reason' Controlled Legal Representation will be granted on the basis that 'the applicant's age (having been accepted by the Secretary of State for the Home Department) may be a contributory and weighty factor in determining refugee status and is likely to satisfy the merits test (i.e. the case will have at least a borderline prospect of success' Para 29.9.5, chapter 29, Decision-making guidance to the Funding Code, November 2010 [www.legalservices.gov.uk/docs/cls_main/Funding_Code_Chapter_29_Immigration_-_Nov_2010_\(498kb\).pdf](http://www.legalservices.gov.uk/docs/cls_main/Funding_Code_Chapter_29_Immigration_-_Nov_2010_(498kb).pdf)
- 20 The AIT can decide whether to grant a cost order to the legal representative to cover the costs of the preparation, but only at the end of the case. If the application is refused on the papers then a legal representative will have to decide on whether there are merits to fund a statutory review application to the High Court. It is very unclear at the moment which legal representatives will be prepared to undertake statutory review applications to the High Court in the hope that they will be granted public funding in retrospect.
- 21 UK Border Agency Asylum Policy Bulletin 28 – *Providing travelling expenses and reimbursing essential travel costs* at www.ukba.homeoffice.gov.uk.
- 22 Emma Churchill, UK Border Agency, *National Asylum Stakeholder Update*, October 2011
- 23 *Borders, Citizenship, and Immigration Act 2009*, s.55.
- 24 UK Border Agency *Enforcement Instructions and Guidance*, Chapter 26, at www.ukba.homeoffice.gov.uk
- 25 Section 33 and Schedule 3, *Asylum and Immigration (Treatment of Claimants etc) Act 2004*. See also UKBA *Asylum Policy Instruction on Safe Third Country Cases* at www.ukba.homeoffice.gov.uk.
- 26 See European Court of Human Rights cases of *MSS v Belgium and Greece* (www.unhcr.org/refworld/docid/4d39bc7f2.html) and *Rahimi v Greece* (www.unhcr.org/refworld/docid/4d9c3e482.htm)
- 27 UK Border Agency, *Asylum Process Guidance, Assessing Age*, at www.ukba.homeoffice.gov.uk
- 28 UK Border Agency *Asylum Process Guidance – Detained Fast Track and detained non-suspensive appeals-intake selection*. Applicants claiming to be under 18 will only be accepted into the fast track if: there is clear and credible documentary evidence to show that they are over 18, a full merton complaint age assessment has been carried out by social services (BUT not those carried out by Emergency duty teams) or where the UKBA believe that the applicants 'physical appearance/demeanour strongly suggests that they are **significantly** over the age of 18 and not other credible evidence exists to the contrary (an applicant **must be given reasons** by the UKBA for disputing age in the form of a IS97M).
- 29 Unaccompanied minors must only ever be detained in the most exceptional circumstances then only normally overnight, with appropriate care, whilst alternative arrangements for their care and safety are made. Juveniles may only be detained in a place of safety as defined in the *Children and Young Persons Act 1933* (for England and Wales), the *Social Work (Scotland) Act 1968* (for Scotland) or the *Children and Young Persons Act (Northern Ireland) 1968* (for Northern Ireland).
- 30 Figures provided by the Refugee Council 2011
- 31 Bail for Immigration Detainees, *How to get out of detention: a free guide for detainees*, November 2010 at www.biduk.org.
- 32 Letter from Ruth Hadland, Regional Stakeholder Lead – UASCs, Solihull Asylum Teams, May 2010

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 discretionary leave until he or she is 17½, 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 young person will be returned.

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 eighteenth birthday, unless the safe and adequate reception arrangements test has been met. This should be made clear in the reasons for refusal letter.

Forced return of children

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. To date, an unaccompanied child whose asylum application has been refused will usually have been granted limited leave to remain until they are 17½ as a matter of practice. However, an Unaccompanied Asylum Seeking Children Reforms programme announced by the Home

Office in January 2008 outlined its aspirations to enforce the removal of those children to countries where they argue there are adequate return arrangements, who have not reached 18 and who do not accept the offer of assisted voluntary return¹. At the time of writing, the UK Border Agency (UKBA) is looking into the forced return of children to Afghanistan, as part of the European Returns Platform, with other European countries such as the Netherlands, Norway and Sweden².

The UK Border Agency Asylum Process Instruction has recently been rewritten and now allows for the outright refusal of a separated child's asylum claim, with no subsequent grant of leave to remain and with a view to forced return of the child. However, this is only an option if either it is possible to reunite the child with his or her family, or "where UKBA has made arrangements with NGOs or other organisations overseas to provide specific assistance on return". Furthermore, **case owners will still need to assess whether return is appropriate to the individual child, taking particular account of his/her best interests** (see below for more information). In order to come to a view on the sort of reception arrangements that need to be in place the case owner may need to draw on information from other sources, such as the local authority, and social workers need to be aware of their possible involvement in this decision making process³.

Best interests

In November 2008 the UK lifted its reservation to the UN *Convention on the Rights of the Child* (UNCRC), finally ending its official discrimination against children subject to immigration control. As a consequence, all immigration and asylum policies and practices must comply with the rights and duties set out in the UNCRC.

One of the core principles of the convention is the best interests principle, contained in Article 3(1) of the UNCRC, namely that "*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*" This duty applies to every aspect of UK Border Agency functions and to all agencies working with asylum seeking children, irrespective of their immigration or any other status. It applies to how claims are considered and decisions are made as well as to procedures and processes. An equally important element in any assessment of those best interests is that children must be enabled to participate effectively in all decisions

affecting them and to have their wishes and feelings taken into account (Article 12).

The recent landmark Supreme Court case, *ZH(Tanzania) v SSHD*⁴ has set out the considerable weight and significance that must be attached to the best interests of the child when considering such fundamental decisions as removal and deportation. The Home Office accepted in that case and others⁵ that the principle applied not just to immigration but also to asylum claims, and applied to decisions directly or indirectly affecting a child. It applies therefore both to separated children and those in families.

The duty to comply with the UNCRC has clearly been set out in the UK Border Agency's own asylum instructions since before the case of *ZH(Tanzania)* as a matter of policy, but is now clearly and unambiguously part of our domestic and European legal obligations. The UKBA's guidance 'Processing Asylum Applications from a Child'⁶ requires compliance with these provisions and also contains a best interests "pro forma" for use by local authorities to complete and send to the UKBA.

return

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 implicit 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.

Voluntary return

For separated children and young people who are thinking about returning to their country of origin voluntarily, Refugee Action now runs the UKBA Assisted Voluntary Return programme – called 'Choices'⁷.

1. Refugee Action can help asylum-seekers and refused asylum-seekers (VARRP programme); families and children (AVRFC programme); and irregular migrants (AVRIM programme). The process is made up of four steps:
2. Pre-decision information and support - this consists primarily of confidential advice.
3. Post-decision assistance – this consists of practical help with travel documents and flights and discussion of reintegration options.
4. Airport assistance.

Post-decision support including further reintegration payments, tailed reintegration packages, and advice and assistance as required.

The main Choices offices are in **London, Manchester, Birmingham** and **Leeds**. Refugee Action also has staff in Bristol, Cardiff, Glasgow, Leicester, Liverpool, Newcastle, Portsmouth, Sheffield and Wolverhampton.

It is important that separated children are not pressured into opting for assisted voluntary return, and also that a decision on the child or young person's protection claims is made before they engage with the process.

Removals of over 18s

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 **Asylum Process** chapter), 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. Removal proceedings are started when the Immigration Service 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 Immigration Service suspects that the person may not comply with removal, they are entitled to detain that individual in preparation for removal.

All 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 seeks to remove people as quickly as possible once they have been detained. However, there are often delays because of problems arranging travel documents with countries of return.

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 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 absconded to avoid immigration control⁸.

Family Tracing

The British Red Cross provides International Family Tracing Services (see **Contact Details**) which a separated child or young person may wish to use to trace their family. Some children may be given the (false) impression that initiating family tracing may influence the outcome of their asylum claim. It is important that a separated child is able to make an independent and informed decision as to which to initiate family tracing. In the view of the Red Cross, whether a tracing request is or is not opened should not be considered as evidence that family does or does not exist. The result of an enquiry will be communicated directly to the child.

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 visit Refugee Action, which provides advice and information on returns and also facilitates voluntary returns (see Contact Details). 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 the meeting with the agency in order to provide support. 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 discretionary leave), should be aware of circumstances in which they are liable to be detained/removed. 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', and can itself be a reason for detention.
- **Voluntary return of under 18s:** Children who want to return to their home country may be assisted by Refugee Action but much more work should be done to establish whether or not the child is giving informed consented 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; and his or her history, among other factors. This requires a full family assessment in the country of origin before any return under such a scheme is approved and completed. This may also require consideration of whether DNA tests would assist to determine familial relationships but 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. 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 (although an adverse finding by the UKBA 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 UKBA, and professionals should also carefully consider their duty of confidentiality to a child and information sharing without the informed consent of the child.
- **Emotional support:** Preparation for possible return home should involve an 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 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 possible 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 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 from the First Tier and Upper Tier Tribunal and further correspondence. If possible ensure you have access to a legal adviser willing and able to represent and assist if necessary.

return

endnotes

1. Home Office (2008) *Better Outcomes: The Way Forward – Improving the Care of Unaccompanied Asylum Seeking Children*, at www.ukba.homeoffice.gov.uk.
2. Anki Carlsson, Swedish Red Cross, *Return of unaccompanied minors from a children's rights perspective - Paper prepared for the Nordic Refugee Seminar – May, 2011*, at <http://www.diiis.dk/graphics/Events/2011/Anki%20Carlsson%20Paper%20Asylseminar.pdf>
3. UK Border Agency, *Asylum Process Guidance, Processing an asylum application from a child*, section 17, at www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/
4. [2011] UKSC04
5. *DS(Afghanistan v SSHD [2011] EWCA Civ 305*
6. UK Border Agency, *Asylum Process Guidance, Processing an asylum application from a child*, section 1, at www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/
7. For more information, see www.refugee-action.org.uk/ourwork/assistedvoluntaryreturn.aspx
8. See for example, 11 Million *The Arrest and Detention of Children Subject to Immigration Control: A report following the Children's Commissioner for England's visit to Yarl's Wood Immigration Removal Centre*, at <http://www.11million.org.uk> - although this only deals with children in families.

trafficking

Child victims of trafficking are those who are 'recruited, transported, transferred, harboured or received for the purpose of exploitation'¹. This is different from smuggling children into the UK, which is solely about facilitating travel to the country. Children can be trafficked for various reasons, including sexual exploitation, forced labour, domestic servitude, criminal activities, benefit fraud, organ harvesting or illegal adoption. Many trafficked children, once in the UK, are forced to work in sweatshops, restaurants, factories, agriculture, and in domestic servitude, for criminal gangs or in prostitution². There are several possible means by which children can be trafficked into the UK. They could enter as separated children; as visitors; as students; fraudulently as dependents of adults; met at the airport by people claiming to be relatives; as part of private fostering arrangements; through contracts for domestic staff; or through bogus marriage arrangements.

Such young people are often 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. Some of them are told by traffickers to claim asylum as unaccompanied children. Others may arrive claiming to be adults seeking asylum, or under false passports, or with student 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.

The UK Government signed the *Council of Europe Convention on Action against Trafficking in Human Beings* ('the Trafficking Convention') in March 2007, giving its commitment to the provision of minimum standards for the protection of victims of human trafficking, and drew up the 'UK Action Plan on Tackling Human Trafficking'. One of the key commitments in the Action Plan was to provide targeted guidance to meet the particular needs of children who may have been trafficked. '*Working together to safeguard children who may have been trafficked*'³ provides good practice guidance to all professionals and volunteers working or in contact with children, and provides details of relevant support systems (see also **Further Reading** section).

Identifying a child victim of trafficking

Child trafficking cases are often difficult. The child may be unaware that he or she has been trafficked, or may deny past or continuing exploitation to protect their family or the trafficker. Identity documents – if these exist - are likely to be false, and children are often coached by their traffickers to adopt false identities, false personal details, and to deny any abuse or mistreatment.

A trafficked child may be found in a range of different circumstances - by the police in a raid on a brothel, or in a cannabis factory, for example. The child may be referred to a social worker, or to a UKBA 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.

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, and the types of control exercised by different traffickers. However, research has shown that knowledge of trafficking amongst social care professionals and the provision of support services across the UK is patchy, and access to specialist support, including foster care, is often determined by a child's immigration status⁴.

It is important that professionals working with young migrants are aware of signs indicating 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:

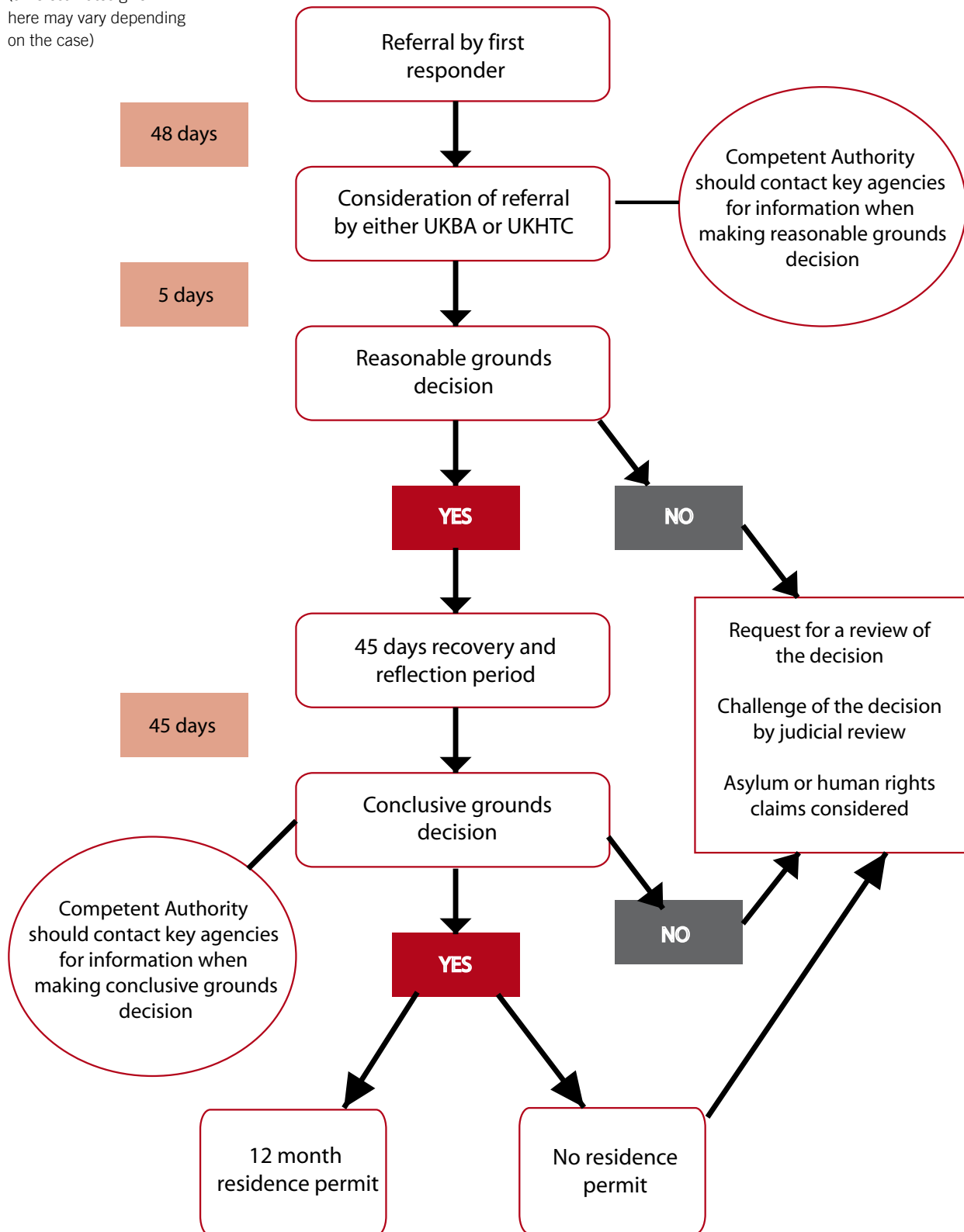
- Signs of malnourishment
- Unexplained phone calls while in a placement
- Money or possessions which are unaccounted for
- Signs of physical or sexual abuse
- Going missing from local authority care
- Fear of authority figures
- A prepared story very similar to that of other children
- A history with 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 www.londonscb.gov.uk/trafficking.

trafficking

Table 2: FLOWCHART OF NATIONAL REFERRAL MECHANISM

(time estimates given here may vary depending on the case)



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 children’s workforce professional or member of UKBA staff 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.

Referral to the NRM

In order to be compliant with the Convention, the government established the National Referral Mechanism (NRM) for identifying and protecting victims of trafficking. Referrals to the NRM are made by ‘first responders’. These are public bodies or government sponsored support providers such as the police, local authorities, UKBA, the Poppy Project or the Migrant Helpline.

Referring a child into the NRM involves completing a referral form which will then be assessed by the relevant **Competent Authority**. There is:

- a Competent Authority in the **UK Human Trafficking Centre** to assess cases where the victim is British or where there are no immigration issues.

And there are:

- linked but separate Competent Authorities in the **UKBA** to assess cases where trafficking may be linked to other immigration or asylum issues.

The assessment tool, referral form, guidance and further information on trafficking can be found on the Home Office website (see **Contact Details**)⁵.

Once the referral to the relevant Competent Authority is made they will analyse the referral and should decide within 5 working days (which can be extended where necessary) whether or not there are **reasonable grounds** for believing that the person referred has been trafficked. 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 is low to ensure that where there is the possibility that a child has been trafficked, it is investigated.

During this time, the Competent Authority should carry out any evidence gathering and enquiries which may be necessary, and before the end of the recovery period the Competent Authority will make a ‘conclusive’ decision about whether or not the person is a victim of trafficking.

The UKBA and the police frequently decline to refer or investigate cases on the basis that the victim states they were not trafficked, even where there are substantial objective indicators that they were. However, in children’s cases, it is not necessary to obtain a child’s consent to refer them to the NRM⁶. Although it would always be good practice for children to have consented to referral, this may permit the identification of children who have been trafficked where fear of their traffickers has prevented them from acknowledging the fact.

The table below shows the breakdown by nationality of the reasonable grounds and conclusive grounds decisions for minor referrals for the top 5 nationalities for the period 1st April 2009 to 31st March 2011. This accounts for 67% of all referrals⁷.

Nationality	Referrals as at 31/03/11	Positive Reasonable Grounds Decision	Positive Conclusive Grounds Decision
Vietnam	107	74	25
Nigeria	48	31	17
China	45	29	7
UK	38	35	33
Romania	25	21	18
TOTAL	263	190	100

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After a decision is made

If a child is conclusively identified as a victim of trafficking, they will be issued with a 12 month residence permit **if** the Competent Authority considers that their stay is necessary owing to their personal situation **or** the Competent Authority considers that their stay is necessary for the purpose of their co-operation with the investigation of their traffickers.

The NRM operates alongside existing European, refugee and human rights law, so those who are trafficked may make other applications to remain in the UK based on either European, refugee or human rights law. 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. Some forms of leave require that the child co-operates with the police.

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 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 will possibly have a right to apply to challenge the decision through a judicial review.

Trafficking and the Criminal Justice System

Crown Prosecution Guidance '*Prosecution of Young Defendants charged with offences who might be Trafficked Victims*' highlights the different situations where trafficked children may commit crimes, including organised street crime and cannabis cultivation, and the process to be followed. Prosecutors should be alert to the possibility that in such circumstances, a young offender may actually be a victim of trafficking and have committed the offences under coercion⁸.

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 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, 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 and/or removal. Clear evidence of duress should result in the young person not being prosecuted, and less clear evidence should prompt further

information being elicited through interview. Duress is not required for a child to be identified as a victim of trafficking, however, identification as such may not guarantee that the child is not prosecuted. Interviewers should be aware of the possibility that the appropriate adult could be involved in the trafficking process. 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 the child might have been trafficked – see **Criminal Justice** chapter for more information.

Support for trafficked children

Trafficked children are entitled to 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*.

Often trafficking victims do not have any official documentation to confirm their age. They may have been held captive since they were very young, and do not have a clear idea of how old they are. Sometimes children are encouraged by traffickers to lie about their age so that they will be treated as adults, even though they are under 18. Where an individual's age is disputed, international law requires that they are given the benefit of the doubt and are treated as children until there is evidence to disprove this⁹. It is essential that those working with the young person advocate on their behalf to ensure that this is the approach taken – see on **Age Disputes** chapter.

Missing children

A problem faced by many local authorities is separated children, who may have been trafficked, going missing from local authority care¹⁰. The Department of Children School and Families published revised guidance in July 2009 - '*Statutory Guidance on Children Who Run Away and Go Missing From Home or Care*' (see **Further Reading**) aimed at practitioners, 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 protocol about action to take when children in care go missing. The UK has an obligation under the Convention to provide safe accommodation to trafficked children, and it is recommended that, wherever possible, trafficked children are placed in specialised foster care, thus reducing the likelihood of them going missing¹¹.

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 Children's Panel at the Refugee Council has experience in helping young people who have been trafficked, so you may also wish to seek advice from them. The NSPCC trafficking project also has a free advice line should you seek further advice.
- Alert children's services 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 mental health agencies to refer to).
- Being trafficked could be grounds to put in an **application for asylum and/or a protection claim**. If appropriate, explore this option with the young person and seek legal advice.
- Try to ensure that individuals are **represented by legal advisers** who are known to be reputable, or have been recommended as having expertise in trafficking cases.
- Where an individual's age is disputed, international law requires that they are given the benefit of the doubt and are treated as children until there is evidence to disprove this. It is essential that those working with the young person advocate on their behalf to ensure that this is the approach taken.

endnotes

- 1 Article 4, *Council of Europe Convention on Action against Trafficking in Human Beings*, 2005. See also HM Government, *Safeguarding children who may have been trafficked*, 2007, at www.education.gov.uk/publications.
- 2 See ECPAT (2004), *Cause for Concern? London social services and child trafficking*, available at www.ecpat.org.uk.
- 3 HM Government, *Safeguarding children who may have been trafficked*, 2007, at www.education.gov.uk/publications.
- 4 Beddoe, C. (2007) *Missing Out: A Study of Child Trafficking in the north-West, North-East and West Midlands*, ECPAT, available at www.ecpat.org.uk.
- 5 See <http://www.homeoffice.gov.uk/publications/crime/referral-forms-human-trafficking/>
- 6 See UK Border Agency *Asylum Process Guidance on Victims of Trafficking*, at www.ukba.homeoffice.gov.uk.
- 7 NRM Statistical Data April 2009 to March 2011, SOCA statistical data, <http://www.soca.gov.uk/about-soca/about-the-ukhtc/statistical-data>
- 8 *Council of Europe Convention on Action against Trafficking in Human Beings*, 2005
- 9 Crown Prosecution Service, *Prosecution of Young Defendants charged with offences who might be Trafficked Victims*, available at www.cps.gov.uk
- 10 See, for example, Booth, R, 'Revealed: 77 trafficked Chinese children lost by home' in *The Guardian*, 5 May 2009, at <http://www.guardian.co.uk/world/2009/may/05/trafficked-chinese-children-crime>. ECPAT UK's research in 2007, *Missing Out: A Study of Child Trafficking in the North-west, North-East and West Midlands*, found 60% of children suspected of being victims of trafficking had subsequently gone missing from local authority care.
- 11 See Anti-Trafficking Monitoring Group, *Wrong kind of victim?* 2010, available at www.antislavery.org

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The local authority in which a separated child is present is responsible for his or her care. The immigration status of a separated child does not affect a local authority's duty to care for them while they are under 18. However, after 18, in certain circumstances, immigration status may play a part in the withdrawal or withholding of services to those who are leaving the care of the local authority (see chapter on **Support for young people turning 18**).

Children's services departments in local authorities used to be called social services. They are organised in different ways throughout the country. In general, a child's first contact is likely to be with an Assessment or Duty Team who will carry out an initial assessment. The case will probably then be transferred to another team, depending on the initial assessment. This might be a specialist Asylum Team, or a Looked After Child Team or team for Children with Disabilities, among others.

The social worker there may make a more detailed 'core assessment' of the child's needs and then develop a plan to help his or her needs¹.

All separated children should receive a full needs assessment² by the local authority in which they are present, in line with the Department of Health's national framework for assessment. This provides a systematic approach to establishing the needs of a child and stresses that particular care and attention is required in the assessment of separated refugee children and children seeking asylum. The framework lays down the following requirements of local authorities:

- a decision about a response to a referral must be made within one working day
- an initial assessment of whether the child is in need must be carried out within a maximum of seven days
- a core assessment for a child in need must be undertaken within a maximum of 35 working days (a young person should have access to a copy of this in their own language)
- a care plan or child in need plan must be prepared for all children. This is a plan to meet the needs (accommodation, financial and other support needs) identified within set time-scales, as well as contingency plans if they are not successful. Plans should be reviewed regularly.

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*. The section of the Children Act under which the separated child is supported is very important, as it not only determines the level of support they are provided with as a child (under 18), but also affects whether they are entitled to leaving care support from the local authority once they reach 18.

In the past, age was often the determining factor in the provision of services. Separated children aged under 16 tended to receive support services under sections 20 and 17, and 17-year-olds under section 17³. Section 20 brings with it a wider range of services and support than section 17 (see box on following page).

Given legal clarification and policy developments (see box on following page), the vast majority of separated young people should now normally be given support under section 20 of the *Children Act 1989* and provided with leaving care services when they are deemed ready to leave care, which will usually not be until they are 18. While there has been some improvement in practice, there is still a lack of consistency in the response from local authorities to separated young people⁴.

Type of accommodation provided

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

It is normally the case that children under the age of 16 are placed in foster care. Difficulties often arise when a local authority disputes that a child is under the age of 16 (see the **Age Disputes** chapter), and often older children will 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 placing a child aged 16-17 in foster care. Indeed, statutory guidance from 2010⁵ 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.

children's services support

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.

Children supported under section 17 will not necessarily receive any services other than payment for subsistence and basic accommodation. This may be in a bed and breakfast or a hostel. Local authorities may arrange for someone else to act on behalf of the local authority to provide these services, and are allowed to give cash as well as other services. Section 17 is designed to support children where there is already a carer, and should not be used to support unaccompanied children who have greater needs than this.

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' child and afforded further protection and rights. This can involve consulting with a child about a placement; keeping siblings together; and a general duty to safeguard 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.

Policy developments

A number of legal and policy developments have provided clarity on the support entitlements of separated children and young people. Local Authority Circular (LAC (2003) 13), issued by the Department of Health in June 2003, stated that support should be based on a needs assessment and, **for the majority of separated young people, section 20 support under the *Children Act 1989* is likely to be the most appropriate course of action**⁶.

In the same year, a judicial review was issued against the London Borough of Hillingdon regarding the lack of leaving care support services for a number of former separated young people who had been supported under section 17 of the *Children Act 1989*. The judgment found that some former separated young people who had been supported under section 17 had essentially been 'looked after' as

defined by section 20 and were therefore entitled to leaving care support⁷. Subsequent rulings have further supported the provision of accommodation to separated children because they fulfil the criteria in section 20(1), including *H and others v London borough of Wandsworth and others* (2007)⁸ and *G v Southwark* (2009)⁹. The latter was followed by another clarification by the Department for Children, Schools and Families, which outlined that in nearly all cases the impact of a child being homeless and their parents being unable to provide them with suitable accommodation or care' would result in the child being a child 'in need' and that **where the criteria for section 20 have been met children's services do not have discretion to choose to use section 17 powers instead to provide accommodation**¹⁰.

children's services support

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

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 on the following page.

What is a needs assessment and pathway plan?

The needs assessment and pathway plan are central parts of the leaving care service. They are carried out by children's services. The assessment identifies what needs the young person has, while the plan sets out details for how those needs will be met. Areas covered in the needs assessment and 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, reviewed if either the young person or personal adviser requests it, and carried out at least every six months.

The young person should be actively involved in his or her assessment and planning, as should significant adults in the young person's life.

What is the role of a personal adviser?

A personal adviser will provide advice (including practical advice) and support to all young people leaving care. In the case of eligible children and relevant children, they can assist with the child or young person's assessment and in drawing up the pathway plan. In the case 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 child or young person's progress and well-being, and maintain written records of contact with them.

The personal adviser may be a social worker, but not necessarily. For example, they may also be a Connexions adviser or an adviser from a voluntary organisation contracted by the local authority to provide leaving care services. It is the responsibility of the local authority to appoint and train people they consider to be suitable as personal advisers.

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 chapter on '**Support for 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 policy that the local authority has. 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 see the chapter on **Work and Training**). It should be made clear to the young person how they will receive their financial support, 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.

children's services support

Table 3 - Categories of 'looked after' Children

Category of young person	Criteria	Services to be provided
Eligible children (Schedule 2, Part 2 of the <i>Children Act 1989</i>)	<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 3 months after the child turns 16 or becomes an 'eligible child' • A pathway plan • A personal adviser
Eligible children (Schedule 2, Part 2 of the <i>Children Act 1989</i>) Relevant children (Section 23 of the Children Act)	<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 • Ceased to be looked after 	<ul style="list-style-type: none"> • Personal adviser if not already done so • Assessment of needs, if not already done so • Pathway plan if not already done so • Keep pathway plan under regular review • Accommodation and maintenance to safeguard and promote child's welfare • Authority must keep in touch with relevant child
Former relevant children (Section 23 of the Children Act)	<ul style="list-style-type: none"> • 18 to 21 years old • Either been eligible or relevant child or both • If, at 21, young person still being helped by responsible authorities with education or training, he or she remains a former relevant children to the end of the agreed programme of education or training, even if that takes him or her past the age of 21 	<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
Qualifying children (Section 24 of the Children Act)	<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.

children's services support

The role of foster carers

Approximately 6% of the 60,900 children in state care are unaccompanied asylum seeking children, with the highest concentration in London and the south east where it is around 17%¹¹.

When an unaccompanied asylum seeking child falls within the scope of section 20, the most suitable care arrangement, in particular for children under 16 years of age will often be foster care. As part of the section 20 duty, local authorities are expected to consult with children about what they want, and to consider this feedback in any decisions made.

Although best efforts are usually taken by local authorities to place young people with foster carers with shared language, culture and/or religion, it is often not possible. This needs to be handled with sensitivity, and additional support provided where appropriate.

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 minors 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 that they were 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 children, there is a potentially hugely important role for foster carers in providing much needed support for them, both as individual children alone in an unfamiliar country, and in terms of navigating the complex education, legal and other systems of official support.

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.

UK Border Agency funding for children seeking asylum

Separated 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 UK Border Agency¹². This has led to problems in predicting demand and allocating resources, as often this funding does not necessarily cover the costs involved with 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 UK Border Agency (UKBA) on a monthly basis informing the UKBA 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 UKBA will provide funding for a maximum of 21 days while the assessment is conducted. The grant for under 18 year olds is not affected by the decision made on a child's asylum claim; however, there are exclusions – usually:

- The UKBA will only provide 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 LA) no costs will be reimbursed.
- The dependent children of any unaccompanied children cared for by the LA are excluded, as these children are not deemed to be unaccompanied.
- Children who have become British citizens (or have citizenship of another EEA state).

children's services support

Separated 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 *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 (NIAA). However, if a LA decides to exclude an EU young adult from Leaving Care Support due to Schedule 3 NIAA, legal advice should be sought on the correctness of this decision.

Advocacy services

A child's advocate may seek to ensure that their rights are protected and that they have access to services which will benefit their lives. Local authorities have a duty to provide information about advocacy services and offer to help find an advocate for children and young people who receive a service from them¹³. 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.

how can you help?

- The majority of separated children under 18 years old should now be receiving support from a local authority **under section 20** of the *Children Act 1989* and be entitled to **leaving care services**. If the child you are supporting is not receiving this level of support and wants to, talk to the local authority department responsible and find out why. Advocate for the child to be provided with the level of support they require and are entitled to, using the government guidance and relevant case law, as appropriate. If necessary, and if the child wants you to, support them in finding a legal representative, advocate or child rights organisation (see **Contact Details**) to challenge the amount of support they have been given, and assess whether a complaint or a civil claim against the local authority is justified.
- Young people should be clear about how they are to access **financial support**, for example, frequency of access and means of payment. Children should also know who to go to in order to sort out any problems with their financial support. If the child does not know, find out by talking to the appropriate social worker who works in the relevant team (usually within the children's services team responsible for separated children, though this varies from one local authority to another).
- If the **circumstances of a child change**, encourage them to inform the local authority. Children's services should then reassess need, review the plan and provide support accordingly.
- If the child has concerns about the support provided to them, including housing problems, support the child in finding out how to make a **complaint** to the local authority or the housing provider contracted by the local authority. 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 Voice; the National Youth Advocacy Service; and the Children's Panel at the Refugee Council (see **Contact Details**).
- Check if there is a **local project** that the child could join. Refugee organisations and children's organisations may run projects in your area – see **Contact Details** for further information.
- 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 child access appropriate education? Inform the child what support they should be receiving and to what standard and, if they have concerns, support the child in trying to resolve them, if necessary by making a complaint.
- In situations where a child lacks support from a social worker, find out and inform the child about **additional support** available in the area (for example, youth service support, mentoring schemes, young refugee groups, counselling support).

endnotes

- 1 Family Rights Group, *An introductory guide to local authority children's services*, at www.frg.org.uk
- 2 Department of Health, *Framework for the Assessment of Children in Need and their Families*, 2000
- 3 K Stanley, *Cold Comfort: Young Separated Children in England*, Save the Children, 2001
- 4 See J Dennis, *Ringling the Changes: The impact of guidance on the use of Sections 17 and 20 of the Children Act 1989 to support unaccompanied asylum seeking children*, Refugee Council, 2005. See also Department of Children, Schools and Families, *Safeguarding Children – The Third Joint Inspector's Report on arrangements to safeguard children*, 2008; Brighter Futures London, *Flowers that grow from concrete: how support services determine a young refugee's life opportunities*, 2011.
- 5 Department of Education, *Provision of Accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation*, 2010 at www.education.gov.uk
- 6 Department of Health, *Local Authority Circular (LAC) 13*, June 2003, at www.doh.gov.uk/publications
- 7 *R(Behre) v Hillingdon (2003)*, known as the 'Hillingdon judgment'
- 8 [2007] EWHC 1082 (Admin)
- 9 [2009] UKHL 26; WLR (D) 159
- 10 Department for children, schools and families, *House of Lords Ruling – Accommodation for Lone 16/17 year old children*, June 2009
- 11 Ala Sirriyeh, *Community Care, Good practice when working with refugee and asylum-seeking children*, April 2011, at www.communitycare.co.uk/Articles/2011/04/15/116694/research-good-practice-when-working-with-refugee-and-asylum-seeking-children.htm
- 12 UK Border Agency, *Unaccompanied asylum-seeking children - local authority grants*, at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithasylumseekers/local-authority-grants/>
- 13 Under the *Advocacy Services and Representations Procedure (Children) (Amendment) Regulations 2004*

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 considerable additional anxieties on top of those faced by their peers. Many 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) they 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. The section below provides a summary of basic information on turning 18, and ways of supporting young people going through that transition.

Access to welfare benefits

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

For many separated children, however, when they reach 17½ their period of discretionary or limited leave to remain expires. 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 automatically extended 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 appealing 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. The person has again become 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 benefits¹.

As the Home Office does not send out 'acknowledgement letters' confirming that an application for an extension of leave has been made as standard, it may be necessary to provide other evidence that an in-time application has been made. The Department of Work and Pensions has issued guidance advising staff to accept a solicitor's letter, where one is available, together with the original Home Office letter or status document granting leave, as proof that an application for extension has been made. Where a solicitor's letter is not available, DWP staff are advised to send a request for verification of status to the Home Office, and this will "be dealt with as a priority". Any refusal by the DWP to reinstate or process a claim for benefits should be referred for specialist legal advice².

Leaving care support at 18

The majority of separated young people when they turn 18 should be entitled to leaving care support. Young people are entitled to this support up to the age of 21 at least, 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**'.

Former relevant children are entitled to:

- a personal adviser;
- a pathway plan;
- financial assistance with employment, education and training (including a higher education bursary if the young person is at university);
- assistance in general (this may include accommodation if the young person's welfare requires it);
- vacation accommodation for higher education if needed;
- 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

support for young people turning 18

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.

Pathway planning

As part of the leaving care support a young person receives, a pathway plan should be drawn up, outlining what advice, assistance and support the young person needs both whilst being looked after and also once they cease to be looked after. Areas covered in the pathway plan should include:

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

Triple planning

There may be considerable delays to 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, one of which may be difficulties in getting permission for them to return to their country of origin or place from which they fled (e.g. 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).

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

As noted above, support from a local authority should often continue 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*³ 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 Home Office through asylum support (often referred to as section 95 or section 4 support).

However, there has been some confusion over whether local authorities are required to provide support to young people who have not received, or no longer have, leave to remain, often referred to as 'end of line' or 'appeal rights exhausted'. These are people who have been refused asylum or any form of temporary protection or their leave to remain has expired (and an application to extend it refused), and they have exhausted all appeals. Often, however, they have not been removed and instead remain in the UK, because, for example, the Home Office is not able to obtain travel documents which give the person permission to return to their country of origin.

The law 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 a removals direction - i.e. as soon as they become 'unlawfully in the UK'.

support for young people turning 18

Human Rights Assessments

There is very little guidance on how a local authority should conduct a Human Rights Assessment, but in doing so, it would need to consider whether to withdraw 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?)

Caselaw has made clear that the young person should not simply be moved by the local authority onto Home Office support under section 4 of the *Immigration and Asylum Act 1999* as a means of ensuring the young person is not destitute.

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. It must be ascertained whether the young person will be left destitute in the UK or would be destitute in their country of origin;

they must be able to access shelter, food and the basic necessities, such as washing facilities.

The young person may have a fresh claim for asylum – 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 claim⁷.

The list below is not exhaustive, but local authorities will have a continuing duty to support a former unaccompanied child under section 23C of the Children Act 1989 if they:

- Have not yet received a decision on their asylum claim;
- Are ARE but originally applied for asylum at the port of entry and were never granted leave to remain;
- Have submitted fresh representations;
- Face practical obstacles to returning to their country of origin;
- Have accepted an offer of voluntary return and are awaiting departure from the UK;
- Would be destitute in the UK if support were withdrawn;
- Have health needs that require it - for example, in order to maintain access to specialist health services.

In order for the young person to be eligible for the three months Home Office funding after they become appeal-rights-exhausted, it is now a requirement that the local authority undertake a human rights assessment⁸. An individual assessment must be carried out in each case.

Who is and who is not 'unlawfully in the UK' and therefore 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, 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 Treaties*⁵ not to provide this support. See Box above or further details.

The Home Office may continue to treat ARE cases as eligible for funding for three months after the young person becomes ARE, but reimbursement will only be provided if the LA conducts a human rights assessment as necessary under Schedule 3.

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 within two months of their 18th birthday).
- young people who have an outstanding appeal against an outright refusal of asylum upon turning 18 and were not granted Discretionary Leave 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 application' by the Home Office.

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

If the young person is eligible for leaving care support, the Home Office should provide funding directly to the local authority department as a contribution towards their accommodation and subsistence (currently £150 per week⁹).

If the young person is not receiving full leaving care support because they were previously supported under section 17 of the *Children Act 1989* and/or 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. These young people may be dispersed. However, if they are receiving some support from the local authority as 'qualifying children' (see **Children Services Support** chapter for more information), it should be possible to argue for the young person to remain in the area where they are receiving this support.

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 the young person should not be dispersed.

Young people who have refugee status, humanitarian protection or discretionary leave (including those who are applying for an extension in-time or are appealing a refusal of extension) will not be entitled to asylum support, as they will be entitled to apply for mainstream benefits (see Table 4).

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 discretionary or 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 **Asylum Process** chapter.

Section 4 support

Adult asylum seekers whose asylum claims are refused are, subject to certain rules, eligible for what is known as 'section 4' support¹⁰. This support consists of accommodation and a card with the weekly allowance loaded on to it, called the Azure Card, with no cash support. It is mainly 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 have outstanding representations with the Home Office such as a fresh claim for asylum or a Judicial review)¹¹. For technical reasons relating to the definition of an 'asylum seeker' for support purposes¹², 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' support¹³, 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 UK Border Agency. Furthermore, 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, 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 UK¹⁴.

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 their 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, for example:

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

If at age 21 they are not in education or training then leaving care support 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.

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Table 4 - Rights and entitlements of separated young people at 18 based on immigration status

Immigration Status	Refugee/ Indefinite Leave to Remain		Humanitarian Protection		Discretionary/Limited Leave to 17½, or applying for extension or appealing against refusal of extension		'End of line' cases ^a		Asylum seeker awaiting a final decision ^b	
	20	17	20	17	20	17	20	17	20	17
Section of the Children Act (1989) previously supported under:										
Local authority support										
Entitled to Children Leaving Care (2000) Act services, which include: pathway plan, a personal adviser and 6-mthly reviews up to the age of 21 ^c at least	✓	◆ See note d	✓	◆ See note d	✓	◆ See note d	◆ See note e	◆ See notes d and e	✓	◆ See note d
Assistance with education costs, including travel and equipment costs and arguably tuition fees ^f	✓	◆ See note d	✓	◆ See note d	✓	◆ See note d	◆ See note e	◆ See notes d and e	✓	◆ See note d
Work										
Permission to do paid work	✓		✓		✓		✗		◆	See note g
Voluntary work	✓		✓		✓		✓		✓	
Housing/benefits/asylum support										
If unemployed, entitled to apply for a range of benefits including income support ^h	✓		✓		✓		✗		✗	
Eligible for local authority housing	✓		✓		✓		✗		✗	
Entitled to asylum support, including housing and subsistence	✗		✗		✗		✗		✓	See note i
Apply for section 4 support	✗		✗		✗		◆ See note j		✗	
Health										
Entitled to free NHS services	✓		✓		✓		◆ See note k		✓	
Entitled to free prescriptions	The following people are entitled to free prescriptions: receiving income support, have an HC2 exemption certificate (asylum-seekers and failed asylum-seekers should be issued with this certificate), 16- to 19-year-olds in full-time education. People with certain illnesses and pregnant women or women who have had a baby in past 12 months are also eligible. For more information see chapter on Healthcare.									

Key: ✓ entitled ◆ possible entitlement – read notes for details ✗ not entitled

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Notes on table 3

a Refused asylum and exhausted any appeal rights arising from that refusal and/or previously granted a period of 'limited leave' (discretionary leave or humanitarian protection) and not applied, in time, for an extension or refused an extension of the limited leave and any appeal rights from that refusal are exhausted.

b Awaiting decision on the asylum application or following an out-of-time application after the expiry of a period of limited leave, the matter is being treated as a 'fresh claim' and the decision is awaited, or awaiting the outcome of a final appeal against refusal of an asylum or human rights claim.

c Leaving care services include a pathway plan, a personal adviser and six-monthly reviews up to the age of at least 21 (and to 25 if in education or training). To receive leaving care services a child must have been 'looked after' by a local authority for at least 13 weeks subsequent to their 14th birthday and either continue to be 'looked after' up to age 18 or have been 'looked after' at some time while 16 or 17. Those first accommodated by a local authority within 13 weeks of their 18th birthday would not be entitled to full leaving care services.

d Given the relevant legal judgments (see chapter on **children services support**), it is possible that the young person ought to have been supported under Section 20 and therefore to be entitled to leaving care support and the lack of support could be challenged.

e Under Schedule 3 of the *Nationality, Immigration and Asylum Act 2002*, 'failed asylum-seekers' are entitled to continued support up to the point where they have failed to co-operate with a removals direction, or, where this has happened, if rights under the European Convention on Human Rights would be breached were support to be withdrawn. 'End of line' young people may also fit another category detailed in Schedule 3, paragraph 7 of the *Nationality, Immigration and Asylum Act 2002*, namely 'persons unlawfully in the UK' and if this is correct, a local authority could withdraw support to 'end of line' cases unless this would be in breach of their human rights under the European Convention.

f Those entitled to leaving care services who are in full-time further education can claim income support and housing benefit until the age of 21.

g If asylum seekers have been waiting for more than a year for an initial decision on their asylum claim, they are entitled to apply to the Home Office for permission to work. This currently applies to separated asylum seeking children and also applies when an individual has made a fresh claim for asylum. See chapter on **Work and Training** for further details.

h These include income support (which those in low-income work are also entitled to) or jobseeker's allowance, housing benefit and council tax. While it is normally the case that those in receipt of jobseeker's allowance or income support can only study up to 16 hours a week without losing entitlement to these benefits, unaccompanied children with limited leave (including those with an extension application outstanding) who are in full-time non-advanced education (i.e. up to and including A level and equivalent) can receive income support up until their 21st birthday or the end of the academic year in which they turn 21 (under part 3, para 11 of *Social Security (Miscellaneous Amendments) Regulations 2012*).

i Young people receiving leaving care support should not be dispersed by the Home Office, which currently reimburses the local authority with a sum of £150 per week for the young person's accommodation and support.

j There are strict eligibility criteria for access to 'Section 4' support. This support is available only to people who are destitute and not entitled to any other public funds, and eligibility is also dependent on the individual fulfilling other criteria. See Home Office Asylum Process Guidance Section 4 support instruction at www.ukba.homeoffice.gov.uk section for more information. If the young person is entitled to leaving care support, then support should be provided by the local authority rather than the Home Office through Section 4.

k Failed asylum seekers are still able to access NHS primary healthcare and secondary care for emergencies or treatment which is immediately necessary. Some secondary NHS care in a hospital not free – see Chapter on **Healthcare** for further details.

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 on 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 **Children Services Support** chapter 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. 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' support (most will be ineligible) more information on this, and an application form, can be found on the Home Office **website: Home Office website > Asylum > Asylum support > Applying for support > Section 4 support**

(current URL: www.ukba.homeoffice.gov.uk/asylum/support/apply/section4/)

Asylum Support

- Check whether the young person is eligible to receive **mainstream benefits**, rather than asylum support. For example, people with discretionary or limited leave to 18, 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.
- Now that the majority of young people should be receiving section 20 rather than section 17 support (see **Children Services Support** chapter), it is also worth challenging the presumption that the young person has been or should have been supported under section 17. This would be another way of ensuring not only that the young person is not dispersed at 18, but is also provided with full leaving care support from the local authority.
- 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

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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 and Upper Tier Tribunals. 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 Letter from Department of Work and Pensions to Children's Commissioner for England, 24 September 2008
- 3 *R (on the application of SO) v London Borough of Barking and Dagenham* [2010] EQCA Civ 1101
- 4 Such as Article 3 of the Convention (now enshrined in domestic law under Article 3 of the Human Rights Act 2000) which prohibits torture and inhuman or degrading treatment or punishment.
- 5 *Nationality, Immigration and Asylum Act 2002*, Schedule 3, para 3
- 6 *Limbuela (R v SSHD ex p Adam, Limbuela and Tessam)* [2205] UKH: 66, para 8
- 7 *Birmingham City Council v Clue* [2010] EWCA Civ 390
- 8 Home Office, *Unaccompanied asylum-seeking children – local authority grants*, at www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithasylumseekers/local-authority-grants/
- 9 Home Office, *Leaving Care Grant Instructions to Local Authorities Financial Year 2013/14* - at www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithasylumseekers/local-authority-grants/
- 10 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'.
- 11 See Home Office information on Section 4 support at www.ukba.homeoffice.gov.uk/asylum/support/apply/section4
- 12 See 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*
- 13 Unless:
 1. The former unaccompanied asylum seeking child appealed the asylum refusal and that appeal was pending on his/her birthday if the appeal was 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.
- 14 See para 40 of *R (on the application of SO) v London Borough of Barking and Dagenham* [2010] EQCA Civ 1101

private fostering

Private fostering is defined as 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 days¹.

Research suggests that the majority of children in private fostering are British children², however, there is a significant proportion of young people in such situations who will also have asylum or immigration issues that need to be resolved. The charity Children and Families Across Borders (CFAB) estimates there are 10,000 unregistered Private Fostering Arrangements (PFAs) in the UK, with 4,000 of the children involved in these arrangements originating from outside of the UK³.

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 health care 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 eg 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
- children of service personnel serving overseas

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?

Annual data collected by the Department for Education suggests that private fostering is increasingly common, with 1,649 children recorded as being in private fostering arrangements in March 2011. However this figure will be an underestimate as it only includes arrangements that local authorities have been notified about. Other estimates have

put the full number of privately fostered children as high as 20,000⁴. Research for the Department for Education suggests that, 'despite the legal duty for parents and carers to notify local authorities in advance about private fostering arrangements⁵, this rarely happens in practice⁶.'

Often, a private fostering arrangement is made with no reference to the authorities, either because of lack of awareness of the duty to notify, or to avoid any official involvement. This may be part of a deliberate attempt to keep the child hidden because they are in the household for the purposes of domestic slavery, for example, and there may be a link to trafficking.

Even when local authorities become aware of a private fostering arrangement, it is often the case that the private foster carer claims to be a relative, and so does not have to be assessed. It is very hard to determine whether someone is a relative or not, but it is important for the safety and well-being of the child that the situation is fully understood so that appropriate support can be provided.

Those privately fostered 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 young people may experience a number of different placements, and often do not know who to turn to when they require help. They may need pro-active involvement from those professionals who come into contact with them to ensure their welfare.

Recognising a private fostering arrangement

Due to the estimated large number of private fostering arrangements that have not been notified to the Local Authority, 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.

This definition of private fostering is unique to the UK and no other jurisdiction defines such private arrangements based on the number of days and the type of relationship.

Sometimes it is not easy to establish the relationship between the fostered child and those that care for them. Care must be taken when determining this relationship - for example, there are circumstances where terms such as "aunty" and "uncle" are used according to cultural traditions, 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 what is actually the case, so this situation should be handled with great sensitivity.

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Once sufficient evidence has been gathered to be reasonably confident that there is a private fostering arrangement, and that the Local Authority has not been notified, the next step is to approach the private foster carer to discuss the situation with them, and inform them of their duty to notify the Local Authority of the arrangement.

Local authority assisted private fostering arrangements

Some local authorities involve themselves in private fostering arrangements for example seeking an informal care arrangement for a child rather than assuming full responsibility for them. The local authority is therefore not financially or legally responsible for the child, and its duties and responsibilities are more limited. There is a risk that a vulnerable child may not be appropriately supported or protected in such an arrangement.

Kinship care

Private fostering is often confused with kinship care. There is quite a wide variety in what arrangements are considered to be kinship care⁷. 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 to be within the local authority as well as the purpose of the arrangement.

Duty to notify the Local Authority

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 writing⁸. This should be done six weeks before the arrangement begins, or, if it is an emergency, the Local Authority must be informed immediately. The private foster carer must also inform the Local Authority of certain changes in circumstances in relation to the arrangement⁹. 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 days¹⁰, as this would still be considered a private fostering arrangement.

Although there is not a statutory duty for **professionals** to notify the Local Authority where they are aware of an unreported private fostering arrangement, most Local Authorities expect engagement with the private foster carer and/or the child's parents or guardian to support and encourage them to make the notification¹¹. If this is unsuccessful, it would then be appropriate to approach the Local Authority with the information yourself¹².

Local authority duties to privately fostered children

Local authorities have a responsibility to safeguard the wellbeing 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 be to view the premises, assess the suitability of the private foster carer and other members of the household, speak to all individuals with parental responsibility for the child and to speak to the child alone, unless inappropriate¹³. Local authorities would have either devised their own assessment and monitoring form or use existing forms for children living outside of their family.

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 arrangement¹⁴. 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, and
- provisions for the child's health and education¹⁵.

Children's services should also look into the child's immigration status, and whether appropriate arrangements are being made to assist the child to obtain secure status (if he or she does not already have this).

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. The private foster carers must comply or they are committing an offence¹⁶. As part of the regular inspections, it is the social worker's job to assess

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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 premises¹⁷.

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 where a child is looked after in a Local Authority foster care placement, there is no specific financial support available to private fosterer carers - they are not entitled to Foster Care relief¹⁸, although they may be entitled to Child Tax Credits¹⁹.

Trafficking

Concerns have been raised regarding children who have been brought to the UK in the guise of private fostering arrangements but are in fact being trafficked for the purposes of domestic servitude or benefit fraud. Many of the concerns have centred on girls aged 14 years and under from West Africa, although children from other countries may also be affected, e.g. Afghanistan, China and Romania. It may be possible to wrongly interpret the relationship between a trafficked child and the person by whom they are being kept as 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 privately foster a child from abroad in order to fraudulently access child tax benefits. There have been some high profile and tragic examples of such an arrangement recently, for example Victoria Climbié, which highlight the need for appropriate monitoring and involvement of professionals. If a child has been brought from another country and is living with an adult in a private fostering arrangement and working as a domestic slave or being abused or exploited in any other way, the local authority must intervene to assess whether the child should remain in the household, and child protection procedures should be initiated.

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 vulnerable²⁰. It is essential to prioritise child safety and protection,

particularly in circumstances where there is a possibility of trafficking, abuse or exploitation. Professionals should seek to avoid making decisions based on assumptions or prejudice related to perceived cultural differences.

Working with children who may have been trafficked requires a good understanding of the potential implications. For example, the traffickers may use abuse to cause the child to be in fear for themselves or their families, and consideration should be given to these factors when interacting with the child and seeking to establish what the situation is.

Asylum and immigration issues

The UK Border Agency defines a child seeking asylum who is in a private fostering arrangement as an 'Accompanied Asylum Seeking Child' (AASC), although the Agency 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 separated 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 his or her relationship to the child²¹.

If a child entered the UK as a dependent on their parent's visa, and the parent has left and placed the child with a private foster carer, there may be outstanding issues with the child's right to remain in the UK.

In the case of an unaccompanied asylum seeking child or a trafficked child where it is not possible to contact parents, the duty of the local authority is to ensure that any arrangement for the care of the child safeguards and promotes their welfare. In some cases this will mean accommodating the child as a 'looked after' child or seeking an interim/full care order that will give the local authority parental responsibility.

In other cases, parental consent should be sought. Where this is not given, the social worker will need to consider the age and understanding of the child and their capacity to give their consent to the arrangement. Where it is in the interests of the child, the social worker should consider ways of reuniting them with their parent(s). As part of deciding whether a private fostering arrangement is suitable, the social worker will need to consider whether this or an alternative arrangement is the best way to safeguard and promote the welfare of the child.

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 arrangement²²
- Regularly visiting the child, his/her private foster carer, and providing help and advice where necessary²³
- Assessing all arrangements concerning children from overseas. Do not accept that the child is a niece or nephew without definitive proof
- Always looking into the immigration status of the child and the possibility of obtaining advice and representation for the child if he or she does not have a secure immigration status
- Always obtaining the wishes and feelings of the child - see them alone and make sure that they are aware 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

Be aware of the danger that a child may reach adulthood and subsequently be unable to access benefits or services because of a lack of immigration status – it is vital that steps are taken to address this while he or she is still a child if possible.

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 you suspect may have been trafficked, it will be necessary to make enquiries to ascertain their legal and immigration status, including checks on all children living in the household which is subject to enquiries.

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 Wirtz, L., *Hidden Children: Separated Children at Risk*, The Children's Society, London. Audit Commission, London, 2009
- 3 Children and Families Across Borders, *10,000 invisible children, 2010* at www.cfab.uk.net
- 4 Philpot, Terry. *A very private practice. An investigation into private fostering*. BAAF, 2001
- 5 Section 67, *Children Act 1989* <http://www.legislation.gov.uk/ukpga/1989/41/part/IX>
- 6 Shaw, Catherine et al, 'Research into Private Fostering', March 2010, Department for Education <https://www.education.gov.uk/publications/eOrderingDownload/DCSF-RR229.pdf>
- 7 Laura Brownlees and Nadine Finch 'Levelling the playing field', UNICEF, March 2010 <http://www.unicef.org.uk/Documents/Publications/levelling-playing-field.pdf>
- 8 Section 67, *Children Act 1989* <http://www.legislation.gov.uk/ukpga/1989/41/part/IX>
- 9 Section 9, *The Children (Private Arrangements for Fostering) Regulations 2005* <http://www.legislation.gov.uk/uksi/2005/1533/regulation/9/made>
- 10 Section 10, *The Children (Private Arrangements for Fostering) Regulations 2005* <http://www.legislation.gov.uk/uksi/2005/1533/regulation/10/made>
- 11 *Privately Fostered Children and Young People, A Professional's Guide*, Solihull Metropolitan Borough Council, p 7 at <http://www.solihull.gov.uk/Attachments/PrivateFosteringProfessionalsGuide.pdf>
- 12 This is supported by the National Minimum Standards for Private Fostering. S2.2.3 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>
- 13 Section 4, *The Children (Private Arrangements for Fostering) Regulations 2005*
- 14 Section 8, *The Children (Private Arrangements for Fostering) Regulations 2005*
- 15 Schedules 2 and 3 of *The Children (Private Arrangements for Fostering) Regulations 2005*
- 16 <https://www.education.gov.uk/publications/eOrderingDownload/DCSF-00198-2010.pdf>
- 17 Section 69, *Children Act 1989* <http://www.legislation.gov.uk/ukpga/1989/41/section/69> The Disqualification from Caring for Children (England) Regulations 2002
- 18 Foster Care Relief information on the HMRC website <http://www.hmrc.gov.uk/individuals/foster-carers.htm#a>
- 19 Child Tax Credits information on the HMRC website <http://www.hmrc.gov.uk/taxcredits/start/who-qualifies/children/children-taxcredits.htm#3>
- 20 ECPAT UK, *Understanding child trafficking and private fostering. 2011 and Bordering on concern: Child Trafficking in Wales*, ECPAT UK, 2009
- 21 *Processing an asylum application from a child*, UKBA, para 4.1 <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/processingasylumapplication1.pdf?view=Binary>
- 22 *Preliminary guidance: Private Fostering*, Hillingdon Local Safeguarding Children Board, 2007 http://www.hillingdon.gov.uk/media/pdf/q/2/private_fostering_lscb_briefing_note.pdf
- 23 *Preliminary guidance: Private Fostering*, Hillingdon Local Safeguarding Children Board, 2007 http://www.hillingdon.gov.uk/media/pdf/q/2/private_fostering_lscb_briefing_note.pdf

age disputes

A significant number of young asylum seekers arrive in the UK claiming to be children but without documentation to prove their age, or with documentation that does not belong to them or has been, or is believed to have been, obtained fraudulently. Many have their age questioned by either the UK Border Agency, or the local authority to which they have turned for support, and there is a widely acknowledged 'culture of disbelief' amongst decision-makers which has resulted in an increased number of children being age-disputed.¹ Often children are not informed about the procedures to which they are subject in order to dispute their age, and this can leave many young people bewildered and angered by the process, which can in turn create difficulties for those working with, or caring for, them.

Why is age important?

The question of age is a crucial one, as it will not only affect how the young person might be cared for by children's services, and their access to education, but it will also affect how their asylum application is processed.

Accommodation, benefits, and education

Adult asylum seekers are entitled to support, including accommodation and essential living needs, from central government. Many asylum seekers will be dispersed throughout the United Kingdom, and limited financial support is provided only to those asylum seekers who are destitute or likely to become destitute within a limited time. The current rate of cash support for a single person aged 18-24 is £36.62 per week².

For children seeking asylum, however, support should be provided by the local authority in which they are physically present. 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 him/her (see chapter on **Children's Services Support**). In addition, a local authority must fulfil the parental obligation under section 7 of the *Education Act 1996* to ensure a child is educated. As well as it being important to determine whether they are a child or an adult, whether a child is under or over 16 will have significant implications for the level and type of care and education they receive.

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

The Royal College of Paediatrics and Child Health acknowledges that 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 puberty³. In 2007 the college 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'*.⁴

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.
- Different calendars are used in different countries. Converting from one to the other can be difficult – mistakes can be made and the wrong date of birth provided.
- 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/maturity. Many assessors report feeling that they do not have the specialist skills required, sometimes due to having to learn 'on the job' from fellow professionals.
- The expectations brought to the age assessment process – for example, children may believe that they should claim certainty about their age when they do not know how old they are. 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
- Interpreters may sometimes extrapolate from what a young person has said when interviewed, and an inaccurate version of their thoughts and recollections recorded.

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Determination of asylum claim

The very 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, Citizen and Immigration Act 2009* places a duty on the UK Border Agency to safeguard and promote the welfare of children.

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, the Secretary of State will not 'fast-track' a child's claim or detain a child under her administrative immigration powers, (save in exceptional circumstances and then only overnight). However a significant proportion of age-disputed young people have been detained and then subsequently found to be children. In 2011, the Refugee Council worked with 38 age disputed individuals who had been detained as adults, of which 22 (58%) were subsequently released as children⁵.

Age assessments by the UK Border Agency

Age disputes most frequently arise when an asylum seeker first applies for asylum, usually at a port of entry or at the Asylum Screening Unit. If an asylum-seeker's claim to be a child is doubted by UKBA, and 'there is little or no documentary evidence to prove their age', UKBA will conduct an initial age assessment of the individual based solely on appearance. UKBA policy is as follows:

- a) If the claimant's physical appearance/demeanour '**very strongly suggests that they are significantly over 18 years of age**' they should be treated as **adults**.
- b) All other cases should be processed to begin with as if children, but this does not indicate final acceptance of their claimed age. Instead, their **age is disputed**. The individual should be informed that the local authority will make an assessment of their age and the result should be communicated to the UKBA⁶.

In both category a) and category b) cases, the asylum-seeker should also be given an IS.97M form stating that their age is disputed.

Treatment of a local authority assessment by UKBA

The general position of the UK Border Agency is to place considerable weight on local authority age assessment. Where that assessment is the only source of information, it will 'normally be accepted as the decisive evidence' of the person's age. However, the UKBA will still come to its own decision as to whether said assessment was conducted properly. If it appears that the findings are unclear, or do not seem to be supported by the evidence, or that the assessment has not been carried out in accordance with the principles set out in case law (see below), then case owners are obliged to discuss the matter with the assessing social workers. The UKBA decides whether the local authority assessment can be relied upon and the UKBA may separately conclude that an applicant is a child or an adult.

The issue of information-sharing between local authorities and the UKBA is a highly contentious one, and many local authorities are reluctant to share full age assessments with the Agency due to data protection and/or confidentiality concerns. A pro forma had been designed which many local authorities use in order to share relevant information regarding the age assessment and its lawfulness, rather than providing the full assessment. Case owners are advised to request a full copy of the local authority's age assessment and confirmation from the local authority that it has been carried out in compliance with the guidelines in caselaw, but it is down to the authority as to what they provide. If there are doubts about its compliance with caselaw, UKBA guidance outlines that caseowners should discuss these with the assessing social workers. This guidance also makes clear that a local authority age assessment should not be used as another means to assess the credibility of a young person's asylum claim, although in some cases it has been used as such.

At the time of writing, the joint working protocol between the UKBA and Association of Directors of Children's Services was being updated. Until this has been completed, the case of *R(JS&YK) v Birmingham City Council* of 2011 makes clear that any differences in opinion about a person's age will need to be resolved by the two agencies and, save in the most exceptional circumstances, a person should not have 'two ages'.

Making an asylum decision without an age assessment

Unfortunately, it is UKBA policy not to delay making a decision on an asylum claim pending an age assessment. If a decision is made without the age assessment and the asylum-seeker has been refused asylum and Humanitarian Protection, then UKBA will not, at that stage, grant discretionary leave. However,

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if there is clear communication with the UKBA caseowner on the progress of the assessment he or she is likely to use their discretion in the case. If a young person who was being treated as an adult is subsequently found to be a child, they should be given the option of withdrawing their original interview record and attending another substantive asylum interview, this time with a lawyer and appropriate adult present⁷.

Age assessments by a local authority

Arrangements for referring age-disputed young people will vary across local authority areas. Some young people will already have been assessed prior to claiming asylum whilst others will be referred according to where they stated they lived at the time of the asylum application.

Even if the UKBA is treating someone as an adult, if a referral is made to children's services (either self-referral or by an agency supporting the young person), the local authority **must** make their own assessment of a 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*.

Which local authority is responsible for conducting an age assessment?

Local authority responsibility is tied to geographical boundaries. It is therefore possible that a separated child who has moved across these boundaries may seek age assessments from more than one local authority. In some cases assessments may not agree.

- A local authority approached for an age assessment should check whether a previous assessment has been carried out. The host local authority should request a copy of the assessment from the original local authority and base further action on its content.
- In the event that no new evidence has been brought forward since the original assessment, the issue should be treated as a complaint about the original assessment and referred to the local authority responsible for it.
- In the event that new evidence has been brought forward, or the previous assessment was not conducted fairly and lawfully, the host local authority should continue to reassess the age of the applicant, taking full account of all sources of information⁸.

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

A local authority's assessment must be as full and comprehensive as possible, conducted in a clear, transparent and fair manner. There is currently no statutory procedure or guidance issued to local authorities on how to conduct an age assessment. Instead the current approach has evolved through practice by local authorities and legal challenges to the process.

Around 2003, the London Boroughs of Hillingdon and Croydon developed a protocol, *Practice Guidelines for Age Assessment of Young Unaccompanied Asylum Seekers*, and a pro-forma - which is now the standard form in which age assessments come - with margin notes guiding social workers on the information they ought to be seeking.

This approach was judicially approved in the case of *R (B) v Merton*⁹, in which the judge set down broad guidelines as to how age ought to be assessed in respect of unaccompanied minors who arrive in the UK without documentary evidence to prove their age. He confirmed that the local authority 'cannot simply adopt a decision made by the Home Office'¹⁰ and outlined a number of criteria for a lawful assessment. Further criteria have 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 caselaw. The following points have been made regarding assessments:

- An assessment cannot be made solely on the basis of appearance, and should be holistic, taking account of the young person's appearance, demeanour, background and credibility¹¹
- Any assessment should take into account relevant factors from the child's medical, family and social history¹², and the decision maker should seek to elicit the general background of the applicant, including his family circumstances and history, his educational background and his activities during the previous few years. Ethnic and cultural information may also be important¹³.
- There is a duty on the decision makers to give reasons for a decision that an applicant is not a child¹⁴.
- The young person should be given an opportunity during the assessment to answer any adverse points the decision maker is minded to hold against him¹⁵.
- Age assessments must be conducted by experienced trained social workers and all the safeguards to ensure fairness must be in place¹⁶.
- If the decision maker is left in doubt, the claimant should receive the benefit of that doubt¹⁷.
- A young person has a right to be accompanied during the assessment by an appropriate adult¹⁸. This should be someone who is independent from the assessment, and preferably should be an adult of the child's own choosing.
- An applicant should be given a fair opportunity to deal with any important points adverse to their case¹

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The procedure for an age assessment includes:

- Two qualified and properly trained social workers should conduct the assessment²⁰.
- An appropriate adult should be present.
- The child should be informed of the purpose of the assessment.
- The child should be informed of the consequences of the assessment decision.
- The assessors must take a child-friendly and sensitive approach, including checking that questions have been understood, and offering breaks. The assessors should check thoroughly that the interpreter speaks the correct dialect/language and that the young person and interpreter understand one another properly.
- The child should be given the opportunity to deal with important points adverse to their age case.
- The child should always be given the benefit of the doubt.
- The decision must be based on firm grounds which are explained to the child. The decision should be issued in writing to the individual and should contain information relating to their right to challenge the decision.

Medical Evidence

Medical evidence should be considered as part of the process of deciding age. The local authority is not entitled to ignore a medical report.

Dental records

The use of dental records has been strongly criticised by the British Dental Association and the Royal College of Paediatricians. 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, and it is questionable whether this is lawful under EU law. If a public authority proposes obtaining a dental x-ray for the purpose of an age assessment, the young person's representatives should object and explain to the young person that they are entitled to refuse consent to non-medical x-rays.

Enquiries in country of origin

Some local authorities investigate the age of separated asylum seekers by making enquiries in their country of origin. Extreme caution should be exercised when making any enquiries in the country of origin, as this may place the child in danger, particularly, though not exclusively, in relation to state actors (those acting on behalf of the government). The young person's legal representative should be consulted before any action of this kind is taken.

The role of the appropriate adult

The most recent and widely reported court case which refers to this matter is *R(FZ) v London Borough of Croydon*.²¹ In this case the judge refers to the necessity of having an appropriate

adult present for the putative child, and refers to appropriate adults as defined by the *Police and Criminal Evidence Act 1984* (PACE) guidance. This guidance states specifically that as an appropriate adult 'you are *not* simply an observer' (their emphasis). The role of an appropriate adult would be to support the putative child in any appropriate practical or emotional way. He/she should not answer questions on behalf of the putative child but should assist in communication if appropriate, and should take notes during and after the interview which can be shared with the putative child if needed.

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 judgment. The Immigration Judge should only be making a finding on age in so far as it is necessary to establish risk under the Refugee Convention.

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 have 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: '*it is for the [local] authority to reassess the age of the applicant (including evidence before the tribunal that was not previously seen before then) 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 different evidence available to them*'²². However, UKBA 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.

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Challenging an age assessment

Judicial review

Age assessments can be challenged by way of judicial review. Judicial review is generally carried out by the Administrative Court, although some judicial review claims (including some age assessment challenges) are now transferred to the Upper Tribunal (Immigration and Asylum Chamber). Judicial review challenges will usually be based on the argument that the assessment has not been conducted properly and that the procedure described above has not been followed. But recent caselaw has made clear that this is not the only test – if evidence can be put forward that contests the age assessed by local authority then there may be no need to challenge the process²³.

It may be that a young person is simultaneously challenging an age assessment and claiming asylum. There is no right answer to the question of whether the age dispute should be resolved before the asylum claim can be determined. It is important in these circumstances that there is co-ordination between the legal representatives for the young person's separate immigration and community care cases. If a young person's asylum claim is decided on the basis that they are an adult and they are subsequently found to be a child the UKBA may need to look again at the asylum claim. It is advisable to refer the young person to a legal representative as soon as possible should this situation arise.

Preparing a challenge

Any challenge to an age assessment should be made 'promptly' and no later than 3 months after the grounds to challenge arose²⁴. In some circumstances, for example when a young person is assessed to be an adult and dispersed to UKBA accommodation (previously called NASS accommodation) it may be months or even a year or more before they are referred for legal advice – in these cases it needs to be argued that an out of time application should be accepted, but permission to proceed with the judicial review may not be given because of the delay.

It should be noted that if a young person is dispersed whilst there is an ongoing age dispute, the dispersal may be challenged.

- **Expert reports** – Independent social workers are sometimes used to help establish age, and paediatric assessments were common in challenges to LA age assessments in the past. Medical assessments assess the physical, and sometimes the psychological and

emotional, development of age-disputed asylum-seekers. However, in *Merton* it was held that this type of medical evidence can be helpful but only to a 'limited' degree²⁵. Subsequent cases found that they do not 'attract any greater weight than the observation of an experienced social worker'²⁶. This, of course, is conditional on the social worker having properly considered the evidence given by a medical practitioner and having the relevant training and expertise to conduct the assessment and analyse information. If a medical assessment is deemed necessary, it should be carried out with the child's consent and by a practitioner with the appropriate expertise.

- **Taking instructions** – It should not be assumed that young people understand days, months, and years as these terms are used in the UK. They may recognise other markers of time such as seasons or religious festivals. It can be helpful to make a personal timeline chart for the young person. Illiteracy can also be a problem when taking instructions.
- **Documentary evidence** – Practitioners should explore what documentary proof of their age the young person may be able to obtain. Depending on when these documents are obtained, it is generally considered to be a task for the UKBA or an immigration representative to get identity documents authenticated, although this is not always possible.
- **Other views** - It may be useful to get the opinion of other people who work with the young person such as teachers, key workers, and foster carers. These people may be willing to give evidence on the young person's behalf, and must be taken into account when assessing age.

The new decision

Until November 2009, if an age assessment was successfully challenged by way of judicial review, then the same local authority would have to conduct a re-assessment. However, this was changed by the judgment of the Supreme Court in *R(A) v Croydon, R(M) v Lambeth*²⁷ which held that, although age assessments remained the responsibility of local authorities, in the event of a challenge by judicial review, it would be for the High Court itself to determine, as a matter of judicial fact, whether the person is a child and how old he or she is. Local authorities should still carry out Merton-compliant assessments of age, and indeed in this case Lady Hale outlined that '*the better the quality of initial decision making, the less likely it is that the court will come to any different decision upon the evidence*'²⁸. But 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 High Court. It is clear from *MC v Liverpool*

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*City Council*²⁹ that the court is not restricted to choosing between the child's claimed age or the local authority's assessed age, but that it can come to its own conclusion.

In *R (F and Ors) v Lewisham and Ors*³⁰ Judge Holman gave the following guidance:

- The question is not just whether the person is a child, but how old he is. Therefore, a challenge can still be brought against a decision that a person is a child who is older than he claims.
- 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.
- If evidence from professionals is adduced in an age dispute fact finding hearing, it may be tested by cross examination – meaning that social workers or doctors may be cross examined.
- 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.

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 case, 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.³¹

Fact finding hearings may be difficult, even traumatic, for the young person concerned. They are likely to be asked detailed questions about their background in their home country and their journey to the UK. The local authority may try to argue that the young person is not credible, or is lying about their experiences. It is very important that the young person is well prepared by their legal representative for the hearing. This preparation is likely to include the drafting of a detailed

witness statement from the young person, which they will then rely on in court.

As age dispute claims have proceeded through to trial over the past few years, the outcomes and the approach the Court has taken to assessing the evidence has raised questions as to whether judicial age assessments are the appropriate substitute for Local Authority assessments. Judicial age assessments have been described as a 'new growth industry' and, worse still, 'simply an expensive lottery.'³²

After the age assessment

If a local authority decides that a young person claiming to be a child is over 18, they will not house or support the young person and he or she will be referred to the UKBA for support and accommodation, unless the Court orders that the local authority should continue to accommodate on an interim basis pending a determination by the Court. 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 UKBA if they want them to alter the accepted age to under or over 18. The UKBA 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.

Currently, there is disagreement between the UKBA and some local authorities as to what, precisely, needs to be provided to establish that a 'Merton-compliant' age assessment has been conducted. Both local authorities and UKBA need to review their current guidance on this issue, but informed consent should be obtained from the individual who has been assessed before any disclosure of personal information is made on the part of the local authority.

Age assessments in other situations

There are also situations where queries on age arise where the UKBA are not directly involved, for example where a school believes a child is younger or older than claimed where a family have already been granted leave to remain in the UK, or where court or probation services are charged with accommodating a young person who is undocumented but claiming an age they cannot prove. In these circumstances, where the matter does not involve an assessment as to whether there is a child in need, Children's Services are not obliged to assess age. If the matter becomes important it may be necessary to employ the services of independent social workers/age assessors or other doctors or professionals to assist departments in providing appropriate services.

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Age disputes and detention or removal

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 normally overnight whilst alternative arrangements for their care and safety are being made (in other words, their detention should be for welfare purposes only).

In all other circumstances children must never be detained, including doubtful age dispute cases where the UK Border Agency are treating the individual as a child pending the outcome of an age assessment. Unaccompanied children should also not be subject to fast track procedures as they fall

within the fast track suitability criteria exclusion list. However, age disputed young people are often detained in fast track and immigration detention (see **Asylum Process** chapter for more information on the Detained Fast Track). UKBA guidance on suitability for Fast-Track states that they are for asylum applications on which a 'quick decision' may be made (within days). Cases where a quick decision may not be possible may include cases where it is foreseeable that further enquiries (whether by the UKBA or the applicant) are necessary before a fair decision can be made, including issues surrounding age. A legal representative should make a request for release to the Chief Immigration Officer or court. In the event of a child being detained there will need to be a high level of coordination between immigration and community care solicitors on the age dispute issue.

how can you help?

- If the UKBA does not accept the age assessment of a local authority, this may be against its published policy and would therefore be unlawful and should be challenged by the young person's legal representative.
- Where there has been an age dispute that has been successfully challenged, the young person may have an incorrect ARC (Application Registration Card) and/or asylum application documentation. To avoid confusion and difficulty in accessing services, it is essential that the young person has the correct documentation. The young person's social worker or advocate can e-mail UASCARCAappointments@UKBA.gsi.gov.uk, and as long as the UKBA database has been updated to say they are being treated as a child, the social worker/ advocate will be sent a spreadsheet to complete and return. Then the child will be sent an appointment to collect their new ARC. It is important to remember that the UKBA will not issue a new ARC once a decision has been made on the asylum claim.
- If a local authority refuses support because they have assessed the young person as being 18 or over, then:
 - Ask for a reassessment of the young person's age if, for example, the young person feels they were not listened to, or information was not properly taken into account.
 - If this request is refused, consider whether or not the assessment was conducted lawfully according to case law. It may be necessary to seek a legal opinion on this.
 - Help the young person access adult asylum support (often called NASS support), if they have been assessed to be an adult.
- If you believe that a young person is under 18, note down why you think this; your experience working with young people; and why you feel the young person is under 18.
- If you believe that the young person is suffering from mental health problems, such as depression and/or trauma, help them contact a GP and/or advice their legal representative, as their health may impact on their ability to communicate.
- If you come across someone who is in detention and says they are under 18 and separated, refer to a legal representative to ensure that an age assessment is carried out, and/or to the local authority as child in need as they have a duty to assess. Young people under 18 should not be detained and, if the age assessment decides that the young person is under 18, they should be released immediately into the care of the local authority.
- If a local authority is planning to make contact with the country from which the young person has fled, in order to verify their age, the social worker should first seek the permission of the young person's immigration legal representative and take no action in the meantime. It is also important if contact is to be made that the young person is involved in a discussion about the potential consequences of doing this for the young person and/or their family. This discussion should form the basis for a decision by children's services on whether contact should be made. Any action made without the child's consent may be open to challenge if it places the child in danger.

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- If you are concerned that someone 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. This should be discussed with their lawyer.
- If you are supporting someone who claims to be under 18 and whose age has been disputed by the UKBA, insist that a local authority makes 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. The UKBA will often not accept the decision without a written explanation from the local authority.

endnotes

- 1 See, for example, The Children's Society, *Into the Unknown: Children's journeys through the asylum process* (2012); Welsh Refugee Council, *Young Lives in Limbo: the protection of age disputed young people in Wales* (2011); ILPA, *When is a child not a child? Asylum age disputes and the process of age assessment* (2007)
- 2 See UK Border Agency website at www.ukba.homeoffice.gov.uk/asylum/support
- 3 The Royal College of Paediatrics and Child Health. *Policy statement on the assessment of the age of refugee children*. 2007. Available at www.rcpch.ac.uk/Publications/Publications-list-bytitle.
- 4 Levenson R, Sharma A. *The health of refugee children – guidelines for paediatricians*. London: Royal College of Paediatrics and Child Health, 1999.
- 5 Refugee Council, *Not a Minor Offence: Unaccompanied children locked up as part of the asylum system* (2012)
- 6 UK Border Agency, *Asylum Process Guidance on Assessing Age*, at www.ukba.homeoffice.gov.uk
- 7 UK Border Agency, *Asylum Process Guidance on Assessing Age*, at www.ukba.homeoffice.gov.uk
- 8 *Joint Working Protocol on age assessment* between Immigration and Nationality Directorate of the Home Office (IND) and the Association of Directors of Social Services (ADSS), 2006. This is currently being updated
- 9 *R (B) v Merton* [2003] 4 All ER 280
- 10 *R (B) v Merton* [2003] 4 All ER 280, para 39
- 11 *Merton* para 28
- 12 *Merton* para 21
- 14 *Merton*, para 45. Also *A v London Borough of Croydon, WK v Kent Borough Council* [2009] EWHC 939 (Admin), para 81 and *R (on the application of NA) v. London Borough of Croydon*, [2009] EWHC 2357 (Admin), para 52
- 15 *Merton*, para 56 and *R (on the application of NA) v. London Borough of Croydon*, [2009] EWHC 2357 (Admin), para 52
- 16 See *A v London Borough of Croydon, WK v Kent Borough Council* 2009 EWHC 939 (Admin), 8 May 2009, para 44
- 17 *A v London Borough of Croydon, WK v Kent Borough Council* [2009] EWHC 939 (Admin), para 9
- 18 *R(NA) v Croydon* [2009] EWHC 2357
- 19 *R(FZ) v London Borough of Croydon*, [2011] EWCA Civ 59, para 20
- 20 Alluded to in *Merton* and affirmed by Court of Appeal in *A v Croydon LBC* [2008] EWCA Civ and *R(K) v Birmingham City Council* [2011] EWHC 1559 (Admin)
- 21 [2011] EWCA Civ 59
- 22 *R (PM) v Hertfordshire County Council* [2010] EWHC 2056 (Admin), para 88
- 23 *R(FZ) v London Borough of Croydon*, [2011] EWCA Civ 59
- 24 Civil Procedure Rule 54.5
- 25 *Merton*, paras 23 and 34
- 26 See *A v London Borough of Croydon, WK v Kent Borough Council* 2009 EWHC 939 (Admin), 8 May 2009
- 27 [2009] 1 WLR 2557
- 28 Para 33
- 29 [2010] EWHC 2211 (Admin)
- 30 [2010] 1 FLR 1463
- 31 See N.Helme & H. Emmerson, *Update on Community Care for children and those leaving care and age assessment*, at <http://www.4-5.co.uk/uploads/docs/section5/Communitycareforchildrenandthose.pdf>
- 32 Discussed in Office of the Children's Commissioner, *The Fact of Age: Review of case law and local authority practice since the Supreme Court judgment in R(A) v Croydon LBC* [2009] (2012)

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 UK¹.

The structure and routine of a school day helps to provide a sense of normality and security for separated refugee and migrant 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 any change they are experiencing, and allow young people to continue their personal development. It is crucial for their general well-being that separated children have access to education and are helped to feel included and settled.

However, many separated young people, particularly 14–19 year olds, find it difficult to secure school and college places. They face considerable barriers to accessing education, including waiting times to access further educational colleges, confusion over their entitlements to financial assistance, difficulties in navigating the English education system, and discriminatory or inconsistent admissions policies². 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 impacts on reaching government targets³.

Primary and secondary education

Local authorities have a duty to provide suitable full-time education for all children of compulsory school age resident in that local authority, irrespective of their immigration status and appropriate to their age, ability and any special educational needs they may have⁴. **Refugee, asylum seeking and other migrant children of compulsory school age all have the same entitlement to full-time education as other children in the UK.** Local authorities also have other 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 public 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 2012 Department for Education School Admissions Code recommends that **'looked after' children are given priority** when placed on the waiting lists of oversubscribed schools⁵. This also applies to academies and free schools⁶.
- 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, for example in relation to home address, religion, or exam-based selection⁷. 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' control⁸.

- Local authorities and schools have to comply with both the *Race Relations Act 1976* and *Race Relations (Amendment) Act 2000*, which make discrimination on school admissions and school places 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 also comply with the *Sex Discrimination Act 1975*; the *Special Educational Needs and Disability Discrimination Act 2001*; and the *Equality Act 2006* which prohibit various forms of discrimination.
- Local authorities have a duty to provide additional support for asylum seeking and refugee children who are 'looked after' under section 20 of the *Children Act 1989*. *Guidance on the Education of Children and Young People* outlines the need to provide a personal education plan with every child's care plan and the responsibility of schools to designate a named person to co-ordinate their educational provision⁹. If 'looked after' children are moved, for example to a new foster placement, education must be in place before the move, unless it occurs in an emergency. 'Looked after' children should not spend more than 20 days out of education.

Some local authorities have alternative projects for children whilst they are waiting for a school place. However, separated children should not have to attend an alternative project for more than six weeks and the education provided should be appropriate and meet their needs. They should also not be enrolled at a Pupil Referral Unit (alternative education provision for children who have been excluded from the mainstream)¹⁰.

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In the case of *R(KS) v LB of Croydon*, it was held that the failure to education three unaccompanied asylum seeking minors for almost a year was unlawful. Following judicial review proceedings, Croydon was ordered to provide suitable education to the children¹¹ pending the identification of a full-time mainstream placement – they had been placed on an English as a Second Language (ESOL) course but this was found not to meet their obligations under the *Education Act 1996* because the local authority was under a duty to provide full time suitable education taking into consideration the child's individual needs.

Free school meals

While each local authority has a duty also to provide free school meals to children of asylum seekers receiving Home Office asylum support¹², 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 (such as special needs, religion, or road safety) and local authorities have the power to use discretion in the decision process¹³.

School uniform grants

Under the Education Act 1996¹⁴ and *Local Authority (Payment of School Expenses) Regulations 1999*, local authorities have the power, but not the 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 uniform and equipment may be available from local foundations or voluntary organisations.

However, 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

Local authorities have a duty to provide suitable full-time education for all children of compulsory school age resident in that local authority, irrespective of their immigration status and appropriate to their age, ability and any special educational needs they may have¹⁵. Schooling is free for all young refugees and migrants.

Between the age of 16 and 19, a young person will be accepted at a school according to the school's admissions policy, although decisions on school places must comply with race relations legislation. Compulsory school age education is free for all children, regardless of immigration status.

In addition, from 2013, all young people will be under a duty to participate in education or training until the end of the academic year in which they turn 17. From 2015, this will rise to their 18th birthday¹⁶. The Education Skills Act 2008 places a duty on local authorities to promote the effective participation in education or training of young people in its area, the aim being to ensure that every young person continues their studies or takes up training and goes on to successful employment or Higher Education¹⁷.

All maintained schools, academies, colleges and providers (including charitable and third sector providers) also have a responsibility to meet the needs of young people in their area and to consider how their provisions will assist young people to participate and meet 'raising the participation age' (RPA) requirements¹⁸.

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Access

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

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

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

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.

Some colleges may not want to accept young people who are waiting for a decision or have a temporary period of leave (such as discretionary leave) 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 an extension, and if this is refused, appeal that extension (see **Asylum Process** chapter). Therefore, even if a young person's leave does expire before the end of the course, given that applying for an extension 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.

Course fees and fee remission – 16 to 18 year olds

Further Education courses at local authority colleges in England for students aged between 16 and 18 are funded through the Education Funding Agency (EFA). Full-time students aged between 16 and 18 will be exempt from fees and eligible for support if they are considered to be 'home students'.

Table 5 gives an overview of which 16-18 old students will be deemed 'home students' but you are advised to seek further information from specialist advisers (see **Contact Details**) and talk to the course provider directly.

Where there are no schools with sixth forms, further education provision for 16-19 year olds must be free, including for asylum seekers¹⁹.

16-19 Bursary

The 16-19 Bursary replaced the Education Maintenance Allowance (EMA) from 1st January 2011. Vulnerable children and young people, which includes those in care and care leavers, will be eligible for a bursary of £1,200 a year, if their course lasts 30 weeks or more, with bursary awards targeted towards those young people who face the greatest financial barriers to participation, such as the costs of transport, meals, books and equipment. Providers are free to determine the assessment criteria for eligibility for discretionary bursaries and the frequency of payment for all awards.

To be eligible to receive a 16-19 Bursary, the young person must be aged over 16 and under 19 at the start of the academic year in which they start their programme of study and "should satisfy the residency criteria in the EFA Funding Guidance for 2013/14"²⁰. See Table 5 for an outline of eligibility.

When a young person turns 19 during their programme of study, they can continue to be supported to the end of the academic year in which they turn 19²¹.

Students aged 19 and over may be eligible to apply for Discretionary Learner Support (see below).

Course fees and fee remission – those aged 19 or over

The main criteria for eligibility as a 'home student' is whether an individual has been ordinarily resident in the UK for three years or more.²² In addition, learners aged 19 years or older and who meet one or more of the following criteria are considered as home students for fee purposes (i.e. not classed as overseas/international students):

- asylum seekers who after six months are still waiting for a decision on their claim or appeal
- asylum seekers who have been in the care of a local authority and are receiving leaving care support
- people who are receiving Section 4 support
- young people granted refugee status, discretionary or limited leave to remain, humanitarian protection, their spouses and dependents
- learners granted indefinite leave to remain (settled) and who have been ordinarily resident in the UK for 3 years before the start of the course²³

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Learners who were granted discretionary/limited leave to remain, refugee status or humanitarian protection and have applied for further leave to remain (in time) should be considered as having continuing leave to remain²⁴.

Once eligible, the learner status for that learning programme will not change for the length of the programme.²⁵

Learners previously funded by the Education Funding Agency who continue their course into the next funding year after their 19th birthday will be eligible for funding from the Skills Funding Agency²⁶.

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 19-24 year olds studying level 3 qualifications for the first time (equivalent to 2 or more A Levels)²⁷.

Discretionary Learner Support (DLS)

Discretionary Learner Support can be accessed by 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 19 and over who have been accepted onto, and are studying, a programme of learning funded by the Skills Funding Agency, will be eligible to apply for discretionary fund²⁸ -see www.direct.gov.uk for more details.

Asylum seekers may receive learner support in the form of course-related books, equipment or a travel pass, but not cash support.²⁹

Funding for ESOL classes

English for Speakers of Other Languages (ESOL) classes are no longer automatically free, apart from for those aged 16-18. However, free tuition will still be available to priority groups identified by the government, such as those who are actively job seeking and those who have very low levels of skills, people who are unemployed or receiving income-based benefits. Public funds for ESOL will be focussed on active jobseekers (those on Jobseekers Allowance (JSA) or Employment Support Allowance Work Related Activity Group, (ESA WRAG)) – so, for example, refugees are entitled to fully funded ESOL provision if they are in receipt of Job Seekers Allowance, those not receiving this benefit are entitled to co-funding. However, where an individual can provide evidence that they are in receipt of a state benefit, other than JSA or ESA WRAG, it is now within the discretion of the training provider to offer funded training that will improve employment prospects, including ESOL³⁰.

Other support

Hardship funds administered by individual colleges are available and 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)³¹. See **Contact Details** for further information.

No recourse to public funds

It should be noted that someone who has 'no recourse to public funds' included in their passport would not be in breach of their immigration conditions if they had access to state-funded education in the UK. 'Public funds' are defined in the immigration rules, and the benefits and services listed to not include education or any education funding³². This condition therefore makes no difference to a student's eligibility.

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Table 5 - Further education entitlements for those aged 16 -18 based on immigration status

(please note that the information below relates to provision in England only)

Immigration status	Refugee status/ Humanitarian Protection/ Indefinite leave to remain	Discretionary Leave/Limited leave to remain ^a	'End of line' cases ^b	Asylum-seeker awaiting a final decision ^c	EU national	Undocumented migrant (an individual without leave to remain in the UK)
Entitled to study at further education institutions (e.g. 6th form or college) – see note d	Yes	Yes	Yes	Yes	Yes	Yes
Eligible for funding (i.e. will not have to pay fees)	Yes (if has remained ordinarily resident in the UK since being granted leave) – see note h	Yes (If has remained ordinarily resident in the UK since granted leave) — see note h	See notes f and g	See note g	Yes (if has been 'ordinarily resident' in European Economic Area for 3 years prior to start of course)	No (see note i)
16 – 19 Bursary	Yes (eligibility for bursary is in line with eligibility as 'home student')	Yes (eligibility for bursary is in line with eligibility as 'home student')	See notes f and g	See note g	Yes (if has been 'ordinarily resident' in European Economic Area for 3 years prior to start of course)	No (see note i)

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Notes on Table 5

a Including those with discretionary or limited leave awaiting the outcome of in-time extension application, or granted an extension or appealing a refusal of extension received. Discretionary leave granted to unaccompanied children seeking asylum whose asylum claims are refused is now called 'limited leave'³³.

b Refused asylum and exhausted any appeal rights arising from that refusal and/or previously granted a period of 'limited leave' (discretionary leave or humanitarian protection) and not applied, in time, for an extension or an extension of the limited leave has been refused and any appeal rights from that refusal are exhausted.

c Awaiting decision on the asylum application or following an out-of-time application after the expiry of a period of limited leave, the matter is being treated as a 'fresh claim' and the decision is awaited, or awaiting the outcome of a final appeal against refusal of an asylum or human rights claim.

d There are no legal restrictions on asylum seekers, refugees or migrants studying in the UK (including all the types of status included in the table). All are free to study on any level of educational course in the UK so long as they are able to satisfy the entry requirements of the course, which may include language skills and previous educational achievement, and that they are able to pay the course fees. Obtaining a college place is at the discretion of the college and should be in accordance with its admissions policy and regulations

e Regulations regarding course fees for further education are complex and depend on whether the course is part-time or full-time and whether the young person is receiving benefits or social services support. See *Education Funding Agency, Funding Guidance for Young People 2013/14: Funding Regulations*.

f Learners who are attending programmes of more than one term's duration, and are eligible for Education Funding Agency (EFA) funding at the start of the programme, will usually be eligible for EFA funding for the whole duration of their learning programmes, although providers should "satisfy themselves that there is a reasonable likelihood that the learner will be able to complete their programme of study (see *Education Funding Agency, Funding Guidance for Young People 2013/14: Funding Regulations*, paras 23-24). Furthermore, learners who were granted discretionary/limited leave to remain, refugee status or humanitarian protection and have applied for further leave to remain in time should be considered as having continuing leave to remain (see Section 3C of Immigration Act 1971). However, if the young person did not receive any of these and has exhausted all the appeals procedures, they are likely to be ineligible for funding.

g All asylum seekers aged 16 to 18 are eligible for funding, as are refused asylum seekers who are in the care of social services or have been granted support under Section 4 of the Immigration and Asylum Act 1999 (see *Education Funding Agency, Funding Guidance for Young People 2013/14: Funding Regulations*, para 28 – all learners accepted as eligible under this paragraph must be reassessed for eligibility at the start of each and every programme they undertake). Those who turn 19 while on a course will remain eligible. If 19+, an asylum seeker will only be eligible if they receive assistance under Section 4 of the Immigration and Asylum Act 1999, or if after six months they are supported and still waiting for a decision on their asylum claim or appeal. (see *Skills Funding Agency, 2013/14 Funding Rules*, Annex 1, paras 12 - 13).

h All refugees and people with indefinite or limited leave to remain aged 16, 17 or 18 on 31 August in the calendar year when they start their programme are entitled to fee remission when studying on a EFA-funded course. This ensures that funding for 16 to 18-year-old learners does not change during an individual programme if they become 19 years old. They do not have to pay fees if they become 19 during their programme, and institutions may continue to claim fee remission.

i As the main basis for eligibility for Education Funding Agency funding is 'ordinary residence', a student must 'have the legal right to be resident in the UK' at the start of their study programme (see *Education Funding Agency, Funding Guidance for Young People 2013/14: Funding Regulations*, paras 20-22) Therefore undocumented migrants with no leave to remain in the UK will not be eligible for funding and can be charged full-cost tuition fees. However, there is no law or policy outlining that they cannot study if they are able to cover the course fees themselves. However, in addition to the categories of eligible students outlined in its funding guidance, the Education Funding Agency will consider 'other exceptional circumstances' and 'where an institution believes that a student should be considered for funding under exceptional circumstances, it should contact its funding body' – see *Education Funding Agency, Funding Guidance for Young People 2013/14: Funding Regulations*, para 29

education

Table 6 - Higher education entitlements based on immigration status (for those studying full time)

(please note that the information below relates to provision in England only)

Immigration Status	Level of fees	Student support (including loan and possible maintenance grant/university bursary)
Asylum seeker	'Overseas fees' <i>(see note b)</i>	Not eligible <i>(see note a)</i>
Refugee Status	'Home' fees <i>(if 'ordinarily resident' in UK on first day of course and since being granted refugee status)</i> <i>(see note b)</i>	Eligible <i>(if 'ordinarily resident' in UK on first day of course and since being granted refugee status)</i> <i>(see note a)</i>
Discretionary/Limited Leave to Remain	'Overseas fees'	Not eligible
Humanitarian Protection	'Home' fees <i>(if 'ordinarily resident' in UK on first day of course and since being granted humanitarian protection)</i>	Eligible <i>(if 'ordinarily resident' in the UK and Islands for three years prior to the start of the course)</i> <i>(see note d)</i>
Indefinite Leave to Remain ('settled status')	'Home' fees <i>(if 'ordinarily resident' in the UK and Islands for three years prior to the start of the course)</i> <i>(see note c)</i>	Eligible <i>(if 'ordinarily resident' in the UK and Islands for three years prior to the start of the course)</i> <i>(see note e)</i>
EU nationals	'Home' fees <i>(if 'ordinarily resident' in the EEA & Switzerland & 'overseas territories' for three years prior to the start of the course)</i>	Eligible <i>(if 'ordinarily resident' in the EEA & Switzerland & 'overseas territories' for three years prior to the start of the course)</i>
Undocumented migrants	'Overseas fees'	Not eligible

Notes on Table 6

a If a student is granted refugee status within 3 months of the start of the course, s/he may qualify for student support for that academic year. If status was granted after this point, they should be eligible for subsequent academic years³³

b If a student is recognised as a refugee after the start of the course, s/he may be entitled to 'home' fees from the start of the next academic year.

c If a student is granted permission to stay in the UK after the start of the course, s/he will be entitled to 'home' fees from the start of the next academic year if s/he meets the requirements above

d If a student is granted humanitarian protection after the start of his/her course, s/he should seek advice from his/her institution as to whether s/he will be eligible for student support.

e For those with 'settled status' they must have indefinite leave to remain AND 3 years ordinary residence before the first day of the first year of the course in order to access student support- it is not possible to become eligible part way through the course. If a young person thinks that they are going to be able to meet all the requirements after the first day of the first academic year of a course you have not yet started, you might want to consider deferring your place until a later date.

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. 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.

People who have 'no recourse to public funds' stamped on their passports, though they may not be eligible for state benefits and services, may be eligible for educational funding, as the Immigration Rules do not list 'state education funding' as public funds³⁴.

education

Higher education

Course fees

Refugees and those granted humanitarian protection are considered to be 'home' students once granted status and home fees apply. Those with indefinite leave to remain who have been ordinarily resident in the UK for three years prior to the start of the course will also be eligible for home fees. Young people waiting for a decision on their asylum application, and those with discretionary/limited leave are considered to be 'overseas' students³⁵. It should be remembered that the institution has the discretion to waive this and charge the home student rate. Exceptions may be made for particularly able students, or those who apply to under-subscribed courses such as mathematics, physics, engineering and modern languages. Many universities have scholarships for overseas students too.

If an individual is granted status during the course of study, and as a result is recognised as a home student for fee purposes, they will only become eligible for home fees in the following academic year.

Student support

The student support system includes loans, grants and bursaries. If an individual meets the eligibility criteria for claiming statutory student support they can apply for a tuition fees loan to cover tuition fees, and for a maintenance loan to cover living costs. Depending on income, a non-repayable maintenance grant is also available.

A person granted refugee status (and his/her spouse and child) will be eligible for student support if he or she is 'ordinarily resident' on the first day of the first academic year of the course and has not ceased to be 'ordinarily resident' since having been recognised as a refugee. People with indefinite leave to remain or humanitarian protection who fulfil the three-year 'ordinary' residence requirement prior to the first day of the first academic year of the course are also eligible. Young people seeking asylum and those with discretionary leave are not eligible for financial support under the student support system.³⁶

If an individual is granted refugee status, humanitarian protection or indefinite leave to remain within three months of the start of the current academic year, they will be eligible for student support for that year. If the change occurs after three months they become eligible in the following academic year. Those granted humanitarian protection or indefinite leave to remain will still need to satisfy the three year ordinarily resident rule.

Evidencing Eligibility for Financial Support

Learners who are successful in their asylum applications and/or appeals and have been granted a form of leave to remain should be able to produce the necessary documentary evidence to support it (such as Home Office letters or documents or a biometric residence permit).

All people who have applied for asylum will be issued with a letter of Temporary Admission (IS96) from the Home Office. They will subsequently receive an Application Registration Card (ARC). Each dependant of the asylum applicant will be given their own card. In exceptional circumstances, where an ARC card cannot be issued within three days, a Standard Acknowledgement Letter (SAL) will be issued. This displays the name, date of birth and nationality of the claimant and any dependants, the date of arrival (if known), the date of application, their address and Home Office reference number. Photographs of the claimant and any dependants are also attached. Copies of this will confirm that the asylum applicant has made a formal claim for asylum.

People who have applied for an extension of their leave to remain will still be eligible 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 confirmation as a matter of course. All that a funding body could 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. If an individual is applying for student support through a local authority, the local authority can contact the Evidence and Enquiries Unit by fax on 020 8604 5783. Local authorities will need to be registered with the unit. Alternatively, it is recommended that a legal representative's letter, confirming that the application has been sent, 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 provisions 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. The amount of financial support offered will depend on the young person's individual situation and the type of course. See the Seeking Support chapter '**Support for**

young people turning 18 for more information.

A care leaver who is starting university before their 25th birthday will be entitled to a one-off higher education bursary of a minimum of £2,000 from their local authority. While, in addition, most young people will be able to access student loans in order to go to university, for those with asylum claims pending or who have been granted discretionary leave to remain, this is not the case.

However, in 2013 the case of *Kebede v Newcastle City Council* addressed this issue. Two brothers, who applied for asylum but were refused and granted discretionary leave, had been offered places at university, but were ineligible for student support, and were classed as overseas students. They

were both 'relevant children' for the purposes of section 23 of the *Children Act 1989*, and therefore eligible for leaving care support. Newcastle stated that the claimants were not eligible for support from the local authority to access university, but the court found the authority had unlawfully failed to consider its ability and duty to fund their tuition fees.

This judgment has important implications for young people with discretionary leave who have been in the care of a local authority and want to go to university but are unable to access student support or home fees. It may now fall to the local authority to fund their access to university, either by paying their fees or providing them with a loan. Legal advice should be sought from a community care solicitor, for which legal aid is available.³⁷

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 admission 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 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.

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**), who provide up-to-date information on loans, grants and benefits.
- Help the young person apply for a **16-19 bursary** if they are eligible
- Ensure young people know what rights and entitlements they have in accessing and funding their post-16 education and support them in doing so.
- If a young person is being charged **overseas fees at university**, help the young person to apply to the university to treat them 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, they may be entitled to further financial support from the local authority to help them access further and higher education – explore this further with them and seek legal advice where appropriate.

how can you help

Other courses

• A number of private companies, non-governmental organisations and refugee community organisations provide basic skills and vocational training. 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 – see the Migrant Children’s Project **Directory of services available to young refugees and migrants** at http://www.childrenslegalcentre.com/index.php?page=directory_of_services

endnotes

- 1 See, for example, Kohli, R. (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 See Refugee Council, *Something to smile about: promoting and supporting the educational and recreational needs of refugee children*, February 2011 and Refugee Council, *A lot to learn: refugees, asylum seekers and post-16 learning*, January 2013
- 3 PICUM Platform for International Cooperation on Undocumented Migrants, *Country Briefing: United Kingdom*, 2011
- 4 As outlined in section 14 of the *Education Act 1996*
- 5 Department of Education *School Admissions Code 2012*, para 1.7 – still applicable in 2013 – see <http://www.education.gov.uk/schools/adminandfinance/schooladmissions/a00195/codes-regs>
- 6 Department of Education, *Education of looked after children - frequently asked questions*, at www.education.gov.uk/childrenandyoungpeople/families/childrenincare/a0066445/education-of-looked-after-children-frequently-asked-questions#faq6
- 7 Refugee Council Information Services Online, at <http://www.rcis.org.uk/education/services>
- 8 Section 433, *Education Act 1996*
- 9 Department of Education and Employment and Department of Health, 2000.
- 10 Refugee Council, *Education to 18 Briefing*, 2007, at www.refugeecouncil.org.uk
- 11 Pursuant to section 19, *Education Act 1996*
- 12 See section 512 of *Education Act 1996*, as amended by *Immigration and Asylum Act 1999*, schedule 14, paragraph 117
- 13 Section 509 *Education Act 1996*
- 14 Section 518 of *Education Act 1996*.
- 15 As outlined in section 14 of the *Education Act 1996*
- 16 Under the *Education and Schools Act 2008*
- 17 Department of Education, *Statutory Guidance on the Participation of Young People in Education, Employment or Training For local authorities*, March 2013 <http://media.education.gov.uk/assets/files/pdf/p/participation%20of%20young%20people%20-%20statutory%20guidancev3.pdf>
- 18 Education Funding Agency, *Guidance for local authorities: Funding 16–19 education and training*, July 2012 at <http://media.education.gov.uk/assets/files/pdf/g/guidance%20for%20local%20authorities%20funding%2016%2019%20education%20and%20training.pdf>
- 19 Section 19, *Education Act 1996*
- 20 Education Funding Agency, *16 – 19 Bursary Fund Guide for 2013/14*, April 2013, para 9
- 21 Education Funding Agency, *16 – 19 Bursary Fund Guide for 2013/14*, para 8
- 22 Skills Funding Agency, *Funding Rules 2013/2014*, Annex 1 para 4.2, available at <http://skillsfundingagency.bis.gov.uk/providers/fundingrules/>
- 23 Skills Funding Agency, *Funding Rules 2013/2014*, Annex 1, paras 10-13
- 24 Under section 3C of the *Immigration Act 1971*
- 25 Skills Funding Agency, *Funding Rules 2013/2014*, para 4
- 26 Skills Funding Agency, *Funding Rules 2013/2014*, Annex 1, para 17
- 27 Refugee Council Briefing, *Short guide on access to further education: asylum seekers and refugees*, August 2011
- 28 Skills Funding Agency, *Funding Rules 2013/2014*, paras 246 - 249
- 29 Skills Funding Agency, *Funding Rules 2013/2014*, paras 247
- 30 Skills Funding Agency, *Funding Rules 2013/2014*, Annex 1, paras 41-41.15
- 31 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, at www.ukcosa.org.
- 32 Home Office, *Public Funds*, at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/modernised/cross-cut/public-funds/funds.pdf?view=Binary>
- 33 *Education (Student Support) Regulations 2011*, Section 16
- 34 See paragraph 6 of the *Immigration Rules*, at www.ukba.homeoffice.gov.uk
- 35 *Education (Fees and Awards) Regulations 2007*, Schedule 1, para 4, as amended by the *Education (Student Fees, Awards and Support) (Amendment) Regulations 2011*, reg 7(a)(ii)
- 36 If applying in England, see Schedule 1, part 2, of the *Education (Student Support) Regulations 2011* for an outline of the categories of eligible individuals.
- 37 *R (on the application of Kebede) v Newcastle City Council* [2013] EWHC 355 (Admin). See Coram Children’s Legal Centre note on this case at http://www.childrenslegalcentre.com/index.php?page=Resources_Further_and_Higher_Education

work and training

Paid employment

Anyone with refugee status, indefinite leave to remain, humanitarian protection or discretionary leave has the right to work in the UK and does not need to apply for permission.

Asylum seekers

In July 2002 the rules were changed to deny asylum seekers permission to work, but, since February 2005, if asylum seekers have been waiting for an initial decision for longer than 12 months they can now apply for permission to work¹. Given that the majority of initial decisions of separated children seeking asylum are made within six months, this will not affect many young people. A Supreme Court judgment in 2010, however, found that the concession also applies to individuals who have made a fresh claim for asylum².

Asylum seekers' employment options are now restricted to the jobs identified on the UK's official shortage occupation list³

Those applying to extend their leave to remain

Young people with humanitarian protection for a specified limited period or those with discretionary leave to 17½, who have permission to work but whose leave expires, are entitled to continue to work if an application to extend or vary the leave is made before the expiry of the existing period of leave (an 'in time' application). If this application is submitted, the young person will be treated as having leave, on the same terms, until the application is decided by the Home Office⁴.

Where the Home Office refuses further leave, the entitlement to engage in paid employment continues on the same terms, until the time for bringing an appeal from that decision expires (ten working days after the decision to refuse further leave) and where no appeal is lodged.

Where an appeal is brought within the ten-day working time limit, entitlement to work will continue until the appeal is finally disposed of. 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, then either no further appeal can be brought or the time for appealing expires.

When all appeal rights are exhausted, the person then becomes (again) a person who requires leave to enter or remain in the UK and does not have it. The prevention of illegal migrant working is set out in sections 15-25 of the Immigration, Asylum and Nationality Act 2006⁵ and it is an

offence to employ an individual subject to immigration control if:

- a) *he has not been granted leave to enter or remain in the United Kingdom, or*
- b) *his leave to enter or remain in the United Kingdom*
 - *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 him from accepting the employment*⁶.

Demonstrating eligibility to work

All persons and their dependents granted Refugee Status, Humanitarian Protection, Discretionary Leave or Indefinite Leave to Remain will be given an 'Immigration Status Document'. This is also known as a 'vignette' and may be placed in the person's passport from their country of origin if they have one. A 'Notification of Grant' letter from the Home Office could be considered if the Immigration Status Document has been lost and a replacement is being sought, although the Home Office states that this does not constitute proof of your status.

As part of the application process for further leave to remain, the applicant must surrender his or her original status document. This means he or she will not be immediately able to show his right to work to a current or future employer, and proving their eligibility to work can often be problematic.

If an employer is looking to recruit an individual who has made applications for further leave to remain, they should contact the Employer Checking Service (ECS) to confirm he or her continuing entitlement to work (see Contact Details for more information). 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. This confirmation, along with an official document issued by a Government agency or a previous employer and giving the potential employee's permanent NI number and their name, will be considered an acceptable combination of documents⁷. While this is being done, the Home Office letter acknowledging the application, together with a photocopy of the Status Document that the applicant is advised to keep when he or she applies for further leave, should be sufficient evidence for existing employees⁸.

work and training

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 person has made an application for further leave, evidence from a legal representative demonstrating that the application was sent in time may be helpful.

Voluntary work

Asylum seekers and individuals who are appeal rights exhausted are allowed to volunteer or undertake unpaid work experience placements without obtaining permission to work, as long as the activity is 'genuinely voluntary' - i.e. the activity is not replacing a paid worker. Travel and lunch expenses may be paid for asylum seekers who volunteer⁹ but should not be made as a flat rate allowance.

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 young people who were awarded refugee status, humanitarian protection, discretionary leave or indefinite leave to remain. 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 asylum seekers 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.

The 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 child or young person's social worker must first of all write to (or fax) the 'Looked After Children' section on local authority headed paper, authenticated with a local authority stamp, and include the young person's name, date of birth, current address and copies of their Home Office documents.

Most young asylum seekers will not have a birth certificate with them nor a passport. Nor will most be under a care order. Even if they have any of these documents, in the case of separated children it is an essential requirement for the social worker making the application, to provide copies of the young person's Home Office documentation. 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.

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

Applications should be sent to:

HM Revenue and Customs,
National Insurance Contributions Office,
Looked After Children section,
Room BP1002, Benton Park View,
Longbenton, Newcastle-upon-Tyne NE98 1YS
Telephone: 0845 9157946; 0845 9153662

You may also fax your letter and documents to the Looked after Children Team on fax number 0191 225 7384. Letters sent by fax and post are dealt with in the same timescale.¹¹

If the young person does not have a social worker but needs a NINO, the Juvenile Contact Centre can be contacted on: 0845 9157006.

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

work and training

Vocational training

Refugees and young people with limited leave to remain are entitled to apply to undergo vocational training because they have the right to work in the UK. Asylum seekers and those in receipt of section 4 support, unless they have permission to work, are restricted to vocational training that does not

involve paid or unpaid employment. The UK Border Agency 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. If it carries a training allowance, the person may need to have the conditions attached to their temporary admissions amended¹⁰.

endnotes

1 The European Directive 2003/9/EC (the Reception Directive) states that the main asylum applicant can apply for permission to work if:

- you waited more than 12 months for an initial decision by the Home Office on your asylum claim or fresh claim for asylum;
- the delay in the Home Office's decision was not your fault; and
- your claim for asylum or fresh claim application is ongoing, even if it is now at the appeal stage.

See Refugee Council Briefing (2010) *Applying for permission to work while claiming asylum*, at www.refugeecouncil.org.uk.

2 *R (on the application of ZO (Somalia) and others) (Respondents) v Secretary of State for the Home Department*, [2010] UKSC 36. Refused asylum seekers who have exhausted the asylum process to make further submissions to the UKBA. The UKBA will consider the submissions, and also whether or not they should be treated as a "fresh claim" for asylum. This will depend on whether the UKBA considers that the information provided is "significantly different" from the evidence previously considered – see paragraph 353 of the Immigration Rules.

3 Paragraphs 360-360E of the Immigration Rules as amended by Cm 7929

4 As outlined in section 3C of the Immigration Act 1971.

5 These provisions came into force on 29 February 2008. They replace the previous offence under section 8 of the Asylum and Immigration Act 1996. One of the reasons for the change was 'to make it more difficult for people who overstay their permission to be in the UK and/or lose their entitlement to work, to remain in employment in breach of the UK's immigration laws'. See UK Border Agency Summary Guidance for Preventing Illegal Working at www.ukba.homeoffice.gov.uk.

6 See section 21 of *Immigration, Asylum and Nationality Act 2006*.

7 Information confirmed by UKBA Illegal Working Unit and outlined in Refugee Council, *Employing Refugees: A guide for employers: documents providing evidence of entitlement to work*, March 2009, at www.refugeecouncil.org.uk/practice/employersguides/employing_refugees.htm.

8 UK Border Agency (2009) *Employment Rights for Refugee and those with Humanitarian Protection or Discretionary Leave – Advice to Employers*.

9 See UK Border Agency Policy Bulletin 72 on *Employment and Voluntary Activity*, at www.ukba.homeoffice.gov.uk

10 See Refugee Council briefing *Short Guide on Access to Further Education: asylum seekers and refugees*, August 2011 at www.refugeecouncil.org.uk

11 See HM Revenue and Customs website at www.hmrc.gov.uk/ni/intro/number-child.htm#2

healthcare

As a result of upheavals, family separation, traumas and social difficulties faced by refugee and migrant children, they can often have complex health problems. Some young people may have experienced torture, violence or trauma, and many have lived in situations of poor health care provision in their own country¹.

Separated young people can face numerous obstacles when attempting to access appropriate healthcare and support, such as:

- difficulties in registering with a GP;
- language barriers;
- lack of sympathy and capacity amongst GPs and other medical professionals when dealing with the complex problems (both physical and mental) of some refugees and asylum-seekers; and
- lack of understanding about how the UK medical system works and what their entitlements may be.

Primary Healthcare

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

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

The NHS is not a “public fund” as defined by the “recourse to public funds rules”. **No law or regulation exists that restricts a patients’ right to access primary health care services because of their immigration status**². There is no legislation, statutory guidance, or case law suggesting that people must be ‘resident’ for any length of time, or have a visa etc.

Separated young people who are under 16, or who are 16–19 and in full-time education, qualify for an HC2 certificate, under which they are automatically exempt from paying statutory NHS charges, including:

- Prescription charges
- NHS dental charges
- Eyesight tests

They are also entitled to financial support to help with the cost of glasses, wigs and fabric supports, as well as travel costs to hospitals for treatment.

Over 16s not in full-time education will need to apply for an exemption by filling in an HC1 form. Children’s services 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 – i.e. they are on a low income – 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, issued by the UK Border Agency (UKBA) on behalf of the Department of Health³.

Registration with a General Practitioner (GP)

Children’s services should ensure that their clients 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*.

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. However, this is not widely understood, and many Primary Care Trusts (the trusts who commission primary, community and secondary care from providers) provide misleading or incorrect guidelines.

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. All asylum seekers, refugees and those with limited leave to remain have the right to be registered with a GP practice and receive primary health care. It is a matter of discretion for individual GP practices whether or not they register refused asylum seekers or those unlawfully in the country (there is no obligation on or expectation for doctors to check the immigration status of a patient). However, they must have reasonable grounds for refusal, which are not based on race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition⁴ (this, of course, does not mean that a practice which is already over-subscribed and has closed its list has to accept new applicants).

If a young person is turned away, the GP needs to give reasons for their refusal in writing and refer the individual to another GP. Where a young person is having difficulty being accepted onto a GP’s practice list, they should contact their local Primary Care Trust (PCT) which, where necessary, will allocate him or her to a GP practice. To find a local PCT go to:

www.nhs.co.uk -> authorities and trusts -> primary care trusts -> search by town/city/postcode.

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It is not necessary to have an NHS number before registering as this will be provided once the 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 to primary and secondary care is different. Secondary healthcare, the second stage of treatment usually provided by a hospital, is available on the NHS for anyone who is 'ordinarily resident' in the UK. A person is regarded as 'ordinarily resident' if he or she is lawfully living in the UK voluntarily and for a settled purpose. Undocumented migrants would not be eligible, and neither would a young person once he or she 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'). This is because they are not considered to be either 'lawfully resident' or 'ordinarily resident'⁵.

However, there are some exceptions to this rule -see below. Furthermore, whilst hospitals can withhold treatment in some circumstances, they also have discretion to provide treatment without payment in others. Care which is considered to be 'immediately necessary' treatment or 'urgent' treatment must be provided, without delay, whether or not the individual is able to pay. Patients may be able to access treatment by arguing that:

- Their condition will deteriorate significantly or their prognosis will be affected if they do not get treatment, and;
- they cannot pay for the treatment in advance, and;
- they cannot return to their country of origin immediately (for example, because they are too sick to fly, or there is no safe route, or they have made a further application for leave to remain in the UK that has not yet been considered).
- They are still liable to be charged, but treatment should not be refused if they cannot pay⁶.

A written ministerial statement from the Department of Health in July 2009 said that, in England, exemption from charges should be extended to *'those who claim has been refused but who are being supported by the UK Border Agency because they would otherwise be destitute, have children and/or because it is impossible to return home through no fault of their own'*⁷.

If an asylum seeker is undergoing hospital treatment when his or her claim is finally rejected (or in the case of an individual granted limited leave, when their leave finally expires and they become 'unlawfully present'), this treatment will continue free of charge until completed⁸.

Furthermore, **certain treatments are always free of charge notwithstanding the immigration status of the patient**⁹:

- Treatments of certain communicable diseases¹⁰ such as malaria and TB
- Treatment received at a special clinic for a sexually transmitted disease (testing for the HIV virus and counselling following the test are both free of charge, but any necessary subsequent treatment and medicines may have to be paid for)
- Treatment for accidents and emergencies as an out patient in a hospital's Accident and Emergency department or walk-in centre (this does not extend to services provided once the patient has been admitted as an in-patient)
- Family planning services
- Compulsory psychiatric treatment

To find out further information, please check the Department of Health's Table of Entitlement to NHS Treatment at www.dh.gov.uk/en/Healthcare/Asylumseekersandrefugees/index.htm

Mental healthcare

Mental health problems are reported to be common amongst refugees and migrants and, in general, literature on this group's health needs highlights high levels of mental distress. The different stages of the migratory process can have a negative impact on mental health, and can include not only traumatic experiences in the country of origin (including torture, war and rape) but also during the journey to and after arrival in the UK.

Experiencing racism and discrimination in the UK, as well as other factors, such as poverty and adapting to a new society, can also contribute to significant mental health problems. Research has found that very few separated young people receive the emotional or mental health support needed¹¹. Although it should not be assumed that all young separated children have mental health problems (which can be stigmatising and leads to counter-productive generalisations), it is important to recognise that many young people will have had severely distressing experiences, either in their country of origin or since arriving in the UK.

Some professionals argue that in such situations supportive listening is very valuable¹², and that the focus should be on

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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 – a recent report found that few separated children were accessing specialist mental health services such as counselling or psychiatric support¹³.

There are three types of mental health services available to young refugees:

- 1. Non-governmental specialist mental health services**, specifically supporting refugees, for example, Freedom from Torture (see **Contact Details**), which provides a free service, including child psychotherapy and counselling in an individual or group work setting. Each agency has its own referral procedures, including who is able to make a referral.
- 2. 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. 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. For more information on your local service contact your local GP or primary care service.
- 3. Emergency and crisis services** – for example, hospital accident and emergency departments. ChildLine, the Samaritans and other support services are there to help with specific experiences, such as rape, bereavement or drug addiction. For more information, see **Contact Details**.

Antenatal and post-natal healthcare

A significant number of separated 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. Some young women may have become pregnant since their arrival in 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 are working in the sex industry here. Young women who have experienced rape and/or have been working in the sex industry in the UK 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.

All separated young girls and women who are pregnant, or who are young mothers, are likely to need help accessing financial support, alongside emotional support. The table opposite provides details of entitlements to maternity and child benefits. However, please note that the rules are complex and change regularly, and benefits will depend on individual circumstances. It is therefore important to check with your local welfare rights unit or Citizens' Advice Bureau (see **Contact Details**) for up-to-date advice on benefits for individual young people.

Information on local maternity services can be obtained from the Primary Care Trust, a health visitor or GP.

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 guidelines¹⁴.

Access to secondary care is covered above.

Consent

Consent to a health assessment should follow the General Medical Council's Guidance. In the case of separated 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 treatment¹⁵. 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'¹⁶. 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 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 consent¹⁷. 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'¹⁸.

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Table 7 – Maternity and child benefits entitlements

Immigration Status	Refugee/ Humanitarian Protection/other form of leave to remain	'End of line' cases ^b	Asylum-seeker awaiting a final decision ^c	Undocumented/ irregular migrant
Statutory maternity pay ^d	Child Benefit	✓	✗	
Maternity allowance ^e	Entitled to apply for child tax credit	✓	✗	
	Local authority support	✓	✗	
Entitled to apply for a £500 Sure Start maternity grant ^f		✗	✓ (entitled to £250 payment if receiving section 4 support)	
Entitled to UKBA maternity payment to help with the costs arising from the birth of a new baby		✗		
Additional weekly payments from the UKBA		✓	✓ – see note g	
		✓		
Free NHS prescriptions and dental treatment ^h		✓	✓	
Free NHS primary and secondary care, including “immediately necessary” NHS maternity treatment		✓	✓	
		✓	✗	
Free milk, fruit, vitamins and infant formula through Healthy Start vouchers ⁱ		✓	✗	

Key: ✓ entitled ◆ possible entitlement - read notes on next page for details ✗ not entitled

Entitled to apply for



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Notes on Table 6

- a** Including an individual who was granted discretionary leave till 17 ½ and is awaiting the outcome of their in-time extension application, or has been granted an extension or appealing a refusal of extension received
- b** Refused asylum and exhausted any appeal rights arising from that refusal and/or previously granted a period of 'limited leave' (discretionary leave or humanitarian protection) and not applied, in time, for an extension, or refused an extension of the limited leave and any appeal rights from that refusal are exhausted.
- c** Awaiting decision on the asylum application or following an out of time application after the expiry of a period of limited leave, the matter is being treated as a 'fresh claim' and the decision is awaited or awaiting the outcome of a final appeal against refusal of an asylum or human rights claim.
- d** Statutory Maternity Pay (SMP) is paid by the employer for 39 weeks to women who have been employed by the same employer continuously for at least 26 weeks into the 15th week before the week that a baby is due, and have been earning at least £95 a week. SMP is based on earnings level. Liaise with employer. See www.directgov.uk for more details.
- e** If not entitled to Statutory Maternity Pay, but have earned an average of £30.00 per week (through self-employed or employed work) for 26 out of the 66 weeks immediately before the week that the baby is due then entitled to Maternity Allowance. See www.directgov.uk for more details.
- f** Entitled if the mother or her partner is on income-based jobseeker's allowance; income support; or receiving working tax credit or child credit at a rate higher than the basic family elements. The grant is for a fixed amount of £500 and is paid towards cost of clothing and equipment for a baby – as of January 2011 the grant is restricted to the first child in a family.
- g** When the baby is born, an individual on asylum support can receive additional payments from UKBA – during pregnancy, they can request an extra £3 per week. When the baby is born, and until he or she is one year

old, they will be entitled to an extra £5 per week. When the baby is one year old they will still be entitled to an extra £3 a week until the baby is three years old. When the baby turns three the additional support payment will stop and the weekly support amount will be the current weekly UKBA allowance for parents and children. For someone receiving Section 4 support, they can apply for similar payments. In addition, once their child is born they can apply for an extra £5 per week to pay for clothing for your child until they are 16 years old. All additional payments will be added to their Azure card payments. If they already have children who are under 18, there should be no limit on the amount of support they can carry over on they Azure card from one week to the next. If this is their first child, UKBA should stop the £5 carry over limit once they are issued the maternity grant.

h Need to apply for an exemption certificate as an expectant mother. See www.nhs.gov.uk for further information.

i People at the end of the line or unlawfully in the UK are still able to access NHS primary healthcare for emergencies or treatment which is immediately necessary and this should be provided free of charge. This will include midwifery support via a GP, and NHS maternity treatment deemed "immediately necessary" must be provided free at the point of access, although some may subsequently be required to pay for it. Although some secondary NHS care in a hospital is free, such as initial scans and hospital care during labour, if after labour a patient stays in for more than two days they may be charged for the cost of this in-patient care. See pages X

j If in receipt of: income support, income-based job-seekers allowance, Child Tax Credit, or if pregnant and under 18. See www.healthystart.nhs.uk

k If supported under the *Children Act 1989* or Children (Leaving Care) Act 2000, social services should provide financial support to the child and mother if this cannot be accessed through entitlements noted above, or they require additional support needs. Expectant and nursing mothers may qualify for support under section 21(1)(aa) of the National Assistance Act 1948.

Young people with disabilities

Apart from in the specific field of mental health, 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 stigmatising of disability among certain cultures. There are high levels of unfulfilled need amongst this population in areas such as social contact, personal care, communication and support.¹⁹

Research has also found overstretched local authority resources, which sometimes means that the needs of disabled refugees and asylum seekers are seen as less pressing than those of other disabled people in the locality²⁰. Children with disabilities are provided with support mainly through children's services alongside support from local authorities, 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 limited 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 they '*have a physical or mental disability or both*' and if the disability is severe enough '*to need help caring for [themselves]*'²¹.

Female genital mutilation

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 is a major issue for some girls who come from countries where it is practised, including some countries in sub-Saharan Africa and the Middle East such as Somalia, Sudan, Ethiopia, Eritrea and Yemen. 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

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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 and adolescence, and sometimes even in older women. FGM can cause a range of short-term and long-term medical problems, from serious infections following procedures, which can in extreme circumstances cause death, to difficulties in childbirth, menstrual and urinary problems. 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 to arrange for FGM to take place.

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 health care.
- A significant proportion of asylum seekers have been tortured²³. Those young people alleging **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. Explain when they should access the different services available - for example, when it is appropriate to go to the accident and emergency unit and when to make a doctor's appointment. The system may have been very different in the country where 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 '**end of line**'/**appeal rights exhausted**' make sure they understand what health services they are still entitled to access free.

Mental health

It is recognised by mental health professionals that it is particularly helpful for young refugees 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 have to have professional skills in 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, or 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. A local authority should include an assessment of the young person's mental health as part of their general assessment ('child in need' plan; care plan; or pathway plan), which should be reviewed regularly.
- With the permission of the young person, make a referral to a specialist refugee **mental health service**, or encourage the young person to make a self-referral. The referral procedure varies according to each agency (see **Contact Details**)

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Antenatal and post-natal care

- Help ensure the young woman **understands** the various types of antenatal and post-natal care available to them and what to expect at each stage – before, during and after birth (this varies across primary care trusts) – and how to access them.
- 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 the Refugee Council and the Red Cross 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 Chapter on **Trafficking** for more information).
- 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 provide 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 may not be familiar with the medical approach to pregnancy and birth in the UK and may need some guidance.

- If a young woman who is expecting is receiving asylum support from the UK Border Agency, ensure that the **accommodation provided has adequate facilities for children**. This should include an 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. There may be an African Well Woman Clinic or other clinic in a hospital in the area that can provide specialist help (see **Contact Details** for links). If not, it may be possible to travel to another part of the country to obtain such assistance.

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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 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
- 3 UK Border Agency, *HC2 Certificates*, at www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/modernised/asylum-support/section-95/hc2certificates.pdf?view=Binary
- 4 Article 14, *Human Rights Act 1998* and section 20, *Race Relations Act 1976*
- 5 Regulation 4 (1)(c) *National Health Service (Charges to overseas visitors) Regulations 1989*, as amended by the *National Health Service (Charges to overseas visitors) Amendment regulations 2004*, 4 (e), which inserted in paragraph (c) after the words 'United Kingdom' where they occur for the second time 'which has not yet been determined' - i.e. if you are refused you will be liable for charging. 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.
- 6 See Department of Health guidance on *Failed asylum seekers and ordinary/lawful residence*; and when to provide treatment for those who are chargeable at www.dh.gov.uk. See also *Court of Appeal Judgment in R (A) v Secretary of State for Health* [2009] EWCA Civ 225; [2009] WLR (D) 113.
- 7 Ministerial statement available at: <http://services.parliament.uk/hansard/Lords/ByDate/20090720/writtenministerialstatements/part019.html>
- 8 Regulation 4 (3) *National Health Service (Charges to overseas visitors) Regulations 1989*.
- 9 Regulation 3 *National Health Service (Charges to overseas visitors) Regulations 1989*.
- 10 i.e. those listed in schedule 1 of the *National Health Service (Charges to overseas visitors) Regulations 1989*.
- 11 See, Chase, E and Knight, K and Statham, J (2008) *Promoting the emotional wellbeing and mental health of unaccompanied young people seeking asylum in the UK*, Thomas Coram Research Unit, Institute of Education, University of London, and K Stanley (2001), *Cold Comfort: Young separated refugees in England*, Save the Children.
- 12 For further details, see Royal College of Paediatrics and Child Health (1999) *The Health of Refugee Children – Guidelines for Paediatricians*.
- 13 UNICEF, *Levelling the Playing Field: A UNICEF UK report into provision of services to unaccompanied or separated migrant children in three local authority areas in England*, March 2010, at <http://www.unicef.org.uk/Documents/Publications/levelling-playing-field.pdf>
- 14 See Information Sheet on *Undocumented Migrants* on www.maternityaction.org.uk.
- 15 Section 8 of *Family Law Reform Act 1969*.
- 16 *Gillick v West Norfolk and Wisbech Area Health Authority* [1985] 3 All ER 402 (HL).
- 17 Section 3(5) of *Children Act 1989*.
- 18 Department of Health (2001) *Seeking Consent: Working with children*.
- 19 Ward, K; Amas, N; Lagnado, J. (2008) *Supporting disabled refugees and asylum*

citizenship

Naturalisation

Almost all adults who apply to become British citizens must do so under the naturalisation process. A British citizen has the right to vote in European and British local and national government elections. British citizens also have the right to live in the UK permanently and are free to leave and re-enter the UK at any time. However, British citizenship can still be withdrawn if a naturalised citizen does anything which is seriously prejudicial to the vital interests of the UK.

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:

- are 18 or over
- are of sound mind
- are of good character
- can communicate in English, Welsh or Scottish Gaelic to an acceptable degree; and
- have sufficient knowledge of life in the United Kingdom
- have been in residence in the United Kingdom legally for at least five years, or for three years if they are the spouse/civil partner of a British citizen
- have been free from immigration time restrictions (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 five years before the date of their application (three years if they are the spouse/civil partner of a British citizen)
- 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
- have not been in breach of the immigration rules at any stage during the five-year period¹
- intend to continue living in the UK (unless they are the spouse/civil partner of a British citizen)

A period of temporary admission can count towards the 3/5 year qualifying period, so, for example, a port applicant for asylum who was granted leave as a refugee under a backlog policy could apply immediately after 3/5 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 become a British citizen. For up-to-date information on this please go to the UK Border Agency website (see **Contact Details**).

Registration

All children under 18 who apply to become British citizens must apply to 'register' as citizens. Registration is a process similar to naturalisation. Only certain people are eligible to register as British citizens, including the following:

- Children born in the UK and one of their parents becomes settled in the UK
- 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 years²

There is no requirement in law for these children to have indefinite leave to remain or even to be lawfully resident, but for all registrations, the child must:

- be under 18 on the date the Home Office receive the application; and
- be of good character if they are ten years or over on the date of application.

All other children can register as British only at the discretion of the Home Secretary. If the child is living in the UK, there are no specific residence or other requirements, but 'consideration is given to':

- The child's connections with the UK
- Where the child's future is likely to be
- The views of the parents
- The nationality of the parents

Children born in the UK

Children who were born in the UK automatically acquire British citizenship at birth if either parent was a British citizen or settled in the UK. It is worth noting that before 2006, the nationality of the father was only taken into account if he was married to the mother of the child. For children born on or after July 2006, the father, if not married to the mother, can be recognised as the father if he can satisfy certain requirements as regards proof of paternity³.

endnotes

¹ See section on British Citizenship on the UK Border Agency website at www.ukba.homeoffice.gov.uk

² Section 3(1) of the *British Nationality Act 1981*

³ See UK Border Agency, *BN9 – Children born or adopted on or after 1 January 1983: In the UK/In a British Territory* at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/britishcitizenship/informationleaflets/bnchapters/bn9.pdf?view=Binary>

travelling overseas

Separated children are likely to have restrictions on where they can travel according to 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 of this nature should be submitted well in advance of the date of travel.

Asylum Seekers

When an asylum application is made, the Home Office will keep the applicant's passport 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. 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 can not travel abroad.

Refugees

Recognised refugees are not permitted to travel on their national passports, since they are no longer under the protection of their country. Instead, they will be issued with a folded A4 immigration status document (ISD) which has a space for the new-style UK Residence Permit (UKRP) vignette showing that the holder has been granted leave to remain as a result of an asylum decision.

If a young person is given permission to stay in the UK as a refugee, they can apply for a **convention travel document** (CTD). They must have permission to remain in the UK for at least 6 months from the date the application is submitted. It will usually be valid for the same period as the permission to stay, or, if the individual has indefinite leave to remain, for ten years. It entitles the holder to travel to any country except that of his or her country of origin from which they fled persecution in the first place - some countries will require CTD holders to obtain a visa before entering the country, though, and enquiries should be made at the embassy of the country. 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 status¹.

Those with humanitarian protection or discretionary leave

Since March 2008, people with humanitarian protection or discretionary leave who cannot obtain a passport from their country of nationality, are able to apply for a **certificate of travel** (previously they would have had to apply for a certificate of identity) in order to allow them to travel.

If the child has temporary permission to stay in the United Kingdom (limited leave to remain), the certificate of travel will usually be valid for the same period as his/her permission to stay here.

The applicant needs to prove to the Home Office, by means of a letter from their high commission or embassy, that they have been refused a passport from their country of nationality. This is waived if the applicant was granted protection based on a fear of authorities in their country of nationality (if the Home Office has accepted that the individual has such a fear, it will say as much in the letter sent when the applicant was informed of the Home Office decision on their asylum application).

If the individual's country does not have an embassy in the United Kingdom, or their embassy is unable to process their passport application, it may not be necessary to prove that the application has been unreasonably refused. However, the Home Office may then issue a 'certificate of travel' 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 certificate of travel if he or she can prove that he or she has an urgent need to travel for compelling and compassionate reasons, which may include essential educational or religious trips, among others.

Some countries do not accept certificates of travel as valid travel documents, so it is important to check with the authorities of the country the person wishes to visit before applying for a certificate of travel.

There are fees for obtaining a travel document from the Home Office. For children support under section 20 (see chapter on **Children Services Support**) these costs should be covered by the local authority providing their care.

travelling overseas

Applying for travel documents

Section 5 of the Home Office Travel Document Application Form (TD112)² refers to child applicants, and the requirement for someone (or body) with Parental Responsibility to give consent to the application, and to the travel abroad. This is a problem for separated children in the care of children's services for whom no-one has parental responsibility, and who are not wards of court (as an official of the court can sign for PR if the child is a ward of court). If the child is aged 16 or 17, it should be sufficient and acceptable to the UKBA to submit a letter with the TD112 explaining why parental consent is absent (this should normally give some details about who is caring for the child). However, if the child is under 16 there is a problem if no-one is able to personally sign the consent box at 5.3 as having parental responsibility.

Payment of a fee is required when applying for a Convention Travel Document or Certificate of Travel. For children in the care of a local authority this will need to be paid for by children's services as part of their duty under section 17 of the *Children Act 1989*.

Travel to the country of origin

Refugees or those with humanitarian protection or discretionary leave who choose to visit the country from which refuge was sought may have their leave to remain withdrawn on return to the UK. In the past, such trips were largely overlooked by the immigration authorities, but powers now exist to enable the withdrawal of protection. 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 sent advice before making any such trip. Young people who wish to return voluntarily to their country of origin can get help with this (see chapter on **Returns**). Please check Home Office UK Border Agency website for further details on travel (see **Contact Details**).

endnotes

¹ UK Border Agency Asylum Process Instruction *Travel Abroad*, at www.ukba.homeoffice.gov.uk

² Available at www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/traveldocuments/td112-form.pdf

criminal justice

For some children and young people who come into contact with the criminal justice system, questions may also be raised with regards to their immigration status. The consequences of this can be extremely significant in some circumstances, depending on the nature of the criminal offence with which they are charged.

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 example, much concern has been raised about the criminalisation of children apprehended in raids on cannabis factories who in some circumstances are being prosecuted rather than provided with protection¹. Many children are not identified as potential victims of trafficking and are subsequently charged with drugs or immigration offences. Often these children will first come to the attention of the police, or the youth offending team; it is important that all professionals operating within the criminal justice system are alert to the potential signs of trafficking and are aware of the appropriate steps to take upon identifying such a case— see chapter on **Trafficking for more information**.

In some circumstances, children and young people may be accused of committing immigration offences, such as using a false passport, or will enter the criminal justice system in some other way and risk deportation as a result.

Trafficking

One way that child trafficking victims can come to the attention of the authorities is in relation to crimes committed as a result of being controlled by the traffickers, or anyone they have been sold on to. The most common of these are theft (in organised “pick pocketing” gangs)² and the cultivation of cannabis plants³.

Professionals who come into contact with children in circumstances where suspicions of trafficking arise, should be aware of the many sensitivities of such a situation when taking instructions and gathering evidence. Children who have been trafficked are, understandably, often very fearful; this can be for a number of reasons including threats having been made towards themselves or their families coupled with the existence of large debts owed to the traffickers. Trafficked children are often subjected to physical, psychological or

sexual abuse or may be the victim of abuse arising from cultural practices such as witchcraft. They are unlikely to be knowledgeable with regards to the legal system in the UK or have any concept of their rights, and may have been systematically lied to by the traffickers about being deported or imprisoned. They may have been coached in a version of events which they are told to relate if they are apprehended by the authorities and persuaded that their situation which will be much worse if they don't. Accordingly, it can be very difficult to ascertain the true circumstances in which the child or young person came to be arrested.

It is important therefore to make concerted efforts to gather reliable evidence to identify the circumstances in which the child is living and how they entered the country. This may be done in association with organisations with appropriate expertise; for example, local or national charities that provide support, advice and information to trafficking victims (see **Contact Details**).

The child is likely to have had some very traumatic experiences both in the process of getting to the UK and subsequently in the country. It is possible that there will be inconsistencies in the child's account, perhaps as a result of pressure exerted by the trafficker to give a certain version of events, as well as the general lack of knowledge that the child will have with regards to the exact circumstances of what they have been through.

For trafficking victims, the primary response should be one of child protection and safeguarding to ensure they are safe and have appropriate support to meet their welfare needs. (See **Trafficking** chapter). Any youth who might be a trafficked victim should be afforded the protection of child care legislation. They should be treated as victims, not as offenders.

The prosecution of trafficked children

The Crown Prosecution Service has published guidance on whether an individual who is a suspected victim of trafficking should be prosecuted for crimes committed as a result⁴. The guidance suggests that it is at the discretion of the prosecutor to decide whether it is in the public interest to prosecute in any individual case. However, where there is credible evidence that a child is the victim of trafficking, it will generally not be in the public interest to prosecute for criminal offences arising out of that trafficking. Prosecutors are also required to consider the evidential test and where

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there is credible evidence of trafficking they must consider whether there is a reasonable prospect of conviction in light of the availability of the defence of duress.

In exercising their discretion in any individual case, the prosecutor will consider a number of factors, including what evidence there is that the individual has been trafficked, the degree to which this trafficking contributed to the offence being committed, and the level of coercion. *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (The Palermo Protocol)⁵, asserts that for child trafficking victims consent is irrelevant. Once the fact that the child has been trafficked is established, there is a limited requirement to provide further evidence about how this affected the child's actions in terms of any criminal activity.

The prosecution of traffickers

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 itself. For victims, many of whom have had traumatising experiences and may be very fearful of the traffickers as a result of abuse and threats, it 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.

Deportation

Young people over the age of 17 may face deportation if they are convicted of a serious offence where the sentencing judge has recommended the person's deportation⁶ or if they are the family member (i.e. spouse, civil partner or dependant child) of someone who is subject to deportation. An individual who has lived in the UK lawfully and continuously for the previous five years would be excluded from deportation following conviction.⁷

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 *1971 Immigration Act*, where the deportation is conducive to the public good.

The decision to deport an individual⁸ following criminal conviction will be made on grounds of public policy, health or safety. Cases are referred to the Criminal Casework Directorate of the UK Border Agency 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 2 or 3 sentences over a period of 5 years
- For EEA nationals: A custodial sentence of 24 months or more
- An immigration, violent or drugs offence has been committed

Following conviction, the UKBA will contact the individual explaining if they are liable for deportation. The individual can respond to this with evidence supporting their case to remain in the UK. It is advisable that this is done with legal assistance. The UKBA will respond to this with their decision about deportation. An individual can appeal the decision, this must be done within 10 days if in prison or released, or within 5 days if detained under the Immigration Act 1971. The appeal will be heard by the Asylum and Immigration Tribunal. In addition to the evidence for remaining in the UK, the tribunal will consider what the individual has done to address their offending behaviour and what risk they continue to pose to public safety and security.

A decision to deport an individual following criminal conviction can be challenged on a number of grounds, including:

- Real risk of harm if returned to country of origin, or are a refugee
- Breach of rights protected by the ECHR
- Separation from immediate family, or long residence in the UK - the stronger the individual's ties are to the UK, the more difficult it is for the UK Border Agency to justify deportation. Factors to be taken into account include a serious relationship, children, length of residence in the UK, health
- EEA Nationality - there are increased levels of protection for EEA Nationals making it harder for the UK Border Agency to deport.
- If under 18 years of age at the time of conviction, more serious grounds are required for the UK Border Agency to deport minors
- Facing extradition or ordered to serve the sentence in a psychiatric institute under certain provisions of the Mental Health Act⁹.

Many appeals are made on the basis of an individual's right to a private and family life arising from Article 8 of the European

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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 true if the individual has their own children in the UK. In any such decision, the best interests of the child must be a primary consideration¹⁰.

In practice, the threshold for deportation may be very high. However, whilst the decision will consider an individual's overall character, a conviction of a serious crime will mean that very strong evidence will need to be presented to outweigh this.

In addition, separated children arriving in the UK may have been coerced into committing immigration offences, such as using false documents¹¹. It has long been recognized in international law that those seeking asylum should not be given protection from prosecution for using false documents, and this is now reflected in domestic law. Unfortunately, defence representatives may still be unaware of the scope of this protection¹².

how can you help?

- **Be alert to the possibility of child trafficking.** In 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 may need to be taken to safeguard them.

Steps should be taken to refer the child to the appropriate bodies, including the National Referral Mechanism and the UK Human Trafficking Centre.

- **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 has been informed they are liable for deportation, ensure that they have access to appropriate legal advice.**
- If a young person is being prosecuted under Section 2 or 35 of the 2004 Act regarding immigration documentation, 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.

endnotes

¹ ECPAT, *Safeguarding children trafficked to the UK to work in cannabis factories*, 2011 at http://www.ecpat.org.uk/sites/default/files/understanding_papers/understanding_trafficking_for_cannabis_cultivation_2011.pdf 2 under section 1 *Theft Act 1968*

³ under section 6 *Misuse of Drugs Act 1971*

⁴ Crown Prosecution Service (PCS) http://www.cps.gov.uk/legal/h_to_k/immigration/#pevidential

⁵ 'Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention Against Transnational Organised Crime', United Nations, 2000, http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf

⁶ S3(6) *Immigration Act 1971* <http://www.legislation.gov.uk/ukpga/1971/77/section/3>

⁷ S7(1)(c) *Immigration Act 1971* <http://www.legislation.gov.uk/ukpga/1971/77/section/7>

⁸ Under the 1971 *Immigration Act*

⁹ S. Bravery and S Daley, *Challenging Deportation*, *Insidetime*, Dec 2009 http://www.insidetime.org/articleview.asp?a=637&c=challenging_deportation

¹⁰ see *ZH (Tanzania) v SSHD* [2011] UKSC 4

¹¹ Offences under sections 3 and 5 of the *Forgery and Counterfeiting Act 1981*; section 6 *Identity Documents Act 2010*; and section 2 *Asylum and Immigration (Treatment of Claimants) Act 2004*

¹² See, for example, *R v Mohammed and others* [2010] EWCA Crim 2600

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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.

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 UK Border Agency, 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 who have 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

Every new asylum applicant at the Asylum Screening Unit will receive an Application Registration Card 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.

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.

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.

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 Screening Unit

Asylum seekers who have not declared at port of entry can go to the Asylum Screening Unit in Croydon to make an in-country application for asylum.

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.

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Asylum Support

Destitute adult asylum seekers and their families are not eligible to receive mainstream welfare benefits, but can apply to the UK Border Agency 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 “UKBA Support” or “Asylum Support”.

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) or naturalisation.

Case Owner

A Case Owner is a UK Border Agency official responsible for an asylum seeker’s case throughout the process – from application to the granting of status or removal. Their role includes deciding whether status should be granted, handling any appeal, and dealing with asylum support, integration or removal. Each asylum seeker will have a named ‘case owner’.

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 UKBA’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 Discretionary Leave. A Certificate of Travel is not valid to travel to the country of origin. It replaced the brown Certificate of Identity document.

Certified - ‘clearly unfounded’

When the Home Office believes that the asylum seeker comes from a safe country and would not face persecution if they returned, it deems it a “clearly unfounded” case. Applications from individuals from these countries may be dealt with via a shortened procedure.

Common Travel Area

It 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 controls’ 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 UK Border Agency and the UK Human Trafficking Centre.

Convention Travel document (CTD)

A blue travel document issued by the Home Office to people with refugee status and at least 6 months permission to stay in the UK remaining upon payment of a fee for the purpose of travel abroad. The CTD is valid for all countries, except the country of origin.

Deportation

When a person is removed on the grounds of public policy, health or safety. An individual may be deported if 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 where the Home Office has decided the individual does not qualify for refugee status or humanitarian protection but where there are other strong reasons why the person needs to stay in the UK. This is the most common form of leave given to unaccompanied asylum seeking children when there are no adequate reception arrangements in their country of origin. It is normally given for three years or until the individual reaches 17.5 years of age – whichever is the shorter period. There are certain other specified reasons where DL would be granted to an asylum seeker.

Dispersal

Dispersal is the process by which the UK Border Agency 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.

Dublin II Regulations

The Dublin II 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.

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ESOL

English for Speakers of Other Languages, the principal form of publicly funded English language provision in the UK.¹ ESOL courses cover:

- speaking and listening
- reading and writing
- vocabulary
- punctuation and grammar²

Eurodac

Eurodac is a large database of fingerprints of applicants for asylum and illegal immigrants 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 an 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 has been 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 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 is used to determine asylum applications from people who the UK Border Agency (UKBA) assess to be ‘suitable’. Applications in the detained fast track are held at an Immigration Removal Centre and the initial decision on their case and any appeals happen at a faster pace than in the community. A case is considered suitable for the fast track process where it appears to the UKBA that the asylum claim can be decided ‘quickly’.

First reporting event

Shortly after the screening interview the asylum applicant will be asked to attend a ‘first reporting event’, where they will meet the UK Border Agency (UKBA) case owner who will deal with their case and have the procedures explained to them, in particular the ways in which the UKBA expects the applicant to keep in touch with them during the course of the asylum process.

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.

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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

Hard case support

See 'Section 4 support'

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

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Human Rights Act 1998

The Human Rights Act incorporates the European Convention on Human Rights (ECHR) into the UK law.

Humanitarian protection (HP)

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 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, under Immigration Act powers, to detain people who are waiting decisions on their asylum claims or who are being forcibly removed from the UK following an unsuccessful asylum application. It is government policy not to detain children who are seeking asylum except 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 part of the UK Border Agency that regulates entry into the UK at ports, screens asylum seekers, manages asylum cases and has 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 the basis of another reason, 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 decision 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 as 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 UK Border Agency official to someone to extend an existing 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 in the case of minors granted discretionary leave.

Legacy case

The term used to describe older asylum applications, most of which were filed before March 2007, which the UK Border Agency claims to have predominantly resolved. Outstanding cases are now dealt with by the Case Assurance and Audit Unit.

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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.

Legal Services Commission (LSC)

The body set up under the Access to Justice Act 1999 to administer public funding for legal help and representation. The LSC issues contracts to solicitors' firms and advice agencies to conduct legal work, including asylum and immigration work.

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

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.'

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, UKBA, 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 UKBA.

Naturalisation

Naturalisation is the process of becoming a British national.

New Asylum Model (NAM)

The New Asylum Model was introduced by the UK Border Agency (UKBA) for all new asylum claims made from April 2007. NAM entails a 'case owner' from the UKBA who is responsible for processing the application from beginning to end.

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 UK Border Agency - 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 UKBA 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.

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 UK Border Agency 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.³

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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 are entitled to access public funds, as are unaccompanied asylum seeking children given 'discretionary leave until age 18'.

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 UK Border Agency 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 UKBA 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 asylum seekers who are not detained are expected to report to a reporting centre or police station.

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.

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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 UKBA support, liability to prosecution, liability to detention and suitability for being dealt with under the fast track procedure. During the interview asylum seekers have their photo and fingerprints taken and are issued with an asylum registration card. The screening interview is not the place to explore the claim for asylum.

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 UKBA 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.

Self-Evaluation Form

A form issued to children applying for asylum. Forms need to be completed and returned to UKBA within 28 days.

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. 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 UKBA 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, eg the NHS

Student Support

Student support is provided by the UK Government, either as a grant or 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 Support is not public funds as defined in paragraph 6 of the Immigration Rules.

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 (DL/HP/ELR) 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 case owner 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 Immigration Service. 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 immigration service after a specified time.

Trafficking

Trafficked children are those who are recruited, transported, transferred, harboured or received for the purpose of exploitation.

further reading

useful resources

Migrant Children's Project

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.

Available at: www.childrenslegalcentre.com

Refugee Council Information Service

The Information Service contains information on the asylum process, support and entitlement. It is aimed at anyone providing advice and help to asylum seekers and refugees.

For details of how to subscribe go to www.rcis.org.uk/

Refugee Council Regional Support Pack for Advisers

This support pack includes sections on the UK asylum process, the asylum support system, educational and employment entitlements, accessing healthcare, and what to do after receiving a decision on an asylum claim. The support pack also provides a comprehensive contact list for advisers in Greater London, East of England, West Midlands and Yorkshire and Humberside. It is designed to compliment the material covered in the Refugee Council Information Service.

Available free at: <http://www.refugeecouncil.org.uk/practice/advisers/supportpack>

Leaflets designed for refugees and asylum seekers are also available from the Refugee Council in **other languages** at <http://languages.refugeecouncil.org.uk/>

Immigration Law Practitioners Association Information sheets

ILPA provides information sheets on a range of issues relating to immigration and asylum.

Available at: www.ilpa.org.uk

The Children's Society Refugee Toolkit

The Children's Society has designed a **toolkit** for all adult and children's services practitioners, education, health and other agencies in contact with refugee and asylum seeking children and families, to inform them about their needs, rights and entitlements.

Available at: www.refugeetoolkit.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: 0845 458 4151

Email: info@ein.org.uk

Website: <http://www.ein.org.uk>

Citizens Advice Bureau Advice guide

Provides online advice and guidance on a wide range of issues

Website: www.adviceguide.org.uk

Home Office policy

All policy and guidance issued by the Home Office is available on the Home Office UK Border Agency website at www.ukba.homeoffice.gov.uk/policyandlaw/guidance/

general reading

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Available free at www.compas.ox.ac.uk

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Available free at www.phf.org.uk

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Separated Children in Europe Programme: Statement of good practice

UNHCR/Save the Children, 2004

Available free at www.separated-children-europe-programme.org

Working with refugee children

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Available free at www.jrf.org.uk

Series of Save the Children guides on working with young refugees, including working with unaccompanied asylum-seeking children at ports of entry; setting up mentoring schemes; setting up young refugee groups; and emotional support

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A Case for Change: How refugee children in England are missing out

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L. Nandy, The Children's Society, 2007

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Cause for concern? London social services and child trafficking

C. Somerson, End Child Prostitution, Pornography and Trafficking, 2004

Available free at www.londonscsb.gov.uk

detention

Last resort or first resort? Immigration detention of children in the UK

The Children's Society and Bail for Immigration Detainees, 2011

Available free at www.biduk.org

Your rights: children and families in detention

OutCry! - The Children's Society and Bail for Immigration Detainees, 2010

Available free at www.theworkcontinues.org

Experiences of children in detention

OutCry! - The Children's Society and Bail for Immigration Detainees, 2010

Available free at www.childrenssociety.org.uk

'State Sponsored Cruelty': Children in immigration detention

Burnett, Medical Justice, 2010

Available free at www.medicaljustice.org.uk

HM Chief Inspector of Prisons reports on Immigration Removal Centres

Can be found at www.justice.gov.uk/about/hmi-prisons/

The Arrest and Detention of Children Subject to Immigration Control: A report following the Children's Commissioner for England's visit to Yarl's Wood Immigration Removal Centre

The Children's Commissioner for England, 2009

Available free at www.childrenscommissioner.gov.uk

No place for a child: children in UK immigration detention: impacts, alternatives and safeguards

H. Crawley and T. Lester, Save the Children, 2005

Available to order at www.savethechildren.org.uk

Policy briefings on children in detention

Available on the Bail for Immigration Detainees website, at www.biduk.org/library/children.htm

contact details

children's organisations

Coram Children's Legal Centre

The Coram Children's Legal Centre provides legal advice and representation to children, their carers and professionals throughout the UK, in education and child law. The Migrant Children's Project aims to help non-immigration specialist professionals protect and uphold the rights and entitlements working with asylum-seeking, refugee and migrant children.

Migrant children's advice line: 0207 6368505 (tues-thurs)

National Education Line tel: 0845 345 4345

Child Law Advice Line: 08088 020 008

Freephone: 0800 783 2187 (for children and young people)

Email: clc@essex.ac.uk

Website: www.childrenslegalcentre.com

Voice

Voice is a major children's advocacy organisation for children living away from home or in need, and provides a national helpline. Over 250 staff and workers deliver services to children and agencies around the country through its regional offices (see website for further details).

Head Office: 020 7833 5792

Freephone: 0808 800 5792 (for children and young people)

Email: info@voiceyp.org

Website: www.voiceyp.org

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 61 61 01 (for children and young people)

Email for young people: help@nyas.net

Text: 07773334555

Email: info@nyas.net

Website: www.nyas.net

Barnardo's

Barnardo's is a large children's charity. It runs projects for children and young people seeking asylum who arrive here on their own. For more details, see the website.

Head Office: 020 8550 8822

Email: info@barnardos.org.uk

Website: www.barnardos.org.uk

The Children's Society

The Children's Society runs a number of projects across the UK for refugee children. Further details can be found on its website.

Head Office: 020 7841 4400

Supporter Care Team tel: 0845 300 1128

Email: supportercare@childrenssociety.org.uk

Website: www.childrenssociety.org.uk

contact details

British Association for Adoption & Fostering (BAAF)

BAAF is a charity working for children separated from their birth families. 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 7421 2600

Email: mail@baaf.org.uk

Website: www.baaf.org.uk

Save the Children

Save the Children UK is a large children's charity, working to eradicate child poverty in the UK. It currently runs the Brighter Futures project, which is made up of three groups of asylum seekers and refugees aged 15-21 in London, Manchester and Tees Valley who campaign to improve the lives of young asylum seekers and refugees.

Save the Children Tel: 020 7012 6400

Brighter Futures Tel: 0161 249 5139

Website: www.savethechildren.org.uk and www.abrighterfuture.org.uk

asylum and immigration

Refugee Council

The Refugee Council provides advice and support to asylum-seekers and refugees as well as campaigning and lobbying and producing information on refugee issues. Regional office and advice line details are available on the website.

Main switchboard: 020 7346 6700

Advice Lines: 0808 808 2255 and 0808 808 2259

Website: www.refugeecouncil.org.uk

Panel of Advisers, Children's Section (Refugee Council)

The Children's panel has three teams of 'Panel Advisers' - a Drop-in Team who work in the Refugee Council offices in London,

helping separated children who may have newly arrived or are in crisis. The other two teams concentrate on more intensive casework with separated children in London and outside of the South-east, with one Panel Adviser being based in Leeds covering Yorkshire and Humberside.

The Refugee Council operates services in other offices outside of London, and these are known as 'Surgeries'. These currently operate out of Birmingham, Peterborough, Luton, Liverpool and Manchester.

Children's Panel advice line: 0207 346 1134

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

contact details

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 housing and welfare, women's issues, community development, the media and the arts.

Tel: 0141 248 9799

Freephone: 0800 085 6087 to make an appointment or get asylum advice

Email: info@scottishrefugeecouncil.org.uk

Website: www.scottishrefugeecouncil.org.uk

Refugee Action

Refugee Action is an independent national charity that works with refugees to build new lives in the UK, provides support to asylum seekers who have made an asylum application and receiving asylum support, and also offers a confidential information, advice and support service to people considering returning home voluntarily, through its Choices project. Refugee Action has offices throughout the UK – details are available on the website.

Head Office: 020 7654 7700

Choices free helpline: 0808 800 0007

Email: info@refugee-action.org.uk

Choices **email:** choicesduty@refugee-action.org.uk

Website: www.refugee-action.org.uk

North of England Refugee Service (NERS)

NERS provides support services to help asylum seekers and refugees living in the North East.

Head Office: 0191 245 7311

Email: info@refugee.org.uk

Website: www.refugee.org.uk

Asylum Support Partnership

The Asylum Support Partnership delivers initial accommodations

wrap around services for newly arrived people seeking asylum and One Stop Services for those people with ongoing claims who require independent advice and support.

Visit: www.refugeecouncil.org.uk/howwehelp/partners/partnership/asp.htm for details of the services available and where they are located.

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 support to women refugees and asylum-seekers.

Tel: 0207 354 9631

Advice Line: 0207 354 9264

Email: info@asylumaid.org.uk

Website: www.asylumaid.org.uk

Asylum Support Appeals Project

ASAP specialises in asylum support law and provides free legal representation and advice to the appellants appealing against UKBA's decision to refuse or withdraw their support.

Tel: 020 7729 3056

Advice Line: 020 7729 3042 (open Mon, Wed, Fri, 2-4pm only)

Website: www.asaproject.org

contact details

Refugee Support

Refugee Support is the specialist refugee and asylum seeker service provider for Metropolitan Support Trust (MST). It has offices in the Midlands, Yorkshire and London. See website for local office details.

Website: www.refugeesupport.org.uk

Immigration Law Practitioners' Association (ILPA)

ILPA is an association with 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: 0845 000 0046

Email: info@oisc.gov.uk

Website: www.oisc.gov.uk

First-tier Tribunal Immigration and Asylum Chamber (FTIAC)

The FTIAC hears appeals against decisions made by the Home Secretary and his officials in asylum, immigration and nationality matters.

Tribunals Customer Service Centre: 0845 6000 877

Customers Service Centre by Minicom: 0845 606 0766

Email: Customer.Service@tribunals.gsi.gov.uk

Fax: 0116 249 4232

Website: <http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/immigration-and-asylum/first-tier/index.htm>

Migrant Helpline

Migrant Helpline provides a reception, support and advice service to asylum seekers and refugees across the UK, with a focus on the South East.

Tel: 01304 203977

Email: mhl@migranthehelpline.org

Website: www.migranthehelpline.org.uk

London Advice Services Alliance

Website provides guidance on benefits, policy work and information systems.

Tel: 020 7377 2748

Email: info@lasa.org.uk

Website: <http://www.lasa.org.uk>

Liberty (Voluntary Sector Advice Service)

Service provides guidance to voluntary organisations about the impact of human rights law for service users.

Tel: 0845 122 8621

Website: <http://www.yourrights.org.uk/vas/>

Information Centre about Asylum and Refugees in the UK

Academic organisation which collects and disseminates independent information on asylum issues.

Tel: 020 7377 9222

Email: icar@runnymedetrust.org

Website: <http://www.icar.org.uk>

Student Action for Refugees (STAR)

A national network of student groups working to raise awareness and campaign on refugee issues.

Tel: 020 7729 8880

Website: <http://www.star-network.org.uk>

legal advice

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

contact details

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.

Website: www.citizensadvice.org.uk

Online advice: www.adviceguide.org.uk

(Online information includes Frequently Asked Questions in English, Welsh, Bengali, Gujarati, Punjabi, Urdu and Chinese)

Advice line Wales (chargeable): 0844 477 2020

Advice line England (chargeable): 0844 411 1444

Law Society

The Law Society represents solicitors in England and Wales. Its website contains a searchable database to help find a solicitor, 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

Community Legal Advice (CLA)

CLA, part of the Legal Services Commission, aims to ensure that people can get information and help about their legal rights and understand how to enforce them. CLA provides information on its website and offers further advice by phone and email. It also provides a directory for users to locate an advice provider in their area with whom they can discuss their query (this includes lists of solicitors and provides information on the quality marks they have acquired).

Advice line: 0845 345 4345

Email: emailhelp@communitylegaladvice.org.uk

LSC website for links: http://www.legalservices.gov.uk/civil/community_legal_advice_centres_and_networks.asp

Legal Ombudsman

The Legal Ombudsman deals with complaints about solicitors and regulates their work.

Helpline: 0300 555 0333

Email: enquiries@legalombudsman.org.uk

Website: www.legalombudsman.org.uk

Law Centre Federation

Law Centres are not-for-profit legal practices providing free legal advice and representation to disadvantaged people. The Law Centres Federation website offers a search facility to find your local law centre.

Tel: 020 7842 0720

Website: www.lawcentres.org.uk

home office

General enquiries

The UK Border Agency is responsible for securing the United Kingdom borders and controlling migration in the United Kingdom. It manages border control for the United Kingdom, enforcing immigration and customs regulations, and also considers applications for permission to enter or stay in the United Kingdom, citizenship and asylum.

Please note that if the individual is an existing asylum seeker with a Case Owner, they should contact their Case Owner in the first instance.

Immigration Enquiry Bureau: 0870 606 7766 (Textphone: 0800 389 8289)

Asylum support customer contact centre: 0845 602 1739

Email: UKBApublicenquiries@ukba.gsi.gov.uk

Website: www.ukba.homeoffice.gov.uk

contact details

Application Registration Cards (ARC)

To change ARC after resolving an age dispute case write to:
Central Events Booking Unit, PO Box 222, Liverpool, L69 2TY

If a card is lost or stolen contact: 0151 213 2174 (Monday to Thursday 0830 - 1630 and Friday 0830 to 1600) or fax 0151 213 2175

Website: <http://www.ukba.homeoffice.gov.uk/asylum/support/arc/>

Travel documents

For an application form for any type of travel document write to:
UK Border Agency, Travel Documents FPU, Lunar House, 40 Wellesley Road, Croydon, CR9 2BY

Tel: 0870 606 7766

or download from: <http://www.ukba.homeoffice.gov.uk/visas-immigration/while-in-uk/travel-abroad/traveldocuments/>

British citizenship

For information on applying to become a British citizen go to:
www.ukba.homeoffice.gov.uk/britishcitizenship/

Tel: 0845 010 5200

Email: ukbanationalityenquiries@ukba.gsi.gov.uk

Employer Checking Service

A service that allows employers to check the eligibility of their current and potential employees to work.

Sponsors' and Employers' helpline: 0300 123 4699

Website: <http://www.ukba.homeoffice.gov.uk/business-sponsors/preventing-illegal-working/support/ecs/>

Email: sponsorshipPBSenquiries@ukba.gsi.gov.uk

Case Assurance and Audit Unit

For asylum applications made before 5th March 2007 which have still not been resolved following the legacy programme, go to <http://www.ukba.homeoffice.gov.uk/asylum/oldercases/>, or contact the Case Assurance and Audit Unit, Department 87, PO Box 306, Liverpool, L2 0QN

Email: CAAU_enquiries@ukba.gsi.gov.uk

detention

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.

London office (general enquiries): 020 7247 3590

South office: 023 9281 6633

Oxford Office: 01865 200 357

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 group.

Tel: 020 7281 0533

contact details

Email: info@aviddetention.org.uk

Website: www.aviddetention.org.uk

return

Refugee Action

Refugee Action is an independent national charity working with refugees. From 1 April 2011, Refugee Action is running the voluntary return programmes, the most relevant being the Assisted Voluntary Return Programme for Unaccompanied Minors.

Tel: 020 7654 7700

Email: info@refugee-action.org.uk

Website: <http://www.refugee-action.org.uk/default.aspx>

Choices Assisted Voluntary Returns programme webpage: <http://www.refugee-action.org.uk/ourwork/assistedvoluntaryreturn.aspx>

National Coalition of Anti-Deportation Campaigns (NCADC)

NCADC is a voluntary organisation which provides practical help and advice to people facing deportation on how to launch and run anti-deportation campaigns.

Email: ncadc-north@ncadc.org.uk or ncadc-south@ncadc.org.uk

Website: www.ncadc.org.uk

education, training and employment

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. Provides information on its website and also offers advice by telephone.

Advice Line: 020 7107 9922

Textphone: 1 800 1020 7107 9922

Website: www.ukcisa.org.uk

Refugee Education (REFED)

REFED is home to the Albert Einstein German Academic Refugee Initiative (DAFI) Programme, which provides scholarships for qualified refugees to study at universities and colleges in their host country and recently their country of return. In addition, REFED supports teachers and other professionals who work with refugees and asylum-seeking children and young people in an educational context.

Email: info@refed.org

For information about DAFI scholarships email: HQEDUC@unhcr.org

Website: <http://refed.org/>

Family Action Educational Grants Advisory Service (EGAS)

EGAS offers a range of services providing information on funding for those in post-16 education in England. EGAS specialises in funding from charitable trusts and maintains a database of trusts and charities that assist students.

Tel: 020 7241 7459

Website: www.family-action.org.uk

Young People's Learning Agency (YPLA)

The YPLA is sponsored by the Department for Education and exist to support the delivery of training and education to all 16 – 19 year olds in England.

Tel: 0845 337 2000

E-mail: enquiries@ypla.gov.uk

Website: <http://www.ypla.gov.uk/>

Skills Funding Agency

The SFA is an agency of the Department for Business, Innovation and Skills and our job is to fund and regulate adult further education and skills training in England

Tel: 0845 377 5000

Email: info@skillsfundingagency.bis.gov.uk

November 2011 © Coram Children's Legal Centre

ISBN: 978-0-946109-92-0

Designed by Phelan Barker LLP

Printed by Graphix Ltd

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DX: 44640 Mayfair

T: 0207 713 0089 F: 0207 713 0748 E: clclondon@essex.ac.uk