

Local authority support for unaccompanied asylum-seeking children

Separated children, including unaccompanied asylum-seeking children, should be supported by local authorities in accordance with their duties to children under the Children Act 1989. This factsheet outlines what the duties on local authorities are.

The system of support for children

Local authorities have duties to support all children 'in need' in their area. The basic scheme for supporting children in need is found in Part III of the Children Act 1989. Subsequent legislation, guidance and case law has further clarified local authorities' obligations. [1]

Section 17 of the Children Act 1989 requires local authorities to '(a) 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'. [2] Section 20 provides a specific duty to provide accommodation to a child who requires it. As well as this, under section 47 of the Children Act 1989 local authorities have a duty to make enquiries where they have reasonable cause to suspect that the child is suffering, or is likely to suffer, significant harm.

Adult asylum-seekers and families are provided with asylum support from the Home Office, but it is local authorities that are responsible for supporting unaccompanied asylum-seeking children. Local authorities receive funding from the Home Office for this, paid at a daily rate, by sending monthly returns, though this funding does not necessarily cover all the costs involved. [3]

Who is a 'child in need'?

A child is anyone who has not reached their 18th birthday. [4] Section 17(10) and (11) of the Children Act 1989 defines a child in need in broad terms, including all children with a disability. A child in need is defined as a child who is unlikely to achieve or

maintain a satisfactory level of health or development, or whose health and development will be significantly impaired, without the provision of services, or any child with a disability.

A child can be 'in need' for a huge variety of reasons, including, in the case of unaccompanied asylum-seeking children, because they have no parents or carers in the UK to support them and often no financial means at all. It is important to understand that a child is in need due to circumstances, not through any fault of their own. What matters is their need for support, not how they came to be in need.

Immigration status is irrelevant to whether a child is in need; duties are owed to all children regardless of where they come from.

Accessing support

Some unaccompanied asylum-seeking children come to the attention of local authorities very soon after their arrival in the UK, for example if the local authority is contacted by immigration officers at a port of entry. The Home Office must refer an unaccompanied child who claims asylum to a local authority if they are not already known to one. [5] Unaccompanied children who claim asylum at the Asylum Screening Unit in Croydon are sometimes allocated through a rota system to different local authorities across London. In other cases the referral of a child to a local authority children's social care team might be made by the police, another professional or a member of the public. Children's social care teams within local authorities should have a process in place for referrals. Once a referral is received, a social worker should make a decision within one working day about the type of response that is required. [6]

If a child has not had contact with the relevant local authority but is in need of support, they should present to the local authority. (Please see the factsheet, '[Which local authority is responsible for an unaccompanied asylum-seeking child?](http://bit.ly/1cBhM10)' at <http://bit.ly/1cBhM10>)

If any professionals are supporting them at that time, they should accompany the child to the local authority to help them.

A child in need of support, especially a child from another country, cannot be expected to know what they are entitled to, so it is very important that local authorities have systems for identifying children who may be in need [7] and that other professionals working with children assist them to access appropriate support. There are potentially many children who meet the definition of a 'child in need' and are eligible for local authority support who are not accessing it.

A barrier to a child accessing local authority support is often the local authority not accepting the age of the child and disputing that they are a child at all to whom duties are owed. For [guidance on age disputes](http://www.childrenslegalcentre.com/index.php?page=fags_age_assessment), see http://www.childrenslegalcentre.com/index.php?page=fags_age_assessment.

Assessment of the child's needs

If a child is potentially in need of support from a local authority, there must be a process of assessment of the child's needs. [8] Local authorities must assess a child's needs thoroughly under section 17 of the Children Act 1989 to determine what action to take and what services to provide. Social workers are trained in such assessments.

On 15 April 2013 new statutory guidance was introduced on the legal requirements for keeping children safe and promoting their welfare, called 'Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children'. [9] This guidance emphasises that assessment should not be a one-off event but a continuous process and provides guidance on conducting assessments. [10] The guidance says that assessments for asylum-seeking children require particular care. [11] The social worker should complete the assessment within 45 working days of the referral. [12]

The social worker conducting the assessment and their manager should agree a care plan (with other professionals as relevant) and discuss this with the child, with the plan setting out the services to be

provided, the actions to be taken, by whom and for what purpose. [13] The plan should be regularly reviewed.

Under the Equality Act 2010, public authorities have a responsibility to have due regard to the need to eliminate discrimination and promote equality of opportunity. This applies across the board, including in the process of undertaking assessment and identifying needs. As stated in the statutory guidance, '[n]o child or group of children must be treated any less favourably than others in being able to access effective services which meet their particular needs'. [14] An unaccompanied asylum-seeking child should not face any disadvantage compared to any other child.

For more information on the services provided to children in need, see the factsheet, '[Services provided to unaccompanied asylum-seeking children](http://bit.ly/1cBhM1O)' at <http://bit.ly/1cBhM1O>.

Section 20 accommodation and 'looked after' status

The general duty to support children in need is owed under section 17 of the Children Act 1989. This sets out general requirements for local authorities. Supplementing this, section 20 of the Children Act 1989 contains a specific, mandatory duty to provide accommodation to a child who meets certain criteria. The criteria are that a child requires accommodation because there is no one with parental responsibility for them, because they are lost or have been abandoned, or because the person who has been caring for them is prevented from providing them with suitable accommodation or care. [15]

If a child requires accommodation they must be accommodated by the local authority under section 20 of the Children Act 1989. Being accommodated under section 20 has implications not only for the support they receive as 'looked after' children, but also for their eligibility for leaving care support as they progress to adulthood.

For more information, see the factsheet, '[Support provided to unaccompanied asylum-seeking children](http://bit.ly/1cBhM1O)' at <http://bit.ly/1cBhM1O>.

Parental responsibility

A local authority supporting an unaccompanied asylum-seeking child will not acquire parental responsibility for the child unless the local authority takes care proceedings under section 31 of the Children Act 1989.

Child's participation

The wishes and feelings of the child should be considered. The UN Convention on the Rights of the Child provides for respect for the views of the child and for those views to be taken into account. [16] Local authorities' consideration of the child's wishes and feelings is also specifically provided for in the Children Act 1989. [17] The child should feel that they are engaged in the process when adults are making decisions that affect them. Having an advocate can help with this.

Complaints and challenges

The obligations on local authorities to children in their area are extremely important and the consequences of local authorities not meeting their duties can be incredibly serious. If a local authority fails to comply with its duties to a child, such failures should be addressed as soon as possible.

If a child is not receiving the appropriate support they can be helped to use the local authority's complaints system. Each local authority must have a complaints procedure. [18] A complaint can also be made to the local government ombudsman (this should normally be made within 12 months). Beyond these mechanisms, the main means by which the actions of local authorities are scrutinised is through the judicial review procedure, a process that involves making an application to the Administrative Court, part of the High Court, allowing the court to review whether the conduct of public bodies is in accordance with the law. Legal aid is available for community care and public law, so the first step where legal action is necessary is (with the child's consent) to make a referral to a community care or public law solicitor who provides services under

legal aid. For more [information on legal representation](#), see

www.childrenslegalcentre.com/index.php?page=legal_advice_and_representation.

Notes

[1] See especially the Children (Leaving Care) (England) Act 2000 and the Children Act 2004

[2] Section 17(1), Children Act 1989

[3] Home Office 'Grant instructions to local authorities financial year 2013/14 Home Office grant: unaccompanied asylum-seeking children', available at

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithasylumseekers/local-authority-grants/uasc2011/grant-instructions.pdf?view=Binary>

[4] Article 1, United Nations Convention on the Rights of the Child. See also section 105, Children Act 1989

[5] Part 6.4, Home Office Asylum Process Guidance, 'Processing an asylum application from a child', available at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/processingasylumapplication1.pdf?view=Binary>

[6] Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children', page 26

[7] Paragraph 1, Part I, Schedule 2, Children Act 1989 specifies a duty to take 'reasonable steps' to identify 'the extent to which there are children in need' in the local authority's area

[8] The House of Lords held that a duty to assess was implicit in the Children Act 1989 in *R (G) v Barnet LBC* [2003] UKHL 57. See also 'Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children', page 16 and following

[9] This new guidance replaces the previous guidance: 'Working Together to Safeguard Children' (2010), 'The Framework for the Assessment of Children in Need and their Families' (2000) and 'Statutory guidance on making arrangements to safeguard and promote the welfare of children under section 11 of the Children Act 2004 (2007)

[10] 'Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children', page 16 and following

[11] *ibid*, page 30

[12] *ibid*, paragraph 35

[13] *ibid*, paragraph 50

[14] *ibid*, paragraph 15

[15] Section 20(1), Children Act 1989

[16] Article 12, United Nations Convention on the Rights of the Child

[17] Section 20(6), Children Act 1989; section 17(4A), Children Act 1989, inserted by section 53(1), Children Act 2004

[18] Section 26, Children Act 1989