



Ringling the changes:

The impact of guidance on the use of Sections 17 and 20 of the Children Act 1989 to support unaccompanied asylum-seeking children

Refugee Council

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About the Refugee Council

The Refugee Council is the largest charity in the UK providing help and advice to asylum seekers and refugees. We also work with them to ensure that policy makers address their needs and concerns. The Refugee Council Panel of Advisers for Unaccompanied Refugee Children has ten years' experience of assisting unaccompanied children during the asylum process. Through our services to children and our policy work, we work closely with many agencies assisting children involved in the asylum process.

Introduction

The level and nature of support for children and young people seeking asylum has been an issue of great concern to many over recent years. Concern has focused mainly on the distinction between Sections 17 and 20 of the Children Act 1989, which define the duties of local authorities to provide support in accordance with a child's needs.¹

Section 17 provides a basic definition of a 'child in need' and places a duty on a local authority to provide a service appropriate to the child's needs. Local authorities are allowed to arrange for someone else to act on behalf of the local authority to provide these services. They are also allowed to give cash as well as other services.

Section 20 of the Act places a duty on a local authority to 'look after' a child in need, if they appear to need such level of service. The duty involves consulting with a child about a placement, keeping siblings together, and a general duty to safeguard the welfare of the child. The Children Act regulations give clear instructions on the writing and reviewing of a care plan for a child 'looked after', as well as on the regularity of visits by a named social worker and on access to records. Section 20 also requires a local authority to provide a service to those leaving care.

In the past, most unaccompanied asylum-seeking children received the less protective level of support under Section 17 of the Children Act. In June 2003, the Department of Health issued a Local Authority Circular, LAC (2003) 13 following an amendment to the Children Act. Part of the purpose of this circular was to clarify the Government's policy on the responsibilities of social services departments towards this group of young people.

The circular states that:

“Where a child has no parent or guardian in this country, perhaps because he has arrived alone seeking asylum, the presumption should be that he would fall under the scope of section 20 and become looked after, unless the needs assessment reveals particular factors which would suggest that an alternative response would be more appropriate. While

¹ For more information refer to the *Refugee Council's Information Service* or the briefing *Support arrangements 16 to 17 year old unaccompanied asylum seeking children (2003)* see: www.refugeecouncil.org.uk/publications

the needs assessment is carried out, he should be cared for under section 20."

This report reveals the initial findings of a mapping exercise looking at the impact of Local Authority Circular (LAC) (2003) 13² on the level of support given to unaccompanied children seeking asylum.

Any attempt to measure the impact of this guidance must of course take into account other factors relating to the issue of care for these children and young people. In August 2003, the High Court reviewed the use of Section 17 (rather than Section 20) to support unaccompanied children³. The judgement is commonly referred to as the Hillingdon judgement as it relates to the cases of four young people supported by the London borough of Hillingdon.

The judgement found that, although the young people concerned were nominally receiving services under section 17, their support needs and provision had, in fact, amounted to being 'looked after', as defined by Section 20. As recipients of care under Section 20, the children also acquired associated rights to leaving care services under the Children (Leaving Care) Act 2000, which are activated by the provision of support under Section 20.

The Hillingdon judgement therefore brought some clarity to this previously confused area of policy. Services provided to unaccompanied children seeking asylum would largely be delivered through Section 20 of the Children Act 1989 (such as taking them into public care), thus increasing the responsibilities of local authorities to this group.

Measuring the impact

The Refugee Council and Save the Children have long been associated with lobbying for unaccompanied asylum-seeking children to be provided with a level of support appropriate to their needs. LAC (2003) 13 was broadly welcomed and both organisations were keen to assist local authorities to respond to the guidance. A two-stage piece of work was planned to assess the implementation of the guidance. The first stage would be a short mapping exercise to gain an understanding of what the response within local authorities had been. This report outlines those findings.

The second stage, which has yet to be completed, will be more in-depth and analytical, looking at how local authorities managed to rise to the challenge, and what barriers they had to overcome in order to provide the appropriate level of support. Where the policy and practice have not changed, the reasons for this will also be explored. The findings and conclusions of both stages of research will be published in a final report by Save the Children in 2005.

² *Local Authority Circular LAC (2003) 13* was issued by the Department of Health on 2 June 2003. It can be found on the Department of Health website at: www.doh.gov.uk/publications/coinh.html, or by calling 0870 155 5455 and quoting LAC (2003) 13.

³ The transcript of this judgement can be viewed at: www.bailii.org/ew/cases/EWHC/Admin/2003/2075.html

Stage one

The aim of this stage of the study was to gain an initial insight into what was happening in this area of work. We were interested to find out what, if any, changes had been made to the services provided to unaccompanied children and young people seeking asylum following the circulation of LAC (2003) 13. We set out to ask those providing these services about any resulting changes that had taken place in the areas of policy, practice and the structure of service delivery.

In August 2004, we sent a letter to local authorities across England introducing the exercise and requesting their co-operation. During September and October the Refugee Council spoke to 19 local authorities across England. All individuals interviewed were in each case involved in the delivery of services to unaccompanied asylum seeking children, usually a team manager or service manager. All participants were asked the same set of questions.

Findings

The six main questions put to participating local authorities required a 'yes' or 'no' answer. Four of the six questions had a subsidiary question asking for more detail on answers already provided. The questions are listed below, followed in each case by a summary of the responses.

1. Has the service you provide to unaccompanied children seeking asylum changed at all since June 2003?

Of the 19 authorities, only four had not made any changes at all to their service. The remainder reported that they had changed or were in the process of making changes. Whilst some local authorities stated that other factors had led to a change, for example, an increase or decrease in numbers of young people seeking a service, most said that the change had been in response to the LAC (2003) 13 or the Hillingdon judgement. Several respondents specified the date of the change, although this question was not asked. Some stated that the change was made in response to the Hillingdon judgement as opposed to the government circular.

The subsidiary question asked about the age of the children affected. Almost all respondents said that the change in service related mainly to the over 16s, although the structural changes described in the answers to question 3 affected a wider age range.

2. Has the local authority policy changed?

14 respondents reported a change in policy, although it was pointed out by three of these that their policy had not yet been fully implemented. Those that reported a policy change were asked to describe it. For most, the changes were made in order to adopt the guidance provided by LAC (2003) 13 so that most unaccompanied young people aged 16 to 17 would be looked after under Section 20 of the Children Act 1989.

However, within this group, there was a range of practice. One respondent described the policy as being “more likely to decide to look after”. Another local authority adopted a policy of asking the young person what level of service they want first, giving them the opportunity to consult their legal representative.

Where policies were still being developed, respondents stated that all unaccompanied children would be offered a leaving care service. Some were still waiting for senior managers or the legal department within the social services department to advise on policy.

3. Has any change been made to the way services are delivered?

By far, the most common response to this question was that service delivery for unaccompanied children was being or had been reviewed and/or restructured. Six local authorities had completed a whole-scale review or established a new team. In another four cases the process of review had not been completed at the time of questioning. Minor changes had taken place in five other areas. These included making a minor change to the leaving care service or taking on one additional member of staff. In only four local authorities was the structure the same as it had been previously.

The result of the review was in most cases a consolidation of services. Some services were moved into the jurisdiction of children’s services for the first time. Some of the authorities with higher numbers of young people had taken on large numbers of extra staff. Several respondents mentioned an increased involvement of leaving care services, as they forecast an increased number of care leavers in the future. Many were still struggling to recruit enough new professionals to fully implement policy changes.

4. Do you support all unaccompanied children under Section 20 until the assessment of need is completed?

Responses to this question were largely a simple ‘yes’ or ‘no’ answer. Ten respondents said that they always provided support under Section 20 whilst carrying out a needs assessment, with no exceptions. Another two respondents said that their departments only supported unaccompanied children under Section 17 during this period if the young person’s age was in doubt. One respondent said that current practice was to use Section 20 in a minority of cases but that when the policy was fully implemented their intention was to follow clear guidance on this. Six local authorities said that they do not support 16 to 17 year-olds under Section 20 whilst their needs are being assessed.

5. Do you have any unaccompanied young people supported under Section 17?

Only two local authorities were not supporting any unaccompanied young people under Section 17. Of the remainder, three local authorities said that young people supported under Section 17 would receive leaving care support once they reached 18. This included a local authority which had previously stated that their policy did not change after June 2003 (in answer to question 1), which implies that this has always

been their policy. Another said that they continued to support over 18 year-olds but that it was not formally as care leavers.

Several local authorities had criteria for supporting young people under Section 17. Two used Section 17 to support those young people they believed were probably adults but to whom they had given some benefit of the doubt. Rather than ending the provision of service altogether they decided to exclude them only from a 'looked after' service.

Three authorities were supporting unaccompanied asylum seekers who had elected to be supported under Section 17. The descriptions of young people making this decision varied from "a couple" to "most of our young people are choosing this level of support".

Three local authorities explained that where a young person had settled into independent living they had remained on Section 17 support, rather than being moved into the 'looked after' system.

6. Have you applied the guidance retrospectively?

This question was of course only relevant to those 15 authorities that had reported a change in their service (answered "yes" to question 1). Of these, 13 said they had applied the guidance retrospectively to those young people under the age of 18 who were being supported at the time of the change. One local authority was still reviewing cases given support under Section 17. The other was only reviewing existing cases if challenged by the young person's legal adviser.

The subsidiary question asked about providing leaving care support to those who, having apparently been supported under Section 17 (but actually received services amounting to Section 20 support), had been excluded from services under the Children (Leaving Care) Act. This question related more to the Hillingdon judgement than the Department of Health guidance.

Ten respondents had only provided a leaving care service to those who had returned to request it. The remainder had made some efforts to contact people, with limited success, although one had written to last known addresses and one had managed to contact some young people through their place of study. Two or three respondents commented that fewer young people than expected had returned requesting a leaving care service.

Conclusions

The local authorities participating in this study are not a representative sample, although they were chosen because of their differences; some had larger numbers than others, and the sample includes both urban and rural areas. They are spread throughout England. Any conclusions therefore can only be indicative of the wider picture.

Disparity amongst the responses indicates that the guidance provided by LAC (2003) 13 has not been as effective as we may have hoped. A year on from the period of

policy change instigated by this and the Hillingdon judgement, there is still a lack of consistency in the response of local authorities to unaccompanied children seeking asylum.

However, it is clear that many changes have been made. Senior managers and, in some cases, legal departments and directors of social services have been involved in decisions aimed at improving the service to children and young people. This indicates that some notice has been taken of the guidance issued in LAC (2003) 13 as well as the Hillingdon judgement.

We can look forward to further evidence and analysis when Save the Children report on the findings from stage two of this piece of work.

Sincere thanks to the representatives of the local authorities who agreed to take part in this exercise. Your time and honesty is very much appreciated.

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