

# **SUPPORTING UNACCOMPANIED ASYLUM SEEKING CHILDREN AND CARE LEAVERS**

*POLICY RESOURCE FOR LOCAL AUTHORITIES*



**This policy resource for local authorities has been endorsed by the following organisations**



## **Acknowledgements**

**This report was produced with the support of The Paul Hamlyn Foundation**



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# Supporting Unaccompanied Asylum Seeking Children and Care Leavers

This resource is based on an internal protocol developed with the London Borough of Merton by South London Refugee Association (SLRA) and is intended as a guide to support good practice. It was published by SLRA in May 2023 reflecting relevant legal duties and guidance at that time, and updates will be made annually. However, all users of this resource should ensure that they are using the most recent version and that they have sought advice on any further changes to legislation or policy.

For best practice please read and use in conjunction with our [‘Immigration Support for Children in Care and Care Leavers - Policy Resource for Local Authorities’](#) which can be found on our [Taking Care page](#) on our website.

## 1. Introduction

An unaccompanied asylum seeking child is defined by the Home Office as a young person under the age of 18 making an application for asylum in his or her own right and who "has no adult relative or guardian to turn to in this country". These children may have arrived in the UK by themselves or with an adult who later abandoned them or who does not present as a suitable carer or guardian.

These children are supported within the framework of the Children Act 1989 as Children in Need, and this should be guided by the principle that they are children first and foremost, and so should be afforded the same level of care as any other Looked After Child.

However, these children and young people face particular difficulties, due to the fact that they have been separated from their families, local communities and cultures and are likely to have experienced considerable physical, sexual and/or emotional harm and exploitation.

[Statutory guidance](#) lays out the duties local authorities and social care practitioners have in supporting unaccompanied asylum seeking children in care and care leavers. This policy is intended to provide additional guidance and was co-created by South London Refugee Association and the London Borough of Merton (a team of social workers and care experienced young people who have gone through the asylum process).

Where reference is made to ‘young people’ it means that the information is relevant to both children in care and those over 18. Otherwise it will specify.

## **2. Referral and Assessment**

### **2.1. Overview**

Unaccompanied asylum seeking children are the responsibility of the local authority because they meet the Section 20 criteria of the Children Act 1989 by the fact of there being no person with Parental Responsibility for them, and/or the person who has been looking after them is prevented (for whatever reason) for providing them with accommodation, and/or they are lost or abandoned.

These children will be assessed and cared for by the local authority in exactly the same way as any other children who are assessed as Children in Need. As such they must be assessed under the normal criteria, and whilst there is a presumption that they fall within the scope of Section 20, other factors and alternatives should be considered, including applying for a care order (particularly for children who are younger, those at risk of trafficking, and / or have additional needs) or considering, and potentially assessing, family members who may be able to sufficiently care for the child. The case of [J \(Refugees\)](#) – provides a good overview of the differences for unaccompanied asylum seeking children cared for under section 20 and a care order.

### **2.2. Unaccompanied Asylum Seeking Child Presenting Directly to The local authority**

Children will often be referred to the local authority through a regional rota system (e.g. London Asylum Seekers Consortium ) or the National Transfer Scheme. However, some will present directly to Children's Services. In these instances, it will be the responsibility of that local authority to assess them as a Child in Need using The Single Assessment Framework.

If there is reason to believe that the child may have been trafficked into the UK, the First Response Service will commence a Section 47 Child Protection Investigation, make a referral to the National Referral Mechanism, and make a referral to the Independent Child Trafficking Guardianship Service. Please see the section on [Trafficked Children and Young People](#) for further guidance.

At the earliest opportunity the first allocated social worker will contact the Home Office Asylum Intake Unit (by emailing [child.asuappointment@homeoffice.gsi.gov.uk](mailto:child.asuappointment@homeoffice.gsi.gov.uk) or calling 03001234193) to inform them that the child wishes to make a claim for asylum. The social worker will then need to support the child to access specialist immigration legal advice as a matter of urgency. For further information on this see section on [Supporting young people through the asylum process](#).

Once a single assessment has been completed they will be transferred to the relevant service within the local authority for looked after children. If at this stage the local authority has reached its quota of unaccompanied asylum seeking young children (as specified by the National Transfer Scheme), they may consider referring them to the National Transfer Scheme.

### 3. National Transfer Scheme

The National Transfer Scheme (NTS) protocol for unaccompanied asylum seeking children has been created to enable the safe transfer of unaccompanied children in the UK from one local authority to another local authority. When the NTS first began operating in 2016 it formed the basis of a voluntary agreement made between local authorities in England to ensure a more equitable distribution of unaccompanied children across local authorities, and since 2018 has been extended to include Northern Ireland, Scotland and Wales.

As of 14 December 2021 the NTS became mandatory for the majority of UK local authorities with children's services, meaning that they will be required to accept transfers of unaccompanied asylum seeking children into their care. However, local authorities will not need to accept unaccompanied children where this cohort already makes up 0.1% or more of their general child population. The Home Office have said that the scheme will be kept under review and the length of time for mandating will be determined by a range of factors including intake levels.

Detailed guidance on the NTS can be found [here](#), but makes clear that in accordance with Section 55 of the Nationality, Immigration and Asylum Act 2002, the best interests of children being considered for transfer must always be a primary consideration throughout the transfer process. Therefore, the child's voice must be at the centre of any decision to transfer a child via the NTS, with consideration given to a range of factors such as access to medical treatment, family ties, legal representation and advocacy, education, ethnic group, religion and continuity of care. The decision to refer should also be regularly reviewed.

Factors indicating it may be appropriate to withdraw the referral include:

- The child subsequently disclosed that they have relatives in the area
- The child developing connections with the local community or local services or treatment which it would be detrimental to leave
- The child expressing a strong wish to stay despite being adequately prepared for transfer
- Recommendations from other professionals that the child should not now be transferred.

## 4. Children Who Are Age Disputed and Age Assessments

Many unaccompanied and trafficked children arrive in the UK without documentation to prove their age. As such, it is not uncommon for the Home Office to dispute a child's claimed age, requesting that the Local Authority completes an 'age assessment'. In other instances, someone claiming to be a child may present directly, or be referred to the local authority by another agency, because the Home Office has decided to treat them as an adult. This will have been following an assessment from an immigration officer that their physical appearance and demeanour "very strongly suggests" that they are "significantly" over 18 years old. These referrals are likely to come from organisations working in adult asylum accommodation and hotels, as this is where the Home Office will place such young people.

Given the wide margin for error and the very significant safeguarding risks for children being wrongly treated as an adult, the local authority should respond to these referrals by conducting an initial assessment and taking the child into care in all cases other than where there is no doubt / strong evidence that they are an adult – this should still be assessed and rationale noted. For further guidance on conducting these initial assessments / brief enquiries please see this [resource](#) from the British Red Cross and Just Rights Scotland. Once the child is in care, if there is significant reason to doubt their age a full age assessment should be conducted in line with the guidance below.

The starting point for age assessments must be the '[Care of unaccompanied migrant children and child victims of modern slavery - statutory guidance for local authorities](#)' (2017) which provides:

*"Where the age of a person is uncertain and there are reasons to believe they are a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with section 51 of the Modern Slavery Act 2015. Where an age assessment is required, local authorities must adhere to standards established within case law. Age assessments should only be carried out where there is reason to doubt that the individual is the age they claim. Age assessments should not be a routine part of a local authority's assessment."*

Age assessments are a complex task that cannot establish the actual age of a young person. They are approximate and based on the social workers assessment and professional judgement of the young person's likely age. Such assessments may be compounded by issues of disability, mental health, cultural background and language. All of which can impact upon how a young person presents in terms of memory, demeanour, and emotional state. Some young people may genuinely not know their age and this can be misread as lack of cooperation. Levels of competence and understanding in some areas or tasks may exceed or fall short of our expectations of a child of the same age in this country. Because of these issues a young person should always be given the benefit of the doubt.

All age assessments must be 'Merton compliant' (which means having all of the safeguards established in the Merton judgement, such as the presence of an appropriate adult and the opportunity to respond to any negative inferences) and completed in line with the Association of Directors of Children's Services [Guidance](#) that

is written to assist social workers and their managers in undertaking age assessments in England.

This guidance mirrors statutory guidance in stating that age assessments should only be carried out if absolutely necessary, due to the distress they can cause to young people. Because of this the guidance states that local authorities may decline to age assess a young person where they do not feel one is necessary, and request for the Home Office to accept the young person as a child without further assessment. To avoid delays in the young person's asylum claim, it is crucial that this request is made at the earliest opportunity in writing and followed up on if the Home Office does not respond.

Where an assessment has been deemed necessary it should be carried out over a period time with the involvement of two assessing social workers who have been trained to undertake age assessments, with a specialist appropriate adult in attendance and input from other professionals working with the young person such as social workers, foster carers, teachers and support workers. It may be appropriate to also consider information from other young people. Once completed, the relevant [proforma](#) should be completed confirming the assessed date of birth to be provided to the Home Office. The full assessment should never be provided to the Home Office.

As guidance states there are potentially far more serious safeguarding consequences for assessing a child to be an adult (e.g. a child being accommodated with adults and / or detained), than for assessing an adult to be a child. Therefore if the local authority concludes from the age assessment that the young person is an adult, they should refer them to local specialist casework services (see [MiCLU's service map](#) for details of where to refer) so that they can access urgent legal advice about this decision, to mitigate any risks of, before taking steps to move them onto adult accommodation provided by the Home Office.

Due to a rise in children being wrongly treated as an adult in the first instance, some children are not accruing 13 weeks in care before turning in 18 because of a delay to their being taken into care. As with any qualifying children, the local authority must assess the young person's needs when they are turning 18 and can use their discretion and make the decision to continue providing accommodation and support where their welfare requires it. Therefore, in these instances careful consideration should be given to the young person's needs and any potential safeguarding concerns before making a decision to refer them into Home Office accommodation.

It should be noted that following the Nationality and Borders Act 2022, the Home Office may now also conduct age assessments through their National Age Assessment Board (NAAB) and have introduced the use of 'scientific methods' (although this is yet to be implemented). However, the use of 'scientific methods' are still widely opposed by the leading medical bodies due to their inaccuracy and potential for harm to children. Likewise, BASW (The Professional Association for Social Work and Social Workers) have raised [concerns](#) about the Home Office directly employing social workers to conduct age assessments and so the preferred approach will be for age assessments to continue being conducted internally by two local authority social workers.



## 5. Trafficked Children and Young People

Unaccompanied and separated children are particularly vulnerable to trafficking, exploitation and modern slavery. Concerns may be identified after they have been taken into the care of the local authority as an unaccompanied asylum seeking child, or prior to this and be the reason they were taken into care following a safeguarding referral. If the latter, they should be supported to seek legal advice around making an application for asylum on the basis of being trafficked.

Professionals working with children and young people should be aware that due to the methods of control used by traffickers, and other reasons such as the effect of trauma, there are complex reasons why victims may be reluctant or unable to disclose that they have been trafficked. Many victims will not be aware they have been trafficked, or will try to minimise the abuse they have suffered. Therefore, it is essential that social workers, personal advisers, and foster carers have a comprehensive understanding of the issues surrounding trafficking and modern slavery, so that they are sufficiently equipped to identify anyone who may have been trafficked, and / or is being exploited, and to take the necessary safeguarding action to protect them.

If a child is identified as a potential victim of trafficking the following actions will need taking;

- Initiation of any appropriate safeguarding procedures (such as a Section 47 enquiry)
- A referral into the ICTG (Independent Child Trafficking Guardian) Service
- A NRM referral

To ensure that social worker have the necessary knowledge for this they will need to undertake regular mandatory training and familiarise themselves with the following;

- The [‘Safeguarding Trafficked and Exploited Children’](#) procedure from the London Safeguarding Children Partnership, for detailed guidance on identifying and protecting migrant child victims of trafficking, including making NRM referrals and carrying out section 47 enquiries.
- [‘Modern Slavery: Statutory Guidance for England and Wales \(under s49 of the Modern Slavery Act 2015\) and Non-Statutory Guidance for Scotland and Northern Ireland’](#) for further information on identifying and protecting victims of trafficking more generally, including the role of the local authority as a first responder and making NRM referrals.
- [‘Interim Guidance for Independent Child Trafficking Guardians’](#) with an up to date list of where this support is available in Appendix A (in addition to the early adopter sites of Greater Manchester, Hampshire and the Isle of Wight, and Wales) and information on how to refer.

- Resources from the Home Office on [‘Criminal Exploitation of children and vulnerable adults: County Lines guidance’](#) and the Department for Education on [‘Child sexual exploitation Definition and a guide for practitioners, local leaders and decision makers working to protect children from child sexual exploitation’](#).
- [‘Care of unaccompanied migrant children and child victims of modern slavery Statutory guidance for local authorities’](#) for more general information on supporting unaccompanied asylum seeking children who may be victims of trafficking

It should be noted that there have been significant changes to processes relating to the identification, protection and support of victims of trafficking and modern slavery under the Nationality and Borders Act 2022. For example, changes have been made to the legal threshold for the first decisions that victims receive after being identified as a potential victim.

The Modern Slavery Statutory Guidance now states that a decision maker must now find that there are reasonable grounds to believe, *based on objective factors but falling short of conclusive proof*, that a person is a victim of Modern Slavery to reach a positive reasonable grounds decision. The guidance states that this will require objective information and specific evidence, including Modern Slavery expert Reports, medical evidence, and the views of trusted third parties such as social services and Independent Child Trafficking Guardians.

This and other changes make it all the more vital that social care teams and practitioners ensure they have received recent child trafficking training so that they can make effective NRM referrals.

Furthermore, because of the complexity of the issues it is always important to seek specialist advice when you are working with a potential victim of trafficking. The young person’s immigration representative should be able to provide some advice, but other organisations such as [ATLEU](#) or [ECPAT UK](#) may be contacted for further support

## **6. Areas of Support for Unaccompanied Children and Young People**

### **6.1. Support for new arrivals**

In addition to the sometimes very complex needs of the child, in the first few weeks they may also be experiencing fatigue, malnourishment, trauma and other health issues from their journeys to the UK. Therefore, it is important to remember that they may be feeling disoriented and confused and so sufficient time should always be taken to explain (and re-explain if needed) the different roles of those who will be supporting them and what to expect in the first few weeks. MiCLU's ['Who is Who' videos](#) are a useful resource for this as they provide an introduction to the different professionals that unaccompanied children will come into contact with in several languages.

The Home Office is under instruction to refer all newly arrived children to the Refugee Council's Children's Section within 24 hours of their first contact, and so social workers may want to follow this up with the Refugee Council for any additional support.

At the earliest opportunity the allocated social worker will contact the Home Office to inform them that the child wishes to make an asylum claim. Please see the section on [Supporting young people through the asylum process](#) for detailed guidance on these steps.

### **6.2. Suitable placements**

Placement options for unaccompanied asylum seeking children should be the same as for other looked after children.

Children who have been referred to the local authority through a regional rota system (e.g. London Asylum Seekers Consortium ) or the NTS are likely to have been accommodated in temporary accommodation for a short while. It would be helpful to get as much information that may have been gathered in this time, to support the local authority to identify an appropriate placement. This information often isn't forthcoming but may be sought.

It is strongly advised that any newly arrived child be placed in a foster care placement. Any exception to this must be clearly recorded and approved by a service manager. In the exceptional event that the social worker assesses that it is in a 17-year old's best interest to live in supported accommodation (and the service manager agrees), it is advised that any provision should offer 24-hour support (such as supported lodgings or 24 hour semi-independent accommodation) for at least the initial 3-months. This level of support is necessary in order to fully assess the child's needs, to ensure any immediate needs are met, their views are taken into account, and that young people are safeguarded against any potential trafficking risks.

Due to heightened risks that they may go missing in the initial weeks and months, all foster carers and residential staff caring for unaccompanied asylum seeking children should be aware of this risk and understand what practical steps they should take in the event that the child does go missing. They should also be provided with resources from,

and details of, specialist organisations such as ECPAT who may be able to offer guidance and support where there are concerns that a child may have been (or is at risk of being) trafficked and / or exploited.

In this initial period, carers and professionals should also seek to develop an awareness of the child's past experiences and any psychological issues they face, which may not be immediately apparent, so that they can work together to develop a holistic assessment of the child as well as provide support, reassurance and effective safeguarding to them. It is often a misconception that children who arrive in the UK unaccompanied have independent living skills due to the fact they have travelled to the UK without their families. This often isn't the case and should never be assumed.

Whilst it is hoped that the initial placement may be suitable on a permanent basis, this should be reviewed after a few months (or sooner if necessary) once the young person's needs have been fully assessed. During this time foster carers and key workers should have supported the child with all of their initial needs and built up a picture of the support they require.

Please see [statutory guidance](#) for further information on placement decisions for unaccompanied asylum seeking children.

### **6.3. Health**

Children should be helped to access relevant primary health care services (GP, dentist, optician) as soon as possible after their arrival. This task is usually undertaken by foster carers or supported housing key workers, and needs to be addressed in Care Plans/Pathway Plans.

For children supported under Section 20 a referral for the statutory LAC (looked after child) medical should be made within 5 working days of the young person becoming looked after, so that the medical can be completed within 20 working days. Due to the fact they will have no previous health records, it is important that their health is assessed and their needs recognised at an early stage. The LAC Health Team will be notified by the social worker and will arrange for the initial Health Assessment to be completed with assistance of an interpreter. The Health Assessment will establish if the child has suffered from any medical conditions or are likely to have been exposed to certain diseases, which may be more common in their countries of origin on transit. The immunisation programme will be initiated once consent has been received from the child. Children may also be referred to the TB clinic following their initial LAC health assessment. For female young people, it is also important to establish if they have been the victim of Female Genital Mutilation (FGM) if that is the practice in their country of origin.

Experiences in their countries of origin or during transit to the UK may cause children to suffer emotional trauma and distress, and so it is important this is explored by the paediatrician in the LAC medical and any recommendations included in the health plan. If a need for support is identified CAMHS (Children and Adolescent Mental Health

Services) should be contacted as soon as possible, as the child may be approaching 18 and there may be a waiting list for support.

Whilst some young people's mental health needs might be immediately obvious, for many young people it may be difficult to identify. Therefore it is important that professionals are aware of what issues might be affecting a young person's mental health, as well as how these issues might present. Relevant training should be accessed alongside resources such as [The Children's Society's report 'Distress Signals'](#). In doing so, professionals can ensure that young people are connected with support that is adapted to their needs.

It is important to recognise that young people may be unlikely to disclose any emotional difficulties in the initial period after their arrival, due to reasons such as stigma or a lack of trust. Feeling welcome and safe in their placement, and supported by their carers and social worker, will be a crucial part of alleviating some of these difficulties in the initial months.

If the young person does disclose having suffered something traumatic and is experiencing symptoms such as nightmares, flashbacks, and anxiety, referrals to specialist mental health services should be considered and discussed.

However, counselling may not be appropriate, or even safe, for every young person at all times. Therefore, any discussions around this should be handled sensitively, with care taken to speak about these issues in a way the young person can understand and relate to. Other forms of support (such as access to a gym, community support and other positive activities) should always be considered alongside, and sometimes instead of, other therapeutic interventions. For a list of services please see [MiCLU's service map](#).

It will also be crucial to ensure that young people are able to access advice and information on issues such as sexuality, gender expression, sexual health, and health relationships, as it is possible they will miss sex and relationship education classes offered in school. Referrals can be made to specialist services, but social workers should continue to proactively explore these issues with the young person over time. As part of this young people should be supported to access appropriate resources and information through use of interpreters and translations if necessary.

#### **6.4. Education**

When a young person becomes looked after the Virtual School headteacher will allocate an advisory teacher in accordance with the age of the young person. The advisory teacher will set up a meeting with the allocated social worker to find out more information about the young person. Thereafter, the Virtual School system progresses the setting up of an Initial Personal Education Plan (PEP). In the case of 16 -18 year olds, the advisory teacher will often arrange this to take place within the Initial CLA Review.

All unaccompanied young people are closely monitored by the Virtual School through contact between the network and advisory teachers. Interpreters will attend PEP Meetings. If social workers or personal advisors are concerned about the educational progress of a young person, they should communicate with the advisory teacher. For

school age children the PEP is the main vehicle for checking on educational progress. All advisory teachers work closely with social workers outside of PEP meetings and the Virtual School can trigger additional meetings as required. The Virtual School can also support by:

- Seeking teacher feedback
- Considering what additional opportunities there are for learning outside formal lessons, for example, social activities, extra ESOL through local charities and tuition arranged by the Virtual School
- Requesting support from college SEN department
- The Virtual School can commission an educational psychologist to carry out an assessment if this is unavailable elsewhere.

If any additional learning needs are identified, consideration should be given to application for Education Health Care Plan (EHCP). Social workers will need to liaise between the Special Education Needs Team, the Virtual School, and the school / college, to ensure that additional support is put in place. The [‘Special educational needs and disability code of practice: 0 to 25 years’](#) may be consulted for further guidance.

Social workers should be alert to any special educational needs that young people have, and that may be more difficult to identify due to language differences, lack of formal education and / or history. Experiencing trauma and periods of chronic stress are also known to have long term impacts on cognitive ability, and so it’s also possible that needs will develop over time. Early identification is crucial but at whatever stage / age a young person’s learning needs become apparent, they will need to be formally assessed.

For children who arrive in the UK halfway through the academic year, there may be difficulties finding them a course place. The Virtual School should be automatically notified of any new arrivals, but they can also be contacted to advise on schools and colleges who will accept midyear applications, and any alternative provision that may be available in the interim. If there are any concerns about the young person’s educational progress (for any reason) the Virtual School may consider putting in place additional support, including paying for 1-1 tuition.

Young people will need ongoing support in accessing appropriate education, which could include a local primary or secondary school (for those of a statutory school age), English for Speakers of Other Languages (ESOL) classes at a local college or community learning centre, further education courses, or university. More formal educational routes may not be appropriate for every young person, and so alternative options (such as volunteering) should also be considered. In any case, social workers will need to ensure that appropriate applications have been made, and that the young person is supported to enrol.

It is crucial that the young person’s education is set out in the personal education plan (PEP), care plan or pathway plan, including further and higher education. The young person’s immigration status, and potential outcomes, should also be taken into account

when planning for various education routes. Young people may also be referred to specialist organisations for additional educational mentoring, support and advice. Please see [MiCLU's service map](#) for a full list of services.

Most ESOL and further education courses will usually be funded by central government, provided the young people are able to present Home Office documentation and proof of their status as a Looked After Child or Care Leaver. However, social workers can make a request to the Virtual School to cover course fees where alternative funding is unavailable (because of a young person's immigration status for example). Asylum seeking young people who want to attend University may also be supported to apply for the Sanctuary Award and / or other scholarships. [Refugee Education UK](#) and [Student Action for Refugees \(STAR\)](#) provide information on scholarships and grants available.

Young people will also need support identifying and applying for any bursaries that are available, e.g. the 16-19 bursary fund. For young people that are unable to access the bursary due to their immigration status (or attendance due to appointments related to the immigration process), the local authority should fund the equivalent of the bursary if they access education. Social workers may also need to advocate with the college if a young person is denied the bursary based on attendance, and missed school was unavoidable because of appointments relating to their asylum claim or poor health.

All young people in full time education should be provided with a laptop.

Good Practice also entails encouraging young people to maintain their first language. Libraries should have books in some more common languages, and young people should be supported to access online resources. Refugee community groups may be able to offer further advice on language groups.

It is important to recognise the impact immigration issues can have on a young person's education and so social workers may need to go to extra lengths to put additional support in place to address these barriers, and / or advocate on a young person's behalf to ensure that they are able to access and engage with any educational and training pathways that have been identified. This support should be included and monitored in care and pathway plans.

## **6.5. Community support and referrals to specialist services**

Young people should be supported to establish community links and make friends, through supported access to local religious facilities, youth groups, leaving care groups and ethnic community groups.

Local specialist services can also provide advice and support for asylum seeking children and young people, particularly in the following areas: accessing appropriate and competent legal immigration advice, contact to refugee community organisations, advocacy or contact to family tracing services.

Newly arrived young people will need extra support in the first few months to access groups, including being accompanied in person.

For a full list of services please consult the [MiCLU service map](#).

## **6.6. Family Tracing and Contact**

Where appropriate, a young person should be helped to make contact with the British Red Cross for international family tracing. It is important to bear in mind that this process might take a long time, be unsuccessful or even bring the young person bad news about their family. There are also risks of jeopardising the welfare of family members in the country of origin. Young people should also be prepared for the fact that they will only be able to trace family members if they can provide enough details about last addresses etc. It should always be the decision of the young person to undertake family tracing, and the Red Cross will not take referrals from professionals. A young person may not want to trace their family or meet with the British Red Cross. These are difficult and complex decisions, and no negative inference should be made if a child does not wish to access the service.

A young person may also attempt to trace family members through other informal channels (e.g. local mosques, diaspora communities, social media etc), and should be supported to do this safely.

If a child is in touch with any family members, either in the UK or abroad, support should be provided to maintain contact once sensible checks have been made (e.g. identity checks and contact made by the social worker) and there hasn't been any indication of risk. This support may include, providing international phone cards, facilitating visits, and identifying placements near to, or shared with, family members.

Where appropriate the local authority may support family members to obtain an order that would allow them to exercise parental responsibility for the child/children, e.g. Special Guardianship Order or Child Arrangements Order.

## **6.7. Care Plans and Pathway Plans**

A young person's needs will emerge throughout their time in care, and this should be reflected in their care plan. Within 3-months of the child turning 16 they will also develop a pathway plan with their social worker. At age 16 all young people will also be jointly allocated a personal advisor who will contribute to the pathway plan and support the young person to work toward independence.

Every young person will have their unique and individual needs, aspirations, personalities, potential, and wishes which will need to be taken into account in their care / pathway plans.

Whilst care and pathway planning for asylum seeking young people should be the same as any other child in care or care leaver, they will have additional needs that need to be included and addressed. Critically, going through the social care system at the same time as the asylum system can feel disempowering and disorientating and so it is



essential that all processes and decisions are explained fully and in a way that can be understood by each individual young person.

Reviews should be seen as an opportunity to ensure that up to date information on the young person's asylum application is received, that they are receiving adequate support and advice in the process, and if there are any concerns. Independent Reviewing Officers have a critical role in ensuring this. For further guidance on monitoring immigration within care planning please see our 'Immigration Support for Children in Care and Care Leavers - Policy Resource for Local Authorities'.

A 'triple planning' approach should be adopted until the young person's asylum claim has been resolved. As a result, social workers need to plan for various possible outcomes for those turning 18 and should be part of their regular statutory planning through the care plan, pathway plan and review process. Planning for possible outcomes after reaching 18 includes:

- Equipping the young person to have a future in the UK if they receive some form of leave to remain in the UK
- Supporting a young person if they continue to wait for a decision or appeal beyond their 18<sup>th</sup> birthday;
- Supporting young people who have been refused leave to remain in the UK and who have exhausted all appeals but are not removed.
- Sensitively considering options if a young person is to be returned to their country of origin or if they have decided to return

[Statutory guidance](#) should be consulted for further information on care / pathway planning for unaccompanied asylum seeking children.

## 6.8. Supporting young people through the asylum process

**Immigration law, policy and procedures change regularly and so whilst this section is intended as a guide, up to date advice should always be sought**

There have been a lot of changes to immigration law under the 2023 Illegal Migration Act. However as most provisions have not yet been implemented, and we still don't know how and when they will be, the following sections do not include any of the changes brought in under the Act. For more information on the Act please see SLRA's briefing for local authorities ['The Illegal Migration Act 2023 and Unaccompanied Children'](#).

This section should be read in conjunction with ['Immigration Support for Children in Care and Care Leavers - Policy Resource for Local Authorities'](#) which can be found on our [Taking Care page](#) on our website.

Statutory guidance states that;

*"In order to support unaccompanied children, social workers' knowledge of the asylum process should include an understanding of the Welfare Interview, Statement of Evidence Form, the purpose of the asylum case review, the importance of the substantive asylum interview, the different possible outcomes of a child's asylum claim and how that impacts on pathway planning. Social workers should also have a broad understanding of the immigration system – for example, the immigration application process, different types of leave, making further leave to remain applications and the appeals process. Social workers must also have an understanding of the trafficking referral process."<sup>1</sup>*

Social workers and personal advisers don't need to be legal experts, but having a general understanding of the asylum process can empower them to support young people to understand and participate in the process themselves, whilst advocating for them if anything goes wrong. Organisations like Coram Children's Legal Centre offer group work to young people on these issues, and other resources exist for social workers to use with young people, such as MiCLU's [resource page](#) and Right to Remain's [online tool](#).

In all cases involving separated children and young people, a responsible adult should be appointed to safeguard the best interests of the child and provide a supportive role and link between all those who may provide services to the child. Based on their duties to safeguard the welfare of separated children, this responsibility will lie with the local authority for looked after children. This means that the social worker will usually have to take on this role, ensuring the best interest of a child or young person is fully taken into account. For further details on the role of the responsible adult please see the section on this in our ['Immigration Support for Children in Care and Care Leavers - Policy Resource for Local Authorities'](#) which can be found on our [Taking Care page](#) on our website.

Every effort should be made to ensure that a young person has an immigration adviser prior to the welfare interview. If this hasn't been possible, one will need securing as soon as possible afterwards. Immigration legal advice and representation must be provided by a registered immigration adviser, who is either a regulated solicitor, employed in an SRA regulated organisation, or is registered with the Office of the Immigration Services Commissioner (OISC). Immigration advisers working on children's legal aid cases must also be appropriately qualified under the Law Society's Immigration and Asylum Accreditation Scheme. Legal aid is available for asylum claims, including for children's asylum claims. Legal aid is also available for children in care in relation to 'immigration matters' – this can include human rights arguments along with the asylum claim, immigration applications, and nationality applications. To demonstrate eligibility for legal aid the local authority will need to provide a letter confirming that the child is in their care and detail any financial support provided.

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/656429/UASC\\_Statutory\\_Guidance\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/656429/UASC_Statutory_Guidance_2017.pdf)

Newly arrived unaccompanied children referred to the local authority through a regional rota system or the NTS may already have had their welfare interview, or have an appointment to return to the Home Office. Otherwise, social workers will have to email [child.asuappointment@homeoffice.gsi.gov.uk](mailto:child.asuappointment@homeoffice.gsi.gov.uk) to request an appointment. For this appointment, they should be accompanied by a responsible adult and an immigration adviser. A letter from Children's Services needs to be provided to the Home Office to state that the child is receiving support. At the end of the meeting the young person will be given a record of the interview and a Statement of Evidence (SEF) Form, with a deadline for it to be returned. If an immigration adviser cannot be found before the deadline, the Home Office should be informed of this, and an extension sought.

To ensure that every young person has the best possible chance of securing status on their initial claim, it is crucial that they are referred to high quality immigration advisers with specialist experience in dealing with children's asylum claims. There may not be appropriate advisers in the area, meaning the young person may have to travel out of the area. Capacity is also a serious issue in the legal sector, and it may be difficult to find an immigration adviser. It is the social worker's responsibility to lead on this, but they should seek recommendations and support with referrals from local refugee charities.

If no ARC has been received within a few weeks of interview, if the date of birth is incorrect, or if an old ARC has expired an online ARC enquiry form can be submitted [here](#) and a request made to the relevant Home Office casework team. The immigration adviser should also be contacting the Home Office to make these requests.

Following the welfare interview young people will need to see their immigration adviser to complete their Statement of Evidence (SEF) Form, and to prepare their witness statement. This statement is extremely important, and so it is crucial that it is not rushed. This will mean doing it over a number of meetings, with time taken to ensure that the process can be handled as sensitively as possible, and that their account is recorded in full and accurately. Usually young people will need to be accompanied to these meetings by a responsible adult.

During this time it will be crucial that social workers raise any concerns they have about the young person's vulnerability, so that the immigration adviser can consider their suitability for interview and whether or not they should make a request to the Home Office to make a decision on the papers. This request may also be put forward when the Social Worker completes the Current Circumstances (CCF1) form. Please note this form should always be checked by the young person's immigration adviser before being returned to the Home Office.

Once the SEF and the witness statement have been submitted the young people will need to wait to be invited for a Substantive Interview. This can take several months, and delays are common. However, immigration advisers should be proactively contacting the Home Office after a few months asking for an interview, and if the delay becomes unreasonable they may consider challenging it through judicial review. Contacting the young person's MP (Member of Parliament) and asking them to contact the Home Office on their behalf can also help. Support letters from social workers and other relevant

professionals detailing the impact the delay is having on a young person is helpful evidence when challenging delay.

Since the Covid 19 pandemic many local authorities have signed up to have substantive interviews conducted remotely from their premises. In this instance, the Home Office will send the invitation to interview to the local authority, which when picked up will be forwarded to the allocated worker who is responsible for setting up a room and organising a responsible adult. If a remote interview would not be appropriate, then this should be raised by the social worker and immigration adviser.

It is good practice to support the young person to meet with their immigration adviser prior to the interview, so that they can be reminded of what to expect and read through their witness statement again. The young person should be supported by a responsible adult at the interview, but this may have to be requested if the young person has turned 18. If the young person is under 18 the Legal Aid Agency funds the immigration adviser and their own interpreter to be present at the interview. If they have turned 18, the Legal Aid Agency will not fund the immigration adviser to attend and the local authority should consider paying for this themselves. At the end of the interview, the young person will be notified of the deadline for reviewing and making comments on the interview transcript, as well as sending any further evidence they wish to be considered in support of their claim. Following the interview, the transcript and a recording of the interview will be sent to the young person's immigration adviser. It is extremely important the immigration adviser arranges a meeting to do this within the deadline.

Following this the young person will have to wait for a decision. Again, delays are very common but their immigration adviser should be proactive in challenging the Home Office if it is having an adverse impact on the young person's welfare. This may include sending a pre-action letter to the Home Office threatening a legal challenge, with supporting letters from relevant professionals. The young person could also be supported to contact their MP, who can make enquiries with the Home Office and ask for the case to be expedited.

When the decision arrives it will usually be one of the following outcomes;

- **Inadmissible**

From 1 January 2021 any asylum seekers who have travelled through a 'safe third country' may be given a notice that their claim may be 'inadmissible' in the UK. However, Home Office's current policy on Inadmissibility makes clear that unaccompanied asylum seeking children are "presently treated as not suitable for third country inadmissibility action". This includes "individuals whose age is doubted but who are being treated as children under the Assessing Age instruction". Therefore, if a young person receives notice that their claim is being treated as inadmissible they should be supported to access legal advice and challenge this urgently.

- **Grants of refugee status / humanitarian protection**

Young people who registered an asylum claim before 28<sup>th</sup> June 2022

These young people will have their cases dealt with under the old immigration rules, with those who are successful in their asylum claim being granted Refugee Status. In cases where criteria for recognition as a refugee is not seen to be satisfied, the Home Office may grant a young person Humanitarian Protection on the basis that they would be in danger if returned to their country of origin. Both forms of status will normally last for 5 years and will include the right to work, recourse to public funds and access to family reunion. They will also be eligible to apply for settlement on a protection route (also referred to as 'settlement protection') after having permission to stay for 5 years.

#### Young people who registered an asylum claim on, or after, 28<sup>th</sup> June 2022

Since the implementation of the Nationality and Border's Act 2022 those who are successful in their asylum claim will be treated differently depending on how they reached the UK.

The Act states that a refugee will fall into Group 1 refugees if they have come directly from the country where their life or freedom was threatened, and they have presented themselves to the authorities immediately. All other refugees will fall into Group 2. Given the lack of safe and legal routes to the UK, this will be impossible for the vast majority of asylum seekers, meaning most will find themselves in Group 2 unless they are able to show that there were 'exceptional circumstances' preventing an asylum application being made in any country they passed through on the way to the UK.

Group 1 refugees will be granted refugee permission to stay. As before, refugee permission to stay will normally last for 5 years and will include the right to work, recourse to public funds and access to family reunion. They will also be eligible to apply for settlement on a protection route (also referred to as 'settlement protection') after having refugee permission to stay for 5 years.

Group 2 refugees will be granted temporary refugee permission, which will normally last for 30 months and may find their right to work, and recourse to public funds affected. They will also only have limited family reunion rights. The conditions attached to temporary refugee permission to stay may change at a later point. A recipient of temporary refugee permission to stay will be able to apply for further permission to stay every 30 months, and will not be eligible for settlement on a protection route after 5 years. With this route to settlement denied, they may have to ask the Home Office for a discretionary grant of settlement (which will mean showing the case is exceptional), and / or have to apply for settlement under other (more complicated and difficult to evidence) routes e.g. applications based on long residence.

An individual granted humanitarian protection will be granted temporary humanitarian permission to stay. This will normally last for 30 months and the conditions are identical

to temporary refugee permission to stay. The conditions attached to temporary humanitarian permission to stay may change at a later point.

Given the difficulties that these conditions will create for young people, it is crucial that before an initial decision is made the immigration adviser makes representations to the Home Office and obtains evidence to demonstrate a) any exceptional circumstances which prevented the child from applying for asylum whilst travelling to the UK, and b) as to why the young person should receive the benefits of full refugee protection, including a longer period of leave. Where the decision-maker decides the refugee falls into Group 2, there will be an opportunity to rebut this finding. After which, the decision-maker will make a final decision as to whether the refugee should be granted refugee permission to stay (Group 1) or temporary permission to stay (Group 2).

- **Young people refused asylum / humanitarian protection**

If the Home Office does not recognise the young person as a refugee or a person who qualifies for humanitarian protection, they may give the young person another type of temporary permission to stay in the UK (regardless of whether they claimed asylum before or after 28 June 2022). This permission is called 'UASC leave' and is only granted to unaccompanied asylum-seeking children where there are no adequate and safe reception arrangements in the country of origin. UASC leave is for a period of 2.5 years or until the young person turns 17.5 (whichever is shorter).

If the young person is not granted refugee status it is extremely important that their immigration adviser advises on limitations of UASC leave and Humanitarian Protection (particularly in cases post-28 June 2022) and their right of appeal. In most cases it will be in the young person's best interests to appeal a negative asylum decision. If their immigration adviser does not advise on appealing, or advises there is not sufficient merit, they should be supported to get a second opinion urgently, as they only have 14 days from the date the decision was sent to appeal. If the young person was granted UASC leave they will not lose this by appealing their refusal of refugee status.

The appeal process is extremely complicated, and may consist of several hearings at different courts (usually the First Tier Tribunal and the Upper Tribunal). [Right to Remain's Toolkit and information videos](#) are a useful resource to understand the process better. Therefore, it is vital that the young person is supported by their social workers or personal advisers throughout. This may include assisting the immigration adviser by gathering any support letters, social services records, and medical evidence that could be helpful in demonstrating the young person's needs and any vulnerabilities. The young person should also be accompanied to any hearings by a responsible adult. The social worker / personal adviser should also ensure that the young person is advised adequately by an immigration adviser on the outcome of any appeal, including the type of leave to remain they will receive if successful, and the merits of appealing to the next court if unsuccessful. If the young person's immigration adviser advises that they have been unsuccessful and they cannot appeal any further,

then the young person becomes Appeal Rights Exhausted (ARE). Any young people in this position should be supported to obtain advice on the merits of making a fresh asylum application, or any other types of applications, including one based on their family and private life.

Once a person turns 18 and they become appeal rights exhausted they may be asked to start reporting at the Home Office on a regular basis. This can be extremely stressful for a young person and so they may wish to be accompanied. The Home Office will usually grant this if the request is made by Social Services. Even if the young person is not accompanied, there should be an agreed plan in place so that the young person has someone to contact if the Home Office takes steps to detain them when reporting. In such instances the social worker / personal adviser will need to contact the young person's immigration adviser, or seek urgent legal advice, immediately.

Throughout the asylum process, social workers / personal advisers will need to record clearly the details of any outcomes and grants of leave in the young person's care plan / pathway plan, with the dates their leave to remain clearly stated, so that the young person is supported to make any further leave applications. It is also important to note that a young person will need to apply for further leave or indefinite leave to remain / settlement 1 month before any of the forms of status above expire. They should be assisted to obtain legal representation to do so around 4-6 months prior to the expiry of their leave. This should be noted in the pathway plan.

A young person's right to work and recourse to public funds will depend on their immigration status. When granted status, their immigration adviser will need to go through the various conditions and rights it carries in detail so that both the young people and their worker understands what they are entitled to. Young people without leave to remain (including those who are ARE or have pending applications) will not be allowed to work and do not have access to mainstream benefits, and so will be reliant on financial support from the local authority where eligible. However, the asylum process is also extremely complicated, and the rights and entitlements a young person may have at various points are subject to change. Therefore it is essential that social workers and personal advisers seek specialist advice to ensure that young people are supported through the process and are able to access anything they are entitled to.

## 7. Continuing support for Care Leavers

The Children & Social Work Act 2017 introduced new duties for local authorities towards care leavers and different categories of former relevant young people within The Children's Act 1989, including;

- Care leavers supported under section 23C; All care leavers aged between 18-21 years old AND those over the age of 21 who are pursuing a programme of education or training that is recorded in their pathway plan and has been approved by Social Services.
- Care leavers supported under section 23CA; All care leavers aged between 21 and 25 years old who want to return to their education and/or training
- Care leavers supported under section 23CZB; All care leavers aged between 21 and 25 years old who need help

Statutory guidance from the Department for Education, ['The Children Act 1989 guidance and regulations Volume 3: planning transition to adulthood for care leavers'](#) and ['Extending Personal Adviser support to all care leavers to age 25'](#), should be referred to for guidance on how these duties should be applied and where it may include financial assistance. However in general it should be noted that the changes impose a duty to provide financial assistance (accommodation and money) to care leavers being supported under section 23C (to the extent that a young person's education/training AND welfare needs require it) and 23CA (to the extent that a young person's education/training needs require it).

Migrant young people who have been granted leave to remain are entitled to the same duties of support and care from the local authority as any other care leaver.

Migrant young people who still have an outstanding application (including pending appeals) have the same duties of support and care from the local authority as any other care leaver. The responsibility to provide accommodation and financial support remains with the local authority (rather than the home office for example) until care leaving duties are discharged (based on case law SO Barking and Dagenham).

However, if a care leaver's application is refused by the Home Office and the tribunals and they become 'appeal rights exhausted' their care leaving rights might be affected. This is when they fall under one of the categories of excluded persons in Schedule 3 of the Nationality, Immigration, and Asylum Act 2002 (which places a bar on the provision of social services' support to a person who is 'in breach of immigration laws'), the local authority must carry out a Human Rights Assessment (HRA) in order to determine whether removing or denying someone's leaving care support would breach their human rights and if so, to continue to provide such support to the extent required to avoid this breach.

The local authority may be a member of [NRPF Connect](#), which shares information with the Home Office on former looked after children without recourse to public funds. It



also has published [guidance](#), and an accompanying [HRA template](#), which may be used when deciding when and how to carry out a Human Rights Assessment.

It's important to note that this guidance stresses that during the HRA process, new matters may be identified that need to be put before the Home Office which create a barrier to removal. For example;

- The person has never made an application to the Home Office.
- New circumstances, such as the birth of a child, or diagnosis of a medical condition, have arisen since the person made their most recent application to the Home Office.
- It appears that the person may be able to make a claim under the Immigration Rules, or that a child may be entitled to register as a British citizen, which may then enable their parent to pursue an application under the Immigration Rules.
- The person made their previous application without legal advice or did not appear to have good quality legal advice, made the wrong application, or did not lodge an appeal against a Home Office refusal when they had the opportunity to do so.

In these instances the young person will need to be supported to access good quality immigration advice. The guidance also states that if an application is submitted as a result of receiving legal advice, then this would need to be treated as a barrier to return until the claim is finally determined by the Home Office and/or appeal courts. When a barrier to return is identified, social services' support should be provided if the person qualifies for this.

If the person is advised by their immigration adviser that no further applications can be made, the outcome of such advice would need to be recorded in the HRA. It is at this stage that the assessment will need to consider whether or not terminating support will breach the young person's human rights.

The law as it has developed through the courts recognises that if a decision to terminate support forces a person to be homeless and/or destitute, this amounts to inhuman treatment and as such, is a breach of the person's human right to be free from inhuman treatment (Article 3 right).

Human rights assessments should cover:

- If support is terminated, what will happen to the care leaver if they remain in the UK and specifically what other sources of support can they access to avoid becoming homeless and/or destitute? Through court cases, it is now recognised that when looking at what will happen to a care leaver if their care leaver support is terminated and they remain in the UK, Social Services can not take into account the availability of asylum support (either s.95/s.4) as an alternative option.

- If support is terminated, can the care leaver reasonably be expected to return to their country of origin to avoid becoming homeless and/or destitute in the UK? The assessment should address both practical and legal barriers to their return.
- The impact of the decision to terminate support on all of the care leaver's human rights i.e. not just Article 3 (right not to be subject to torture or inhuman or degrading treatment) and Article 8 (right to private/family life)

Human rights assessments will look at whether the particular form of support the care leaver is receiving must be provided to avoid a breach of the care leaver's human rights and if the answer to this is yes, support is to be limited to the extent required to avoid the breach of their human rights.

Crucially, it must be remembered that this area of law is complicated, legislation and case law changes regularly, and it is illegal to give immigration advice when unaccredited, and so legal advice will need to be sought to establish what care leaving duties the young person may be entitled to before terminating support.

Each young person will have individual circumstances and needs, and so decisions will need to be made on a case by case basis. For example, it may be that the young person has needs that would warrant a community care act assessment. However, if a decision to terminate support has been made, this decision will need to be explained in person and then put in writing, giving at least 28 days notice from the date of receipt. At this time the young person should be directed to specialist organisations who can advise on them around their rights to challenge such a decision, whilst steps are taken to refer the young person to Migrant Help for Home Office support and accommodation (if eligible). This referral should include any relevant evidence in regards to vulnerability and local connection, so that any requests to remain in the area may be supported

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