

Asylum support - Unaccompanied children seeking asylum

Spring 2007

The Home Office defines an unaccompanied child as "a person who, at the time of making the asylum application, is under 18 years of age or who, in the absence of documentary evidence, appears to be under that age, and who is applying for asylum in his/her own right and is without adult family member(s) or guardian(s) to turn to in this country." This definition excludes children who are cared for by a distant relative, or a sibling who is also little over the age of 18.

Unaccompanied children seeking asylum are not supported in the same way as adult asylum applicants, see *asylum support*. Under the Children Act 1989, support for unaccompanied children is the responsibility of local authority social services departments, regardless of the child's immigration status.

Social services' duty of care includes assessing the needs of the unaccompanied child. Social services should meet the assessment deadlines, as defined by the Department of Health guidance (see: the Department of Health website at: www.doh.gov.uk > publications and statistics > publications > publications policy and guidance > Framework for Assessment of Children in Need and their Families)

- In the assessment process, Social Services will determine whether the child's needs fall under Section 17 or Section 20 of the Children Act 1989. This is very important as it will determine the level of support provided not only up to, but also immediately after the young person turns 18.

Section 17 support

Children supported under Section 17 will not necessarily receive any services other than payment for subsistence and basic accommodation. This may be in a bed and breakfast or a hostel. Section 17 is designed to support children where there is already a carer, and should not be used to support unaccompanied children who have greater needs than this.

Section 20 support

Section 20 of the Children Act 1989 places a duty on a local authority to 'look after' a child if they appear to be in need, by providing them with services and accommodation.

- Children should be cared for under Section 20 of the Children Act 1989 throughout the assessment process as stated in Local Authority Circular (LAC (2003) 13) issued by the Department of Health in June 2003

For more information, see the Refugee Council briefing *Support arrangements for 16 to 17 year old unaccompanied asylum-seeking children* available in the publication section of the Refugee Council website: www.refugeecouncil.org.uk > policy & research > briefings > 2003 > support for unaccompanied minors

What can I do if...

My client is receiving section 17 support (instead of section 20 as recommended)?

- Talk to the social worker who assessed your client to learn why your client was not assessed as needing section 20 support.
- If the assessment was made for policy reasons and does not reflect the child's needs, then the assessment should be challenged. You may do this directly with the social services department, or enrol the help of a welfare solicitor to challenge the social services assessment for your client to receive section 20 support.

My client is a young person who was refused support by social services because s/he has been assessed to be an adult?

A young person refused support by social services should obtain a letter or statement from social services to present to the Home Office's Borders and Immigration Agency (BIA) for asylum support. When the BIA get an application from an asylum seeker who declares that s/he is under 18, but is refused support from social services, s/he will be deemed to be an adult for asylum support purposes, until s/he is able to prove otherwise. The BIA should not house people as adults whose papers say that they are under the age of 18, unless they also have a statement from social services stating that they have been assessed as over the age of 18

- It may be that the age assessment can be challenged. After receiving the refusal of support letter from social services, seek advice from:
 - The Refugee Council Children's Panel
 - The young person's legal representative
 - The local one stop service

Turning 18

'Looked after' children

Asylum-seeking children who were 'looked after' for 13 weeks or more (on a care order or accommodated under Section 20 of the Children Act 1989), are entitled to leave care support from the local authority that looked after them, under the Children (Leaving Care) Act.

- Care leavers can apply for BIA asylum support to meet their basic needs. They are also entitled to cash for other expenses from their local authority such as travel costs and educational items.
- If the young person is entitled to BIA asylum support, the BIA will pay the local authority so that they can continue supporting the applicant. This means that they will not be dispersed to other areas of the country.

Children in need

Young asylum seekers supported under section 17, do not qualify for leaving care support on turning 18. If they are still waiting for a decision on their asylum claim, the young asylum seeker will be

treated as an adult when they turn 18. Therefore, the young asylum seeker will go straight on to BIA asylum support and their social services support will cease completely.

- If your client needs BIA accommodation, s/he will be dispersed.

What can I do if...

My client is an unaccompanied child and will turn 18 soon?

Unaccompanied asylum seeking children who, on reaching the age of 18, have an outstanding application for asylum (including those awaiting the outcome of an appeal) can apply to the BIA for asylum support.

Even if the local authority has continuing responsibilities under the Children (Leaving Care) Act 2000, an application for BIA asylum support should be made so that the local authority can be reimbursed for some of its expenses by the BIA, see the BIA asylum policy bulletin 29:

www.ind.homeoffice.gov.uk > applying > asylum > asylum support policy bulletins.

- The social worker should complete this application with the child.

My client has exhausted all appeal rights on their asylum application?

Those young people that have exhausted all appeal rights on their asylum application by the time they reach their 18th birthday (17.5 if decision was served after 1 April 2007) will not be eligible for BIA asylum support.

Thus, your client may be solely dependent on Children (Leaving Care) Act support from social services or, in exceptional circumstances, section 4 support (see *Asylum support* for more information about section 4 support)

- If your client was supported under section 17 and is therefore not entitled to Children (Leaving Care) Act support, send your client to his/her local one stop service for assistance applying for section 4 support (see *Contacts*)

My client is turning 18 and social services have terminated support?

You may ask your social services department to reconsider a decision to stop support at 18.

- If unsuccessful, your client may wish to seek legal advice.

Section 55 and turning 18

Unaccompanied asylum seeking children, who arrived after 8 January 2003, may be subject to the Section 55 test in the same way as adult asylum seekers, when they turn 18.

As with adults, it is unlikely that the young person would be denied accommodation and support if s/he has no other means of support (to prevent a breach of his/her human rights).

What can I do if...

My client receives a negative decision from BIA under section 55?

You should help your client find a legal adviser experienced welfare issues, who can support your client in requesting to have their application for support reconsidered.

- For those young people entitled to help under the Children (Leaving Care) Act 2000, Social Services will not receive funding from the BIA for the service they provide. However, they should still be supported by social services as stated in the Children (Leaving Care) Act 2000. However, once the duty of care under this act ends, the young person would be destitute (either on the young person's 21st birthday or if in full time education, on their 24th).
- Young people with no entitlement to leaving care support or BIA asylum support will be in the same situation as other adults refused BIA asylum support (see *asylum support* for more information).
 - If your client is part of the NAM system, speak to your clients Case Owner.
 - Any decision to refuse support under section 55 should be challenged. Speak to an advisor at your one stop service or, if necessary, speak to the client's legal advisor (see *Contacts*).
 - Most problems can be avoided if the child is accompanied by an adult who is aware of all the child's support issues. The adult can ensure the young person is clear about his/her need for support once local authority support is terminated.

Applying for benefits

When a young person receives a positive decision on his/her asylum claim (refugee status, humanitarian protection) after turning 18, they are entitled to work and/or apply for mainstream welfare benefits (see *asylum decision* for more information)

- Your client will need to provide proof of status. Ensure your client takes his/her Immigration Status Document and any relevant letters from the Home Office.

What can I do if...

My client has applied for an extension of leave and needs to apply for benefits?

Your client will be asked for proof of status as well, but s/he will not have any papers from the Home Office that confirm your client has applied for an extension of leave.

- The Department of Work and Pensions has agreed to accept letters from the solicitor to confirm an individual has applied for extension of leave. Encourage your client's solicitor to write a letter when applying for extension of leave.

Further resources

For advice on unaccompanied asylum-seeking minors, contact the Refugee Council Panel of Advisers for Unaccompanied Refugee Children on 020 7346 1134.

Connexions

Provides support and advice to young people aged 13-19 and to advisors working with young people.

www.connexions.gov.uk

Hillingdon Judgment

For more information about the implementation of the Hillingdon Judgment, see Children's Social Services Local Authority Circular (2004) 6

www.doh.gov.uk > publications and statistics > letters and circulars > local authority circulars > LAC (2006) 6: Unaccompanied Asylum Seeking Children - Leaving Care Costs: 2004-05

Children's Legal Centre

A national charity concerned with law and policy affecting children and young people

www.childrenslegalcentre.com