

Unaccompanied Asylum Seeking Children

Policy and Procedure

Document last updated: 5/11/2015
Document review due: 10/10/2018

Unaccompanied Asylum Seeking Children Policy and Procedures

About this document

<u>Title</u>	Unaccompanied Asylum Seeking Children Policy & Procedures
<u>Purpose</u>	To set out the policy approach by Essex County Council to support and safeguard children who enter Essex unaccompanied by an adult.
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<u>Approved by</u>	Jenny Boyd, Director for Local Delivery
<u>Date</u>	05/11/15
<u>Version number</u>	5.0
<u>Status</u>	Final
<u>Review frequency</u>	Every 3 years
<u>Next review date</u>	10/10/2018

Table of Contents

Section	Page(s)
Definitions	4
Legal Context	4-7
Interagency Working	8-9
Procedures	10-19
Support with the Asylum Claim	20-21
Finance	22
Education	22-23
Health	23-24
Confidentiality and Consent	25-26
Appendix One - Flowcharts	27-28

1. Policy Statement

a) Principles and Values

The key principles and values underpinning practice in relation to unaccompanied asylum seeking children and young people from abroad, or those accompanied by someone who does not hold parental responsibility are:

- Children / young people from abroad are children first - this can often be forgotten in the face of legal and cultural complexities.
- Children / young people arriving from abroad who are unaccompanied or accompanied by someone who is not their parent should be assumed to be children in need unless assessment indicates that this is not the case.
- Assessment of need should include a separate discussion with the child or young person in a setting where, as far as possible, s/he feels able to talk freely, aided by the use of an appropriate interpreter, who must be used where needed.
- Assessing the needs of these children and young people is only possible if their legal status, background experiences and culture are understood, including the culture shock of arrival in this country.
- An avoidance of 'interrogating' the child /young person.
- Safeguarding and promoting the welfare of these children / young people must remain paramount for all agencies in their dealings with this group.
- The term 'Child' in this document describes a person under 18 years of age.
- We will ensure that in all our work with unaccompanied asylum seeking children we will aim to meet all their cultural, ethnic and religious needs.

2. Definitions

Asylum Seekers

The term 'asylum-seeker' is used to describe a person who has made a claim for asylum within the meaning of s16(3) Nationality Immigration Asylum Act (NIAA) 2002 and is awaiting a decision from the Home Office.

Unaccompanied Asylum Seeking Children

Unaccompanied Asylum Seeking Children are children who enter the country and apply for asylum and meet the following criteria:

- is, or (if there is no proof) appears to be, under eighteen
- is applying for asylum in his or her own right
- has no adult relative or guardian in this country

Or those young people who enter the UK accompanied but become unaccompanied during their stay in the UK and subsequently claim Asylum in their own right.

Accompanied children

Accompanied children may have travelled either legitimately or illegitimately with their parents. Others may be brought in by adults either purporting to be their parents or stating that they have the parents' permission to bring the child. There are many legitimate reasons for children being brought to the UK, such as economic migration with their family, education, re-unification with family or fleeing a war-torn country.

Trafficked children

The United Nations protocol to Prevent, Suppress and Punish Trafficking in Persons (the Trafficking Protocol 1) defines trafficking as:

"The recruitment, transportation, transport, harbouring or receipt of persons, by means of the use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitutes of others or other forms of sexual exploitations, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs"

(For advice on safeguarding children from trafficking see:
everychildmatters.gov.uk/safeguardingtraffickedchildren)

Child trafficking is defined as:

"The act of recruitment, transportation, transfer, harbouring or receipt of a child (defined as under 18) for the purpose of exploitation either within or outside the country"

Unlike trafficking in adults, there is no requirement that the child have been deceived or coerced by the trafficker: a child's 'consent' to go with a trafficker is not recognised in law.

The vast majority of irregular migrants coming to the UK are smuggled rather than trafficked. People smugglers may profit by transporting irregular migrants for money, but do not attempt to exploit migrants once they reach their destination country. In sharp contrast, traffickers profit through exploitation of their victims, controlling them by:

- Threatening or using violence against the victim or their family
- Debt bondage (a form of slavery where people are forced to work for little or no money in order to pay back debts, in this case debts 'owed' to their traffickers)
- Using threats relating to the victims immigration status (trafficking victims may be terrified of the Immigration Service and of deportation)
- Exploiting emotional attachments, such as 'boyfriends' trafficking women for the purposes of sexual exploitation
- Exploiting the victims vulnerability and lack of alternative options

Some children may have been trafficked and brought into the country by their facilitator, but then claim asylum as unaccompanied children. This may happen after coercion by their facilitator and by doing so they are legally granted permission to reside in the UK entitling them to welfare benefits.

Some groups of children will avoid contact with the authorities as instructed by their traffickers. For example, it is well documented that some children 'disappear' into their ethnic communities once they arrive in the UK. It is also believed that some traffickers insist that the child applies for asylum as this gives the child legitimate right of temporary 'leave to remain' in the UK.

(see www.crimereduction.co.uk/toolkits , http://www.unodc.org/unodc/trafficking_protocol.html and everychildmatters.gov.uk/safeguardingtraffickedchildren)

Refugees

Refugee Children are children and young people less than 18 years within families who are not British citizens but have leave to remain in this country. They may previously have been asylum seekers and been granted Refugee status, or they may have been resettled in this country or any other EU country via UNRWA (United Nations Relief and Works Agency).

3. Legal Context

Unaccompanied asylum seeking children are entitled to care and protection under the provisions of the Children Act 1989 & 2004 and where appropriate the Children (Leaving Care) Act 2000. Whilst in the care of Essex County Council priority will be given to treating young people as children first and asylum seekers second.

The Children Act 1989 Section 20

This requires Local Authorities to provide accommodation for children in need within their area whose assessed needs require this intervention. If a child is accommodated under section 20 he/she becomes a 'Looked After Child'.

The Children Act 1989 Section 17

This places a duty upon Local Authorities to 'safeguard and promote the welfare of children within their area where their welfare would be prejudiced. If a child insists that they want to be given a service under section 17 then consideration should be given to accommodating them under section 20 in line with the Hillingdon judgement of August 2003, unless they specifically state that they do not want to be 'Looked After'.

Which one to use?

The Department of Health issued a Local Authority Circular 'Guidance on Accommodating Children in Need and their Families' (LAC (2003/13)). In this guidance, Local Authorities are advised that during the assessment of UASC's, the presumption should be 'that he/she would fall within 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', for example where relatives are living in the UK and would take responsibility for the child, after the appropriate checks are completed. If a child's vulnerability means that their welfare could be prejudiced then consideration should be given to applying to the court for a Care Order under section 31 of The Children Act 1989.

The Children (Leaving Care) Act 2000 and the Children Act 1989

Under the legislation, 'it shall be the duty of the authority to advise, assist and befriend him/her (the young person in question) with a view to promoting his/her welfare when s/he ceases to be looked after by them.'

Unaccompanied Asylum Seeking Children looked after under the Children Act, turning 18, are entitled to ongoing support as former relevant children from their local authority under the terms of the Children (Leaving Care) Act 2000 until the age of 21 or 24 (if in full time education or training). Some young people may not have completed the required 13 weeks before they turn 18 however they will still be entitled to a Service under s.24 of the Leaving Care Act. For additional information please refer to ECC's Care Leaver's Policy.

The Home Office is responsible for deciding on the outcome of a child or young person's asylum claim. The majority of children and young people claiming asylum are not awarded refugee status (less than 20%) or the equivalent Humanitarian Protection status (1%), but are given Discretionary Leave to Remain (DLR). Essex will support young people to appeal a decision for a refused asylum claim if their legal representative advises there is more than a 50% chance of this being achieved, therefore securing legal aid funding to support this challenge.

DLR is given for a period of 30 months in the first instance (or in the case of young people who are the victims of trafficking 12 months) or until the age of 17 ½, whichever is the sooner. If they make a claim for further leave to remain before the current period expires they will be allowed to remain for a further period, beyond the age of 18. Children's Social Care should therefore make sure the young person makes their application for extension of DLR in time, if no application is made they will be treated the same as any other overstayer. If they fail to apply for asylum prior to 18 they are to be treated the same as any other 18 plus asylum seeker, guidance can be found in section 54 and schedule 3 paragraph 2 of the NIAA 2002.

4. Inter-Agency Working

A protocol for inter-agency working with Unaccompanied Asylum Seeking Children has been agreed between Essex Schools, Children and Families Service, Immigration Services (Casework and Enforcement) and Essex Police.

It has been developed to address concerns regarding accompanied and unaccompanied children and young people arriving in Essex for whom there are concerns about their safety. This might be because they have arrived with false or no documentation, there are concerns about those arriving to meet them, or, because they fit the agreed profiles for children who may be at risk of trafficking/exploitation.

Where it becomes apparent that there are concerns about migrant children, who were not identified at the time of their entry into the UK, the Southend Essex and Thurrock procedures should be followed. (Please refer to Part B3 Section 26 of the SET Procedures, Migrant Children).

5. Procedures

a) Referral Process

Initial Contact

Immigration Officers and other professionals who have contact with children and young people at points of entry within the County of Essex will alert Essex Schools, Children and Families Services whenever they have concerns about the safety of children or young people under the age of 18. This may be for the following reasons;

- a) The person designated to collect the child or young person is neither a relative nor friend of the child or their parents. The possibility that these children and young people are, in fact privately fostered, should be borne in mind and referred to Essex Local Authority Children's Services.
- b) The child or young person has false papers,
- c) The child or young person meets the agreed risk profile for a child victim of trafficking.
- d) The child or young person has claimed asylum on entry.

Following the Merton Compliant age assessment the Immigration Service will complete a screening interview. They will photograph the child or young person and then fingerprint them. This is in order to help safeguard the child, aid identification, as well as being able to identify whether the young person has claimed asylum in any other country before arriving in the UK (third country entrant). A Home Office Border and Immigration Agency check will be completed to clarify the status of the child/ren and the adult/s caring for them. The screening interview cannot be undertaken within the first 4 days of arrival in the UK.

Where Immigration staff are concerned about children they suspect have been trafficked, they should act quickly and resolutely following the Border UK Visa's and Immigration guidelines see www.gov.uk/guidance/immigration-rules

Responsibility for work, information gathering, information from other sources, location/venue, interpreter, appropriate adult, time, recording (as per the ACDS guidelines) After the age assessment has determined the young person to be under 18, and when an interview is considered necessary, every care will be taken to conduct it in the light of the child's

circumstances and understanding. This will consider the child's age, health, (including mental health) and ability. In most circumstances the interview will be conducted by a specially trained officer with knowledge of child protection issues and with an appropriate adult and interpreter present.

Essex Schools, Children and Families Service will need to assess whether there are grounds to continue to provide a service to the child or young person under section 20 of the Children Act 1989 i.e. the child or young person is lost or abandoned; that there is no person with parental responsibility for the child in the UK, or, that the person who has been caring for the child or young person is prevented from providing suitable accommodation or care.

If the child has already claimed asylum the social worker should check to see if the child is registered on the National Register of Unaccompanied Children (NRUC) and, if not to make arrangements for the child's details to be placed on the system. If the child has claimed asylum they will have an Application Registration Card (ARC) in their possession which will contain their photo and other relevant details.

If the child has no documented identification, or their documents are found to be forgeries, it is essential that a photograph of the child be taken and attached to their file. Immigration Policy states they will not normally detain a person under 18 in detention centres unless there is clear and credible evidence that they are 18 or over, a Merton compliant age assessment by the local authority is available establishing the person is 18 or over, physical appearance and general demeanour indicates they are significantly over 18, and there is no credible evidence to the contrary. We will consider all the relevant evidence available to us.

Any carer or relative contacting the department should not be provided with information until Immigration staff have been informed and they have been interviewed by a social worker.

b) Translation/ Interpretation

i) Why should an interpreter be used?

In Essex over 150 languages or dialects are spoken and effective service delivery depends upon accurate communication during:

- Information gathering (names, ages, details of circumstances);
- Provision of information / consultation;
- Decision making (service-user preferences and capabilities);
- Implementing the decisions (reporting a change in circumstances);
- Evaluating and monitoring the results of a decision (whether the service user received the service, whether it was the right one).

Effective and accurate information is therefore vital at all stages and professional interpretation or translation is essential to good practice.

ii) When should an interpreter be used?

ECC will endeavour to use an interpreter where possible.

- Initial needs assessment
- Merton Compliant Age Assessment – Mandatory
- At statutory reviews
- At tenancy sign up

- At health assessments
- At initial education meetings
- At legal meetings
- Any meeting to address safeguarding issues

The young person will be consulted on when an interpreter is used

iv) What is good practice when using an interpreter?

- Avoid using an interpreter working with a second language rather than using their first language; this decreases the margin of error.
- Do not ask friends to be interpreters in meetings.
- Ensure that the customer understands the interpreting process: it is free, impartial and confidential.
- Position the interpreter where he / she can hear or see and be heard or seen.
- Use direct speech, for example "What is your name?" not "Ask him what his name is".
- Use clear, unambiguous language – the interpreter has to understand clearly what he /she is to interpret.
- If using consecutive interpreting (one party speaks and then the interpreter repeats in the language of the listener) break at reasonable intervals at the completion of concept.
- If using simultaneous interpreting (the interpreter whispers their interpretation of the utterance in the language of the listener while the speaker is talking) speak at a reasonable pace and allow the interpreter to catch up when necessary.
- Allow the interpreter to take notes to help accurate recall. Those notes must be destroyed at the end of an assignment.
- Do not ask, or allow others to ask, the interpreter for advice or explanations, other than on linguistic matters.
- The interpreter may intervene, and explain why, in both languages, for four reasons:
 - To clarify understanding or what he / she is to interpret;
 - To ask customers to accommodate the interpreting process, for example, to speak up or more slowly;
 - To alert people to a missed cultural inference and ask for an explanation, which he / she will then interpret,
 - To alert others, that despite correct interpreting, the message may not have been understood.
- Allow the interpreter a break of 15 minutes every hour.
- At the end of the interview:
 - check that the customer has understood the key points;
 - ask if there is anything else they want to know;
 - describe and identify follow up actions;
 - check that all decisions made in the meeting are understood.
- Do not invite or request personal comment from the interpreter, which may involve making value judgements. That is not their role.
- Do not be afraid to challenge an interpreter – ensure that he/she is interpreting word for word

To locate an interpreter or translation service, the Essex County Council - Centralised and Interpretation Service is available through the intranet. Alternatively, many Social Care teams have a list of agencies that provide the same service, known to Procurements and the Marketplace system.

Further guidelines on Interpreting for the Public Sector can be found through the National Register of Public Service Interpreters website.

The cost of interpreters for the purposes of age assessments usually falls to the agency initially involved e.g. Police, Immigration etc. Once the local authority has accepted responsibility for the child, or if the age assessment is disputed, the cost falls to them. However these expenses can be claimed back from the Home Office. Should a young person have a health appointment the cost of interpreters will be met by the health authority. Should a young person need interpretation with police matters or solicitor appointment, these interpretation costs will be met by the relevant services.

For tenancy related matters and partnership working the cost of interpreters will be discussed and agreed between Essex County Council and other agencies.

The Office of the Children's Commissioner recommends that the local authority provides child-friendly literature, in a language that Unaccompanied Asylum Seeking Children can read and understand, and therefore printed in the languages most common to these children.

http://www.nrpsi.co.uk/publications/publications_brochure.htm

Training is available through the Refugee Council, addressing specific issues in relation to Unaccompanied Asylum Seeking Children and interpreters.

<http://www.refugeecouncil.org.uk/eventsandtraining/training/service/fulldetails.htm#interpreters>

c) Age Assessments

Essex County Council will ensure that all age assessments conducted are Merton compliant and only if completely necessary.

Guidance to assist social workers and their managers in undertaking age assessments in England is provided by ADCS (October 2015).

http://adcs.org.uk/assets/documentation/Age_Assessment_Guidance_2015_Final.pdf

The guidance includes that an appropriate adult, independent of the local authority, must assist the age assessment. They are to have the relevant skills and training to undertake their role, and be experienced in working with children and young people.

An Unaccompanied Asylum Seeking Child's age is a key part of the information needed when making an assessment of need and subsequently for the appropriate provision of service. It is important to explain to the Asylum Seekers that an assessment must be undertaken to identify what services will be provided.

Assessment of age is a complex task and not an exact science. In completing an age assessment it must be remembered that the Asylum Seeker has the right to legally challenge the decision.

Assessments should be completed from a holistic perspective and in light of the information available to them at the time. It is a process of professional judgement and a particularly sensitive issue involving many variables, not least the worker's ability to understand any cross-cultural issues that might apply. Decisions on age assessments are sometimes required within a short time period.

Where there is uncertainty, the benefit of doubt should always be the standard practice. The age assessment will form part of the initial assessment.

The age assessment is an ongoing process and the Local Authority will ensure that any age assessment that is conducted is reviewed within 4 weeks and at every statutory review taking into consideration any further evidence or information and the views of those professionals involved in the care of the young person. An updated age assessment will be given to the young person where any additional information is added.

In determining age, note should be made that some societies do not place a high level of importance on age and may calculate it in different ways. Some children will genuinely not know their age, or the ages of their family members and this can be misread as lack of co-operation. Levels of competence in some areas or tasks might not mirror our expectations of a child of the same age.

Normally the Border and Immigration Agency will not dispute a Merton compliant age assessment but will not accept such assessment if there are grounds for suspecting the person who presented for the age assessment is not the applicant or they are not satisfied a full assessment has been carried out. Pediatrician's reports must be given weight if they determine the person as being under 18, if necessary medical evidence will be needed by the Local Authority to counter the applicant's own evidence.

Should a young person dispute the Local Authority age assessment evidence is required to be provided about the new age. This will need to be considered by the child care teams and Essex County Council legal team.

d) Assessments

There are a number of factors that need to be taken into consideration when assessing Unaccompanied Asylum Seeking Children. These might include:

- Concerns around legal status,
- Anxiety raised by another professional asking similar questions to those that have already been asked,
- Lack of understanding regarding the role of social care as separate from the police or immigration, or why an assessment is needed,
- Past trauma experiences can impact on physical or psychological health (This can make concerns from the authorities about minor injury or poor living conditions seem trivial, and this mismatch may add to the fear and uncertainty)
- The journey itself as well as the previous living situation may have been the source of trauma,
- The shock of arrival, the alien culture, systems and language can cause shock and uncertainty, and can affect the mood, behaviour and presentation.

In such circumstances, reluctance to divulge information, fear and confusion can easily be mistaken for lack of co-operation or deliberate withholding of information.

The services of an appropriate interpreter must be secured in the child's first language, and care should be taken to ensure that the interpreter knows the correct dialect.

The first task of assessment with the child is engagement. Open questions are most helpful, with clear emphasis on reassurance and simple explanations of the role and reasons for an assessment. Engagement is more likely to lead to opportunities to build on initial contact.

Ensure the child is seen alone, particularly to check out the stated relationships with any person accompanying them, however, if English is not the child's first language an Interpreter will need to be present. The pace of the interview should be appropriate to the age and understanding of the child.

If possible steps should be taken to make contact with the child's parents in the country of origin, (Immigration may be able to assist with this) to find out what plans they have made for their child and to seek their views. It will be important to take steps to verify the relationship between the child and those thought to be their parent.

Anyone approaching the Local Authority and claiming to be a potential carer, friend, member of the family etc. of the child, should be investigated by the social worker, the police and immigration service. Only if the supervising manager is satisfied that all agencies have completed satisfactory identification checks and risk assessments can the child transfer to their care.

If a young person has been accommodated by the Local Authority for 4 weeks (by the first statutory review) and a person approaches the Local Authority claiming to be a potential carer as stated above, a full CRB and assessment will be undertaken to assess their ability before the child is able to transfer to their care.

The initial Combined Assessment should be completed within 7 days of the referral being received. The Combined Assessment must always be completed including for those unaccompanied asylum seekers who are subsequently assessed as being over 18 years old. An age assessment will form the basis and core information of the combined assessment.

A Combined Assessment should be completed within a maximum of 35 working days from the time when a decision is made to undertake an assessment. The assessment should result in a document that shows the child's circumstances and the measures/services to be put into place. The child or young person should be at the centre of and in agreement with the decisions made in this assessment.

Included in the combined assessment should be an assessment of the child's or young person's emotional capacity and needs. Although a child may appear streetwise and capable of living in a placement, he/she may have emotional needs that will not be met in certain placements. It is important not to make assumptions about a child or young person's emotional capabilities/needs. Therefore the child or young person should be fully assessed and an appropriate placement obtained.

e) Children in Need of Protection

If there is reasonable cause to believe that the child is at immediate risk of suffering from significant harm, consideration should be given as to how the child's welfare can be safeguarded including the use of an Emergency Protection Order or Police Powers of Protection.

If the young person gives a history of abuse or is sexually active, potential pregnancy or screening for sexually transmitted illnesses may need to be offered. This screening has to be handled sensitively and offered if appropriate. Consideration should also be given to whether any recent physical injuries have been investigated and if appropriate treated.

It is the responsibility of all organisations to work together to safeguard and promote the welfare of children. Wherever staff or volunteers come into contact with a child who has arrived unaccompanied in the country and who is not in contact with local authority children's social care, or a child, who is accompanied, but for whom they have concerns regarding their welfare or safety, they should consult and follow the guidance set out in the Southend, Essex and Thurrock Procedures. These procedures will be followed and a strategy meeting / discussion held within the stated timescales.

(For further advice see: everychildmatters.gov.uk/safeguardingchildren and [Essex County Council ESCB - SET Procedures](#))

The purpose of the strategy meeting / discussion is:

- a) To share information with the police child abuse investigation unit, the immigration service and any other relevant professionals
- b) To develop a plan for the child or young person's immediate protection. This plan will include supervision and monitoring arrangements and will form part of the child's care plan, it will be reviewed at regular intervals. The strategy meeting will decide what information can be given about the child or young person to any person that enquires and how the child should be supported.

f) Children Looked After

Whenever an asylum seeking child is looked after and there are concerns that the young person has been trafficked into the country a referral using the National Referral Mechanism (NRM) must be completed and sent to the UK Human Trafficking Centre (UK HTC). For the NRM referral form go to:- <https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms>

The child or young person under 18 will need to be accommodated in a Regulated Placement with an Essex approved provider or foster home.

All Unaccompanied Asylum Seeking Children assessed as being less than 18 years of age should be supported under Section 20 of the Children Act 1989, and be allocated a qualified worker. Once they qualify under the Children Leaving Care Act 2000 they may transfer to the Leaving and After Care Service.

The location of the child or young person will not be divulged to any enquirers until they have been interviewed by a social worker and their identity and relationship/connection with the child is established.

The child or young person will be appropriately supervised whilst in the placement and as far as possible their communications (telephone or internet use) will be monitored for their own protection. It is permissible to take reasonable steps to safeguard the welfare of the child related to their age and vulnerability and any assessment that indicates that the child or young person may be at risk of harm, including abduction from an unidentified person.

Approved accommodation providers and foster carers will remain vigilant about anything unusual, e.g. cars waiting outside of the premises, telephone enquiries. All such information will be passed to the social worker who will ensure that the police child protection team is informed.

If the young person goes missing the carers will immediately inform the allocated social worker or Emergency Duty Service and the Police and obtain an incident number. The social worker will inform immigration, the Home Office and liaise with Essex police. A strategy meeting will be held with all parties concerned within the guidelines of the Essex Missing Persons Protocol or Children Missing from Care Protocol if they are a looked-after child.

g) Accommodation

i) Immediate Placement

It is important that a child or young person is placed in a safe and secure regulated placement until a full assessment of age can be undertaken; this would be conducted by EDT in out of hour's circumstances and followed up by the specialist team in daytime service.

ii) Kinship Care

If it becomes apparent that the young person has family or/and friends living within the UK consideration should be made as to the appropriateness of placing them with their family members following the appropriate checks and assessments. See page 13 regarding assessment and checks.

iii) Foster Care

The child will be placed within an appropriate foster placement in most cases, unless the young person has sufficient independence skills over the age of 16 whereby a supported lodgings placement could be considered, and accommodated under Section 20. The foster carer must be given full information about the child's religious, ethnic, cultural, language and emotional needs. They must be provided with the support to meet these needs. Any information about issues around the young person's health should be discussed with the carer along with any special dietary needs. Information on food, hair and skin care should also be part of the young person's care plan. Foster carers need to take appropriate measures to safeguard any other children in placement given that often very little will be known about the child prior to placing them.

iv) Religious and Cultural Needs

The child or young person's cultural, religious, and ethnic as well as language needs should be considered when matching a child/young person with an appropriate Foster Carer / provider.

v) Risk

The child needs to be considered in terms of risk in terms of their own vulnerability, the risk they may pose to other children, the risk of abduction or exploitation of the child.

h) Statutory Reviews

The Office of the Children's Commissioner recommends that the local authority provides child-friendly literature, in a language that Unaccompanied Asylum Seeking Child can read and understand, at the time the child is accommodated, the rights to which the child is entitled, the purpose of the review and what will happen at a review. Also that the social worker has seen the child before the review, told the child what is to be discussed at the review and the purpose of the review. An interpreter will be provided at statutory reviews.

i) Transition to Leaving Care

Once an Unaccompanied Asylum Seeking Child of 16/17 years old has been accommodated as per s.20 of the Children Act 1989 and initial Home Office procedures have been completed the case will be eligible to be transferred to the Leaving and After Care Service. This policy should be read in conjunction with the Care Leavers Policy. The Office of the Children's Commissioner recommends that there should be a presumption that all Unaccompanied Asylum Seeking Children should remain looked after under s.20 Children Act 1989 until they are aged 18.

There is a clear protocol for transfer of cases into the Leaving and After Care Service. All discussions about prospective transfers should take place Team Manager to Team Manager. The Leaving and After Care Team Manager will complete a 'File Transfer Checklist' to ascertain if the case file is up-to-date and ready for transfer. Young people aged between 16-18 will remain in the Children in care team until initial Home office procedures have been completed. Young people below the age of 16 will remain in the Children in Care team until the age of 18 with an allocated social worker and the services of a Personal Advisor from age 17. During the transfer process, the Team Manager needs to be made aware of where the young person is within the Asylum Process, and who the Solicitor is.

The Local Authority has a duty to assess and meet the needs of Eligible and Relevant children under the Children Leaving Care Act (2000). This includes the appointment of a Personal Adviser, at the age 17. The Personal Adviser will joint work with a Social Worker until the age of 18. The Social Worker will be responsible for the formulation of a Pathway Plan. The plan will include the accommodation and maintenance needs for 16 and 17 year olds and assistance to achieve goals agreed within the Pathway Plan. The Pathway Plan replaces the Care Plan of the looked-after child and includes all the duties associated with looked after children. For Former Relevant (18-21) young people the Local Authority will continue to run a pathway plan to assist the young person in their transition to independence. All plans will need to take into consideration the young person's asylum status. To this end all pathway plans will involve a triple plan, i.e if the young person remains in the UK, if they are to return to their Country of Origin, and if they are Appeal Rights Exhausted.

The key pieces of literature you will need to be most familiar with and consult are:

- The Children Act 1989 Guidance and Regulations
- Sections 24,27,61 and 64 of the Children Act 1989
- Children (Leaving Care) Act 2000 Guidance and Regulations
- Carers and Disabled Children Act 2000
- Guidance on the Education of Children and Young People in Public Care
- Working Together to Safeguard Children
- Framework for the Assessment of Children in Need and their Families
- The Children Act 2004
- Every Child Matters
- National Service Framework
- SET Procedures
- Staying put policy 2013
- Immigration Act 2014

Various Acts cover different aspects of Leaving & After Care e.g. housing and benefits legislation, judgements in a variety of cases will create law and new rules. These rules and judgements will need to be used in conjunction with key legislation already in place.

Definitions

Responsible Local Authority

The responsible Local Authority is whichever one last looked after an eligible or relevant young person. That Local Authority will retain its responsibility wherever the young person may be living in England or Wales.

Eligible Children:

Children aged 16 and 17 who have been looked after for at least 13-weeks since the age of 14 and who are still looked-after. The following are included in the definition of Eligible children:

- **Young People remanded into Local Authority Care:** Young people remanded into Local Authority Care are regarded as Eligible even if they subsequently are not given a custodial sentence, if the period of remand is for 13 weeks or more.
- **Asylum Seekers:** Young people who are seeking asylum are covered by all the terms of the Act if they were looked after for the required 13 weeks.

Relevant Children (Sec 23a)

Children aged 16 and 17 who have been looked after for at least 13-weeks since the age of 14 and were looked after on or after their 16th birthday and who have left care.

Former Relevant Children (Sec 23c)

Former Relevant children are those young people who have reached 18 but not 21 and were Eligible and/or Relevant prior to becoming 18. However, if someone is being helped with education or training they remain a former relevant child to the end of their agreed programme, even if that takes them past the age of 21.

The Children (Leaving Care) Act does not replace the Children Act 1989. It builds on and extends the duties and powers included in the leaving care and aftercare provision of the Act. The provisions of the 2000 Act will apply to all Eligible, Relevant and Former Relevant young people as defined in the 1989 Act and the Regulations. The Care Leavers (England) Regulations 2010 further clarifies and strengthens this Act.

6. Support with the Asylum Claim

In most cases, Unaccompanied Asylum Seeking Children who are referred to Essex Schools, Children and Families Service will already have been in contact with Immigration at Point of Arrival and issued with one or more of the following documents:

- An IS96 (issued at port of arrival) if granted temporary admission, it also documents when the asylum application was made.
- An IS97M if the claimant is registering as less than 18 years of age and the Home Office disputes this.
- An ARC (Application Registration Card) is issued once the claimant's identity is confirmed. (This may take several days) and shows that they have claimed asylum.
- A claimant might also have been issued with a Statement of Evidence form (SEF), issued immediately after screening, which must be completed and returned within 28 working days. (Legal advice should be sought and the Solicitor will work with the child/young person to complete the SEF.). This legal advice is completely independent of the Local Authority,

If an application for asylum has been made, clear records of all contacts and communications must be recorded and kept on file. It is vital that the child's/young persons Immigration and Home Office documents are kept in a safe place in their accommodation. The young person must carry their ARC with them at all times for identification purposes.

a) Home Office Interviews

The screening interview cannot take place within the first four days; an appointment will be made for either Stansted Airport or Croydon Home Office, depending on their entry point. Under the New Asylum Model (N.A.M) young people will be required to attend 3 interviews with their allocated Home Office Caseworker and will be accompanied by a representative of the Local Authority who is familiar with their situation.

These Interviews will culminate in a decision concerning their asylum application.

In-country applicants will have to attend the Asylum Screening Unit in Croydon, with their LA representative, to make their claim for asylum; The young person will be required to attend for further interviews with their caseworker, accompanied, under N.A.M. (New Asylum Model) however any further appointments may take place at Solihull Home Office.

b) Possible Outcomes of Claim

Refugee Status

The Immigration Nationality Directorate makes an initial decision on asylum applications. Refugee status may be granted where it is considered that the applicant meets the criteria set out in the 1951 Convention on Refugees. Such applicants will be given Indefinite Leave to Remain (ILR) where they will be given limited leave to remain (usually for five years). If conditions in the country have improved significantly during this time, they may be expected to return.

Discretionary Leave to Remain (DLR)

If Refugee status or Indefinite Leave to Remain is not granted, a decision of DLR will usually be granted. The Home Office will grant DLR for 30 months or until the young person is 17½ years of age whichever comes first. They will then be able to apply for an extension to their DLR

status which needs to be done with a solicitor. Whilst this extension is being considered the young person will be entitled to public funds and social housing. If the extension application is refused, and they have exhausted all their appeal rights they will be removed. DLR can be granted where the applicant does not meet the criteria for Humanitarian Protection, but where removal might constitute a breach of Article 8 of the European Convention on Human Rights; where a serious medical condition could mean removal could amount to inhumane; or degrading treatment; or she/he cannot be removed. This includes Unaccompanied Asylum Seeking Children where removal is impracticable due to unsafe reception arrangements in their country of origin.

Humanitarian Protection (HP)

The Home Office can grant Humanitarian Protection to a person who would face a real risk of death, torture or other inhumane or degrading treatment if returned home. HP is normally granted for 5 years, although periods can be shorter. At the end of the temporary protection period, the Home Office will actively review the case. If it is viewed that if the applicant no longer has protection needs, then further leave will be refused.

Refusal

If given a negative decision, an applicant needs to access appropriate legal advice immediately, as there are very tight time limits for appeals. Limited claims for Asylum are successful.

Voluntary return

An Unaccompanied Asylum Seeking Child may decide to return home permanently, often as a result of improved conditions in the country of origin. This might be arranged independently or assistance might be available.

The International Office for Migration (IOM) should be contacted and they will assist with a planned return home. This will include an arranged reception and financial assistance on return.

Removal

When all Appeals have failed (Appeal Rights Exhausted), UK Borders Agency will take such steps to remove the Unaccompanied Asylum Seeking Child. This is currently a contentious area, particularly in relation to under 18's. Legal advice should be sought immediately. Legislation contains powers for Immigration to detain such failed asylum claimants. However, this could be a breach of Article 8 of The European Convention on Human Rights.

Third Country Removal

The Home Office, under the Dublin Regulation 2003, seeks to ensure that Unaccompanied Asylum Seeking Children are dealt by the first member state in which they either claim asylum or are finger printed. This is in order to stop successive claims in different member states. The removal of children and young people to third country claims is currently under review by the Home Office.

7. Finance

All new Unaccompanied Asylum Seeking Children will need to be set up on the Integrated Childcare System. They will need to be allocated Case Numbers and a check should be made on NRUC (National Register Unaccompanied Children). Their financial needs will be the same as any other looked-after child although they may have particular cultural needs that need to be addressed as well as usually the need for an interpreter. It is essential that the correct unique code on finance forms such as 243a's etc. is used to indicate that this relates to Unaccompanied Asylum Seeking Child to ensure that all monies are reclaimed from the Home Office; an example of this might be for a Koran or prayer mat.

All Unaccompanied Asylum Seeking Children in the Leaving Care Service will have access to the financial entitlements set out in the Care Leavers Finance Handbook. Please see the Finance Handbook for details of funding for young people with No Recourse to Public Funds (NRPF).

Young people with Discretionary Leave to Remain, Humanitarian Protection or Indefinite Leave to Remain will have access to public funds and social housing, and should be assisted at 18 to make the appropriate claims.

8. Education

Every child/young person is entitled to an Education provision up to compulsory school age.

Education is a significant vehicle to social inclusion and may serve to counteract the disadvantages which may be encountered as a direct result of their ethnicity and status as asylum seekers and looked after children.

Young people will need to be made aware of educational requirements and opportunities in the UK as the structure may differ substantially from that in their home country, where, for example, there may be no legal requirement for full time education to 16 years. If of statutory school age and accommodated under section 20 a referral will be made within the first 7 days to the achievement service to support the young person in obtaining appropriate education and a Personal Education Plan will be completed to assess their needs within the first 4 weeks (by the first LAC review).

For young people out of statutory school age a referral will be completed for an ESOL course (English for Speakers of Other Languages) or appropriate college course to support learning and development.

The Guidance on the Education of Children and Young People in Public Care was issued jointly by the Department for Education and Employment and the Department of Health in May 2000:

- Each child and young person must have a Personal Education Plan.
- Every school must have a Designated Teacher for Children in Public Care.
- Local Authorities will develop a protocol for sharing information.
- Care placements will only be made with educational arrangements already in place, except in.
- Education placements will be provided (where possible) within 20 school days of the care placement.

A school or college placement will be identified as soon as possible. It may prove difficult to integrate a young person aged 15 years and over into Year 11 provision and in these circumstances college provision may better meet the young person's needs. English for Speakers of Other Languages (ESOL) provision, combined with a core programme of courses relevant to ability and understanding of English, should be available in the area in which the young person resides.

In considering education provision, it will be important to ensure that language support is in place and that an assessment of the young person's previous educational experiences and current abilities is made. The young person's wishes are to be taken into account when identifying provision where the young person is 15/16 years. It is essential that an Interpreter attends the initial admissions interview in order to begin the process of identifying the young person's educational needs.

Induction to schools and colleges will be undertaken sensitively, preparing the class for the arrival of the young person and preparing the young person for the routine of the school and the content of the curriculum. Support networks need to be clearly identified and explained, and the young person prepared for the possibilities of racism and bullying. Teachers and other school personnel will be made aware of the young person's circumstances and have clear contact instructions for carers and social work support. Contact should be maintained with the Special Educational Needs Co-ordinator in the school. Lack of English as a first language does not amount to the need for a Special Educational Needs statement.

Schools will be encouraged to enable literate children and young people to use their first language in school, for example in note taking, completion of tasks and discussion of tasks set with one another. This will assist Unaccompanied Asylum Seeking Children to maintain their own identity and language at the same time as learning written and spoken English.

Personal Education Plans will be made with the assumption that the young person will remain within the UK and therefore in line with all other looked-after children. The Education Co-ordinator should be consulted regarding the above matters. However part of the role of the worker is to prepare the young person for the possibility that they may not be able to remain in this country permanently, and there is a need to have a twin tracked approach to planning around the development of skills/education that might be needed to return successfully to their country of origin.

Links with the Ethnic Minority Achievement Service will enable one to one assistance to be provided to the school, and a referral made when a school has been identified.

Higher and further education: pending leave to remain and appeal outcomes access to education will be subject to Asylum status and in line with the pathway plan, finance policy and Immigration legislation.

Should a young person be refused College admission whilst awaiting an outcome to extend their leave to remain, the Local Authority will consider what is available outside of College funding.

9. Health

The Port Health Authority will have carried out initial health screening by a doctor to identify any urgent health concerns and this should be followed by an initial health assessment as required for all looked-after children. The type of health issues that may need attention include: infectious and parasitical illnesses, long standing medical conditions and injuries that the young person

may have sustained in their country of origin. Dental and optical health as well as immunisation status should be reviewed urgently on arrival. Until the first decision regarding refugee status has been made by the Home Office unaccompanied asylum seeking children are not entitled to access free health care.

The unavailability of reliable information may limit the comprehensive completion of the Personal Information Record, but every effort should be made to complete records as fully as possible, paying particular attention to past illnesses, injuries, allergies and family health history.

Registration with a General Practitioner and the looked-after Children medical assessment must be compliant to time scale and the first one should be arranged at the earliest opportunity. An Interpreter will be required for these appointments.

Particular attention should be paid to the young person's experiences in their country of origin where illnesses such as TB and scabies may be prevalent.

The young person's eligibility to register with a GP should be clarified in advance with the surgery in order to avoid potentially difficult and intrusive discussion, and issues of confidentiality clarified with the young person.

Social workers experiencing difficulties in locating a GP with vacancies should contact the Looked after Children's Nurse in the relevant Health Authority. Every Unaccompanied Asylum seeking Child is entitled to be registered with a GP and have access to health services.

Where a young person has suffered torture, persecution or trauma because of their experiences a referral should be considered to the Children and Adolescents Mental Health Service or the Child and Family Consultation Service for therapeutic input to address the issues around their emotional wellbeing.

The Medical Foundation for the Care of Victims of Torture, (web site www.freedomfromtorture.org.uk) is based in London and provides medical treatment, practical assistance and therapeutic support for survivors of torture in the UK in addition to providing advice and information to practitioners.

Accurate recording will be important in describing behaviours, which may require investigating.

Social workers should endeavour to familiarise themselves with cultural norms, which might influence behaviour, emotional displays and reactions to loss and grief in order to avoid any potential for misinterpretation.

Particular attention should be paid to ensuring the young person receives advice on sexual health and relationships and to ensuring that this is undertaken in a culturally sensitive manner.

10. Confidentiality and Consent

Information governance

This relates to the Essex County Council - (Essex Schools, Children and Families Service and Adult Social Care) policies on the confidentiality, recording, use, handling, maintenance, storage, security and client access of its written social care, education and youth service records.

Every member of staff operating an open access policy must clearly understand why records are made and held concerning individuals who receive services and the principles that underpin open access. These are fundamental to good recording practice.

A basic theme to be remembered by all staff is that information about the individual should be recorded with the assumption that the individual will see it unless there are clear and obvious reasons why it should remain confidential.

This relates to making and storing records and maintaining the confidentiality of individuals that receive or come into contact with its services. The basic principle underpinning this policy is that of open recording.

As an employee in Essex Schools, Children and Families Service or Adult Social Care workers have a responsibility to ensure the good ordering of case notes, the accuracy of their contents, and the maintenance of security and confidentiality.

Essex County Council is committed to protecting the rights and privacy of service users/clients, staff and other individuals it has dealings with in accordance with the Data Protection Act 1998.

In order to comply with the law, information about individuals must be collected and used fairly, stored safely and securely and not disclosed to any third party unlawfully.

All "processing" of personal data (includes collection, holding, retention, destruction and use of personal data) are governed by the Data Protection Act 1998. The Act applies to all personal data - whether they are held on a computer or similar automatic system or whether they are held as part of a manual file. Personal data is defined as information relating to an identifiable living individual and can be held in any format, electronic (including websites and emails), paper-based, photographic etc. from which the individual's information can be readily extracted.

Under the DPA 1998 Act, all organisations that process personal information are required to notify the Information Commissioner's Office. Essex County Council's Notification describes the various types of processing of personal information and defines the persons or bodies to which the information may be disclosed.

Failure to comply with the DPA 1998 could result in the prosecution not only of the Authority but also of the individual concerned.

Data subjects (that is persons about whom such data is held) may also sue for compensation for damage and any associated distress suffered as a result of:

- loss or unauthorised destruction of data;
- unauthorised disclosure of, or access obtained to, data;
- inaccurate data - for example, data which is incorrect or misleading.

It follows, therefore, that all staff that are concerned with, or have access to, such data have an obligation to ensure that they are processed according to the eight principles of data protection and the rights of data subjects. This means, among other things, that staff must treat all data carefully and must not disclose personal data to unauthorised persons (this will often include family members of a service user/client).

This document has been produced to offer guidance and support to staff to enable adherence to the demands of the DPA 1998. All staff should be aware of and abide by the ECC Information Security and Communication policy:

Confidentiality statement

Employees of Essex Schools, Children and Families Service and Adult Social Care must at all times be aware of the importance of maintaining confidentiality of information gained by them during the course of their duties. This will in many cases include access to personal information relating to service user/clients. Staff must treat all information in a discreet and confidential manner and particular attention is drawn to the following:-

- data protected information regarding service user/clients must not be disclosed either verbally or in writing to unauthorised persons. It is particularly important that staff should ensure the authenticity of telephone enquiries;
- written records, computer records and correspondence pertaining to any aspect of the organisation's activities must be kept securely at all times;
- you have an obligation to ensure that computer systems which you use are protected from inappropriate access within your direct area of practice for example by ensuring that personal access codes are kept secure;
- all data held, its management and procedures, must conform to the requirements of the Data Protection Act (1998). Under the Act service user/clients and staff have a right to access to their records on application to the appropriate manager;
- conversations relating to confidential matters affecting service user/clients should not take place in situations where they may be overheard by passers-by, for example, in corridors, reception areas, lifts and cloak rooms;
- if unsure seek advice from the organisation's Senior Manager;
- the same confidentiality must also be preserved in dealing with work related matters appertaining to work colleagues.

Any breach of confidentiality may be regarded as misconduct or gross misconduct and may be subject to disciplinary action.

Further details can be found within the Information Governance document available on the Essex County Council Intranet.

Appendix 1 – Flowchart

SUPPORT TO UNACCOMPANIED CHILD BY ESSEX COUNTY COUNCIL

