

Report for: Corporate Parenting Advisory Committee, 4th July 2016

Item number:

Title: Implications for Looked after Children without a settled immigration status



Report authorised by : Jon Abbey
Director, Children's Services

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Ward(s) affected: N/A

**Report for Key/
Non Key Decision:** Non key

1. Describe the issue under consideration

At the meeting of CPAC on 5 April 2016, Members requested information on the areas outlined below:

- What are the Council's Roles and Responsibilities in relation to the immigration status of Looked after Children?
- Is there a policy position on whether the Council would support a challenge to an immigration status determination and, if so, on what grounds e.g. if the care leaver was attending university?

Members also requested some background data regarding numbers of looked after children and care leavers affected and their length on time in care.

2. Background information

2.1 This is a complex area of case law and statute and it is important to set out the legal duties and obligations placed upon Haringey Council and to consider the impact of the Immigration Act 2016.

2.2 The Council's roles and responsibilities

There is currently no specific statutory duty on the local authority to ensure young people access immigration advice. These considerations are usually highlighted in a child's looked after review and are specific to the needs of the individual child. The support identified can include signposting to appropriate

specialist legal advice as well as providing the necessary support and information to the Home Office if requested.

- 2.3 There are three main categories of looked after children and young people and care leavers who may be subject to immigration control.
- i) Unaccompanied Asylum Seeking Children (UASC)
 - ii) Children and young people brought into the UK from outside the EU as visitors and who remain in the UK after their period of leave expires and have become looked after children. This does not include children who have been privately fostered and are known to Children's Services as they are not looked after children. Children from families without recourse to public funds (NRFP) are also not looked after and do not fall into the purview of this paper.
 - iii) Children from within the European Union. European Economic Area (EEA) nationals can access public funds but may be prevented from claiming public funds if they do not satisfy the eligibility criteria attached to a specific welfare benefit or council housing allocation. Eligibility relates to the basis on which the EEA national is living in the UK. EEA nationals have a right to reside in the UK as long as they are exercising Treaty Rights in the UK; this means working (including being a job seeker), studying, being self-sufficient or otherwise being incapacitated and therefore unable to work. A former looked after child, in education and being supported by the local authority, may not be able to access income support or social housing.
- 2.4 Following the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act in 2012, legal aid funding to assist in applications for non-asylum immigration cases has been withdrawn. The Act was predicated on the basis that such matters were straightforward and did not require the assistance of a legal representative.
- 2.5 Asylum applications continue to be supported by legal aid.
- 2.6 The Council has general duties towards looked after children which are set out in section 22 of the Children Act 1989 and these apply irrespective of the child's immigration status. The general duties are:
- a) to safeguard and promote a child's welfare; and
 - b) to make such use of services available for children cared for by their own parents as appears to the authority reasonable in this case.
- 2.7 In considering a child's welfare the authority should also try to ascertain their wishes and feelings having regard to their age and understanding.
- 2.8 In the event that the child's immigration status is not resolved before the age of 16, this should be considered as part of the planning for the child's transition to

the leaving care service.

- 2.9 In order to qualify for leaving care services a child must have been looked after for at least 13 weeks between the ages of 14 and 16 and for some time after their 16th birthday.
- 2.10 The Care Leavers (England) Regulations 2010 sets out duties regarding care leavers who are relevant or former relevant children. These regulations were amended in 2014 by the Care of Unaccompanied and Trafficked Children statutory guidance. This guidance requires that these duties are fulfilled with particular regard to the child's circumstances and needs as unaccompanied or trafficked children. The Children Act 1989 requires that local authorities perform their duties under these regulations for all children, regardless of their immigration status, nationality or documentation.
- 2.11 The guidance and regulations S.23(A) and the Care Leavers Regulations 2010 and 2014 referred to above means that before a looked after child reaches their majority their immigration status should be part of the discussion in the care planning and statutory reviews including whether the Local authority should fund the legal and application costs to enable a child to:
- i) obtain appropriate legal advice; and
 - ii) make an application to regularise their status in the UK.
- 2.12 This is considered to be an element of the child's welfare. Whilst there is no specific provision in the Children Act 1989 or in Leaving Care legislation legal advice is that this is covered within the general provisions of S.23 (3) Children Act 1989 (referred to above).
- 2.13 There are significant consequences for care leavers whose immigration status remains unresolved in the UK at the age of 18. They are unable to access state support with housing, education and benefits. An application to the Visa and Immigration Service (VIS) in the Home Office for a right to remain is also treated less favourably once they reach 18.
- 2.14 If an application to VIS is made before age 18 one of the criteria is to have lived continuously in the UK for at least seven years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK.
- 2.15 If the application to remain takes place when the care leaver is aged between 18 years and 25, the bar is raised considerably as the criteria means they have to have spent at least half their life in the UK (discounting any period of imprisonment) or at least 20 years resident in the UK.

3. Policy and Procedure

- 3.1 Currently Haringey does not have a specific policy which addresses the issue of the Council's roles and responsibilities in relation to the immigration status of looked after children and care leavers, and cases have been dealt with on a case by case basis. A policy writer has been commissioned recently to update Haringey's policy and procedures guidance (TriX) and this is one area the writer

has been asked to address. The draft policy will be subject to senior officer review and legal advice.

3.2 Please see example below of a recently reported case to the LGO.

In a recent case, the Local Government Ombudsman (LGO) found against the Royal Borough of Greenwich regarding the immigration status of a former looked after child.

In January 2016 the LGO upheld a complaint by a former care leaver who had complained that her council had failed to act appropriately and in a timely manner to help her regularise her immigration status after she became a looked after child in 2010.

She had been brought to the UK aged 10 in 2006 by her mother. In 2010 the mother returned to their home country leaving her behind in the UK. She was accommodated later that year by the Royal Borough of Greenwich until she became 18 in 2013. The Council had refused to fund her legal fees.

The LGO found fault causing injustice and recommended that the Royal Borough of Greenwich:

- apologise to the care leaver for the identified failings;
- pay her £5,000 to acknowledge the distress caused by the failure to provide consistent support and advice to her as a 'looked after child', and by the uncertainty caused that, if it were not for those faults, her application to the Home Office for leave to remain in the UK would have been as a child, which may have given her a greater chance of success.

To improve its practice in future the Council were advised that within three months of the date of the Ombudsman's report they should:

- provide specialist advice and guidance to its social work staff on the different requirements of the immigration rules, as they apply to children seeking asylum and those seeking leave to remain, and on the Council's duties in this area.
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- To devise an action plan to ensure it gives full and proper consideration to its duties to all its 'looked after children' who may be in need of legal advice, to meet its obligations as their corporate parent to safeguard and promote their welfare. In particular to those 'looked after children' with complex immigration problems who may need suitable and timely legal advice regarding their immigration status. It should clearly record the reasons if it has refused to arrange legal advice in such cases.

3.3 Currently we are scoping out how many Haringey looked after children who may have an unknown immigration status. Haringey Children and Young Peoples Services are reviewing its policy and guidance in this area to ensure we are compliant with statutory guidance and best practice.

4. **Background data regarding numbers of looked after children and care leavers affected and their length of time in care**

Care Leavers

Unaccompanied Minors

4.1 There are several ways unaccompanied minors come to the attention of Haringey Children's Services. One is if vulnerable children are found in Haringey. The other route is through a system known as the "Croydon Rota" when unaccompanied minors are dispersed across London Boroughs. This ensures the fair distribution of this vulnerable cohort across all London councils.

4.2 The Care of Unaccompanied and Trafficked Children Statutory Guidance 2014 makes clear that a local authority has a duty to protect and support this cohort of vulnerable children. The guidance sets out the steps local authorities should take to plan for the provision of support for looked after children who are unaccompanied asylum seeking children and advises that social workers and personal advisors should work with care leavers' legal representatives and Home Office decision-makers to ensure that the young person understands the process and possible outcomes. and provide them with the support they need in this process.

- If support with immigration or asylum processes is required, the person providing this advice should be a registered Solicitor or registered with The Office of the Immigration Services Commission.
- A child's needs related to being an unaccompanied minor must be considered in the assessment of needs undertaken as part of the pathway planning process and this may include issues in relation to immigration. This should also address funding arrangements for education and training and how a young person's immigration status may limit education, training and employment opportunities.
- Planning cannot pre-empt the outcome of any immigration decision and may be based on:
 - a transitional plan during the period of uncertainty when the care leaver is in the UK without permanent immigration status;
 - a longer-term perspective plan should the care leaver be granted long-term permission to stay in the UK (for example through the grant of Refugee Status); and

- a return to their country of origin at any appropriate point or at the end of the immigration consideration process, should that be necessary because the care leaver decides to leave the UK or is required to do so.
- UASC who acquire Refugee Status or, Humanitarian Protection, are usually granted leave to remain for five years. Although it is not guaranteed that further leave to remain will be granted at the end of the five year period, care and pathway planning should primarily focus on longer term residence in the United Kingdom, in the same way as for any other British care leaver. Young people who are granted Discretionary Leave have the opportunity to apply for an extension to this Leave after three years or on reaching 17.5
- Pathway plans should always consider the implications for the young people if their application to extend their leave to remain is refused, or their appeal against refusal of that application is dismissed. In such circumstances the person may become ineligible for further support and assistance because of the effect of Schedule 3 of the Nationality, Immigration and Asylum Act 2002.

Care leavers without leave to remain in the UK

- 4.3 Care leavers in this position should have had their immigration status considered as part of their statutory reviews. If it was not and they transition to leaving care services, then the assessment of need at the point of transfer, which informs the Pathway Plan, should consider this issue and the steps which would be taken (including support from the local authority) to regularise this.
- 4.4 Legal Aid is not available to the young person and the question of funding falls to the local authority. There is no specific legislation which requires a local authority to pay for or regularise a child's immigration status pre or post 18 but it should be considered as part of the overall welfare consideration for a young person in light of its impact upon their lives.
- 4.5 The Children Act 1989 Guidance and Regulations, Volume 2: Care Planning, Placement and Case Review; and, Volume 3: Planning Transition to Adulthood for Care Leavers provides that care leavers should be given the same level of care and support that their peers would expect from a reasonable parent and that they are provided with the opportunities and chances needed to help them move successfully into adulthood.
- 4.6 The Guidance states that local authorities should have financial policies which include 'costs associated with obtaining important documents associated with identity (passports, birth certificates and driving licences') but falls short of specifically requiring local authorities to fund immigration advice and applications.

Impact of the Immigration Act 2016

- 4.7 This Act came into effect in May 2016. One of the drivers behind this Act was that the current Government does not consider that the Children Act 1989 is the appropriate mechanism for providing support to adult care leavers when the courts have determined that the care leaver has no lawful basis to remain in the UK and can return to their country of origin.
- 4.8 The Immigration Act amends Schedule 3 of the Nationality, Immigration and Asylum Act 2002 so that former looked after children, who have no immigration permission to remain in the UK when they turn 18, will be excluded from receiving all forms of care leaving support under S.23C, and S.24A & B of the Children Act 1989.
- 4.9 The local authority will therefore generally no longer have a duty as a corporate parent to safeguard the welfare of former looked after children who are visa overstayers, have never regularised their status, or are 'appeal rights exhausted' following an unsuccessful asylum claim when they were 18 or older. Instead, accommodation and financial support will be available to such destitute care leavers from either the Home Office or local authority when very specific circumstances apply.
- 4.10 The following care leavers will continue to be able to receive accommodation and financial support under the leaving care provisions of the Children Act 1989 when they turn 18 and until they are 21 or 25 (if pursuing a course of education or training):
- a young person who has indefinite leave to remain or limited leave to remain (including refugee status and humanitarian protection).
 - a young person who is receiving support and assistance under the care leaving provisions of the Children Act 1989 before the new scheme is implemented.
 - a young person who is still pursuing their first asylum application after they have turned 18.
 - a young person with refugee status granted by another EEA state, subject to a human rights assessment.
 - EEA nationals, subject to a human rights assessment (unless a British Citizen).

Data

- 4.11 In 2015 the Department for Education figures showed there were 2630 unaccompanied asylum seeking children in England. In Haringey we have 26 UASC over the age of 15 (four are 15 yrs old, seven are 16 years old and 15 are 17 years old) and 29 former UASC.

	2014	2015	2016 to 16.6.16	Total
UASC	7	13	6	26
Former 18+UASC care				29

leavers				
Total				55

- 4.11 The 16+ and Young Adults Service are providing support for seven European Union nationals aged 16-18 and eight European nationals aged 18 and over.

5. Summary

- 5.1 The Council is in the process of drafting a new policy and procedure in the light of recent legislative changes taking into account legal advice and the recommendations made in the Greenwich case by the Local Government Ombudsman.
- 5.2 On the specific question of whether the Council would support a challenge to an immigration status, determination would be on the basis of legal advice and the individual merits of the case.

6. Contribution to strategic outcomes

Priority 1 - Enable every child and young person to have the best start in life, with high quality education. Undertaking the tasks outlined in the summary will prevent future legal and financial challenges and, where appropriate, provide more settled outcomes for looked after children without immigration status.

7. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

Legal

The Children Act 1989 and associated legislation provide a general framework in relation to ensuring that local authorities provides for a child's welfare. It does not provide additional specific duties in relation to children whose immigration status has not been settled. Any policy in this area must ensure that it provides for the authority to take into account all relevant factors and to enable it to exercise its decision making in a reasonable, transparent and balanced way.

It is an area which, if left unaddressed, can lead to legal challenges against the local authority by way of Judicial Review.

8. Local Government (Access to Information) Act 1985

Background documents:

- Children Act 1989: <http://www.legislation.gov.uk/ukpga/1989/41/contents>
- Immigration Act 2016: <http://www.legislation.gov.uk/ukpga/2016/19/contents/enacted>

- Nationality, Immigration and Asylum Act 2002:
<http://www.legislation.gov.uk/ukpga/2002/41/contents>
- Legal Aid, Sentencing and Punishment of Offenders Act 2012:
<http://www.legislation.gov.uk/ukpga/2012/10/contents>
- Care Leavers (England) Regulations 2010:
<http://www.legislation.gov.uk/uksi/2010/2571/contents/made>
- Care Planning and Care Leavers (England) (Amendment) Regulations 2014: <http://www.legislation.gov.uk/uksi/2014/1917/contents/made>
- Care of Unaccompanied and Trafficked Children 2014:
<https://www.gov.uk/government/publications/care-of-unaccompanied-and-trafficked-children>

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