

14.3 Asylum Seeking Children – unaccompanied or as part of a family.

Background and Context

14.3.1 This guidance was commissioned by the NACPC through the Practice and Procedures Standing Committee in response to increasing concerns around the multi-agency responsibilities for this group of children and young people. The diverse issues posed in our work with Asylum Seekers' Children and Unaccompanied Asylum Seeker Children have reinforced the need to provide professional guidance.

Scope of the Guidance

14.3.2 This guidance sets out to explain some of the complexities faced by those seeking asylum in the UK and how professionals can best work together in responding to, and improving outcomes for children caught up in the process.

14.3.3 There are a growing number of people living within Northamptonshire who have not been granted Indefinite Leave to Remain and are classed as 'failed' asylum seekers. They are not, generally, entitled to support through public funding. They may be subject to removal directions. Some may have specific health related issues and where this is the case the Local Authority may need to undertake a 'needs' assessment.

14.3.4 EEA/EU nationals entering the U.K may experience difficulty accessing public funding, employment or housing. They can access the National Asylum Support Service (NASS) EEA Accession helpline: 0208 633 0341/02.

14.3.5 We do not intend to provide guidance about other families with children entering the UK. Where such families come to the notice of professionals the Asylum Support Team, Children & Families or Maple Access Practice may be approached for advice.

For the purpose of this document the following definitions will apply:

Refugee:

14.3.6 A refugee is a person who has a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion, **and** who is outside the country of his nationality or former habitual residence and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country or return to it. (Refugee Convention - Art. 1A(2).

Asylum Seeker:

14.3.7 Immigration rules provide that an 'asylum applicant' is a person, of any age, who claims it would be contrary to the UK's obligations under the Convention and Protocol for them to be removed from or required to leave the UK.

Immigration law and IND regulations are complex and subject to constant review and change. In simple terms once the application for asylum has been made to the Home Office, the individual or family unit will be referred to as asylum seekers until their application is finally determined. Even though their initial asylum claim may be refused there are appeal processes to be pursued. When a case is finally determined - all appeal rights are referred to as being 'exhausted'.

Asylum Seeking Family:

14.3.8 Families arriving in the UK will make an application for asylum as detailed above. The 'claim' is registered in the lead applicant's name (normally the father where it is a 'two parent' family unit). Each member of the family is included in the application.

Families who entered the U.K. prior to August 14th 2000 were, and continue to be, supported by the Local Authority under the Asylum Support (Interim Provisions) Regulations 1999.

Families with children entering the UK and applying for asylum on, or after, August 14th 2000, became the responsibility of the National Asylum Support Service (NASS). See also section 14.3.38 providing support to asylum seeking families.

Dependent Child under 18 years

14.3.9 A child must be under 18 on the date of the application for asylum support **or** on the date when he, or she, joined a supported household as a 'dependent' child. He, or she, will qualify as a dependent if:

- He or she is a child of the applicant or the applicant's spouse, and dependent on the applicant; **or**
- He or she is a member of the close family of the applicant; or the applicant's spouse, provided the child has been living as part of the applicant's household since birth or for 6 of the 12 months before this application for support.

14.3.10 **Note (1)** A child entering the UK where his, or her, family is already supported as an asylum seeking family will become a dependent child within that family. His, or her, details will be added to their asylum application as a 'dependent child'. The accommodation requirements will be reassessed and additional subsistence payment will become payable. An additional amount is payable for a child with a disability.

14.3.11 **Note (2):** A family member will qualify as a dependent if he, or she, is 'in need of care and attention from the applicant or a member of his household by reason of a disability. The above two criteria apply though the dependent, on grounds of disability or mental health, does not have to be under 18yrs of age. The provision of care and attention is the main distinction.

Unaccompanied Asylum Seeker Child – UASC

14.3.12 Someone who at the time of making the asylum application:

- is, or (if there is no proof) appears to be, under eighteen;
- is applying for asylum in their own right;
- and has no adult relative or guardian to turn to in this country.

14.3.13 **Note: Immigration and Nationality Directorate (IND)** does not consider a child to be unaccompanied if he or she is being cared for by an adult prepared to take responsibility for them. They are deemed to be 'accompanied' and not eligible for asylum support though will be entitled to an assessment of need through Children and Families Services. See also section 14.3.9, dependent child under 18.

Practice Guidance Rationale

14.3.14 Asylum seeking children are a very diverse group and are likely to present with a wide range of needs. Many will have some of the following in common that hold implications for their health, welfare, educational attainment, and social inclusion:

- traumatic experiences of war, social or political persecution;
- an interrupted education;
- limited knowledge of English;
- change in living standards/conditions;
- loss of usual/emotional absence of carer (separation issues);
- cultural/linguistic isolation;
- experience of racism;
- difficulties in accessing health care and specialist services.

The purpose of this guidance is:-

- to provide professionals with an increased knowledge base and understanding to enable them to deliver a quality service to asylum seeking families with children, or UASCs;
- to enable practitioners to work effectively across the agencies in ensuring these families receive an equitable service, and in so doing reduce the risk of harm to children;
- to ensure that, where concerns are raised, each agency is clear as to what actions should be taken;
- to improve the life chances for those children living away from home who may be seen as vulnerable.

Agency Responsibilities

Role of the Local Authority

- 14.3.15 All children and young people who have entered and currently live in the U.K are covered by the provisions of the Children Act 1989 and through the duties and responsibilities of the statutory agencies: Health, Education, Children and Young People's Service and Police.
- 14.3.16 Unaccompanied asylum seeking children become the responsibility of Children and Young People's Service.
- 14.3.17 Unaccompanied asylum seeking children (UASC) have no parent or guardian to turn to in this country, as they arrive in the UK, alone, seeking asylum. The presumption is, therefore, that they will fall within the scope of The Children Act 1989, S.20, and become 'looked after' - unless the 'needs assessment' reveals particular factors that suggest an alternative response would be more appropriate. (The child should be cared for under The Children Act 1989, S.20 while the assessment is carried out.)
- 14.3.18 DOH circular to Local Authorities - LAC (2003)13 and the findings of a judicial review R (Berhe and others) v the London Borough of Hillingdon (2003) EWHC 2075(Admin) clarified responsibilities for providing support. The need to use the Framework of Assessment was re-stated, and the judgement reinforced the expectation that Local Authorities responsibilities to UASC should, with few exceptions, be under the provisions of S.20 Children Act 1989. Clarifying this secured entitlement to 'Leaving Care' services under the provisions of The Children (Leaving Care) Act 2000.

- 14.3.19 The Section 20 (1) criteria that would normally have to be satisfied are:
- there being no person who has parental responsibility for the children;
 - children being lost or abandoned;
 - the person who has been caring for the children being prevented from providing them; with suitable accommodation and/or care.
- 14.3.20 All UASC, on arrival, undergo an initial assessment by the Asylum Support Team. They often arrive with little, or no, documentation to substantiate their identity or age. Some may speak a limited amount of English though not to an extent of being able to comprehend the process of assessment. An interpreter, often through Language Line, is used. Part of the assessment process involves a specific assessment of age. If there is no, or little, doubt as to their 'stated' age then the age, stated by them, is accepted.
- 14.3.21 Where this is not the case then we may dispute their age, subject to the information gained through the assessment process. This may result in the young person still being accepted as being under 18yrs of age though assessed as being older than their claimed age. Where this occurs, the Home Office accepts the 'estimated' age.
- 14.3.22 There are occasions where we firmly conclude that young person is over 18 yrs of age and in these circumstances they will be treated by the Home Office as adults. They are still entitled to apply for asylum - though as an adult.
- 14.3.23 In both of the above scenarios our decision can be challenged, if necessary, through judicial review. A full copy of the 'age assessment' pro forma is forwarded to the Home Office. One has to recognise that age assessment can be an 'imprecise' process.
- 14.3.24 The Community and Language Service (CALS) provide interpreter and translation services.
- 14.3.25 Unaccompanied asylum seeking children, under 16 yrs of age, will generally be placed in foster care. At times such placements may be secured through fostering agencies 'out of county'. We have, additionally, placed a number of young people in this age group in 'Kinship' placements - eg with a family/carer from a similar culture/language/origin background. These placements are assessed and police clearance checks undertaken similarly to foster placements.
- 14.3.26 Cases involving UASC within this age group are then transferred to the Adolescent Care Team (Children & Young People's Service) who become 'case accountable'. The service provided is that which would normally be provided to a 'Looked After child'.
- 14.3.27 UASC aged 16 - 17 continue to be supported by the Asylum Support Team, mainly accommodated in 'shared' housing and usually within their own culture/age group. The accommodation is furnished and includes their own bedroom and shared use of kitchen, bathroom and lounge. Bedding, cutlery, crockery and kitchen utensils are provided. Normal amenities, such as fridge/freezer and washing machine are provided and all utilities are included - gas, electricity etc.
- 14.3.28 Accommodation is secured through accommodation providers, subject to a service agreement with the Local Authority. Properties are inspected by Environmental Health to ensure they meet prescribed standards.

- 14.3.29 A weekly allowance of £45.00 is paid to each young person that they collect from the Asylum Support Team office. This ensures we see each young person on a weekly basis. We, additionally, follow-up through visits to young people in their homes.
- 14.3.30 We have well defined links and working arrangements with Welfare Rights and other immigration legal advisors to, importantly, ensure their asylum claim is positively monitored and pursued.
- 14.3.31 All UASC supported by the Asylum Team are encouraged to register with a G.P. and dentist to ensure health needs are assessed and monitored. See also 14.3.45 the role of the health service.
- 14.3.32 Assistance is provided to ensure that asylum-seeking children, of statutory school age, are integrated into local schools and we have well defined links and working arrangements with schools and Education.
- 14.3.33 There is a positive partnership with Connexions and a 'connexions' worker meets with young people, at the Asylum Support Team offices, one afternoon a week in addition to her 'outreach' work.
- 14.3.34 On reaching 18 years UASC need to be considered in terms of their eligibility to Leaving Care services as 'former relevant' young people. Provision of support to 'care leavers' can continue up to their 21st birthday and, in certain specified circumstances, up to 24.
- 14.3.35 Changes have been put into effect for UASC approaching their 18th birthday. This is co-ordinated between the Asylum Support Team and the Leaving Care Team who become responsible for their support 'post 18'.
- 14.3.36 Unaccompanied asylum seeking children, reaching 18yrs, have normally been granted some form of 'discretionary leave to remain' and need to apply for an extension to this 'leave to remain' prior to becoming 18 yrs. Ensuring this takes place is important as they will retain their 'Leave to Remain' status until their asylum application is finally determined and continue to remain eligible for housing, housing benefit and other associated benefits.
- 14.3.37 UASC, who turned 18yrs of age prior to June 2003, are not being actively followed-up at this point in time and many will have chosen, as young adults, to become self-supporting. A number will have chosen to move out of the county. However, should any of these young people subsequently approach the Local Authority (LA) for support an assessment of their needs will be undertaken to establish their entitlement to a Leaving Care Service.

Providing support to asylum seeking families

- 14.3.38 The LA, through the Asylum Support Team, continues to provide support to families under the 'Interim Provisions' until there is a 'final outcome' to their asylum claim. Once Indefinite Leave to Remain (ILR) is granted to families the support provided through the Asylum Support Team ceases. Asylum seekers, once granted ILR, become eligible to claim benefits, apply for housing and housing benefit, and are entitled to take up employment.
- 14.3.39 Families supported by the LA, under the Interim Provisions, who receive a negative decision and have exhausted all their appeal rights, will continue to be supported by the Asylum Support Team until they become subject to 'removal' from the UK.

- 14.3.40 Families who applied for asylum after August 14th 2000 are supported by NASS, and may, at times, present to agencies for advice and support. A number of families living in Northamptonshire have applied for 'subsistence only' support from NASS and are likely to be supported by friends. They may present as homeless and where this occurs a referral should be made to NASS requesting them to provide a 'full' support package'. This is likely to result in the family being required to move to a 'dispersal' area where the required support will be provided through NASS.

Note:- Northamptonshire is not a 'dispersal' area.

Good Practice

- 14.3.41 Appropriate interpreter services should be used at all times to ensure that the child is listened to and their needs identified (This may establish key information such as name, date of birth, country of origin etc) This is usually through CALS.

- *NRCS and Children and Young People's Service provide interpreter services, where required, for meetings, conferences and visits.*

Asylum Seekers with Care Needs

- 14.3.42 Guidance is available for professionals on the handling of applications for support from asylum seekers who may have children with specific 'care' needs due to illness or disability. (Asylum Support – Asylum Seekers with Care Needs, *Home Office March 2004*)

The Role of the Police

- 14.3.43 As with other public providers the Police have access to their own Police Register for interpreting services. Asylum seeking families and children are subject to 'normal' police jurisdiction.

Good Practice

- 14.3.44 The Child Protection Unit does not make any specific provisions for asylum seeking children and young people, regarding them in the same light as other service users. They assist other agencies in establishing certain information to ensure the quality of service is dependent on their assessed needs.

The Role of the Health Service

- 14.3.45 All Asylum Seekers have the right to be fully registered with a G.P, and should be encouraged to do so as soon as possible. Their children and UASCs are entitled to the same free NHS treatment (hospital care and specialist treatment) as any other children.

The British Medical Association (BMA) recommends that asylum seekers entering the UK should be provided with information, in a language they understand, about access to health care, other social services and registering with a GP. The BMA clarifies there must be no discrimination against any particular group, *as 'refusing to provide health care, or providing lower standards of care' may breach s.20 of the Race Relations Act.*

G.P's, Hospitals, Pharmacists, Opticians and Dentists are entitled to use Health Authority Interpreter Services and recoup the costs.

NHS Direct gives access to Language Line that provides emergency interpreting in 25 languages. www.nhs.direct.nhs.uk. Tel: 0845 4647 (NHS DIRECT) where an asylum seeker is experiencing difficulty in registering with a GP.

Primary Health Care

- 14.3.46 Those who have formally applied for asylum, or have any form of Discretionary Leave to Remain, are exempt from charges for medical treatment under the NHS Health Circular HC (82) 15 para20, and updated in Statutory Regulations No.306,NHS (Charges to Overseas Visitors) Regulations 1989 - **providing they are in receipt of an up-to-date HC2 form,(Help with Health Costs) that must be renewed every 6 months.**
- 14.3.47 Application forms (**HC1**) should be available at surgeries, chemists, hospitals, Benefit Agency offices and the Asylum Support Team. There is a 'fast-tracking' system for asylum seekers applying for HC2 forms and pre-paid envelopes are provided.
- 14.3.48 In **Northampton** the **Maple Access Practice** provides Primary Care services for specialist client groups, including Asylum Seekers and Refugees. Interpreter Services are closely linked with this practice and Kings Heath PMS Practice.
- 14.3.49 Those alleging torture are likely to require clear information as to how to contact specialist services, particularly the Medical Foundation for Care of Victims of Torture. Early referral, in such cases, may be crucial to the patient's asylum case in addition to providing specialist assessment and treatment.

Hospital Services

- 14.3.50 All Accident and Emergency services are free though there may be restrictions regarding access to specialist services. See: Caring for Dispersed Asylum Seekers 2003. (reference document)

Hospitals may need to verify that the patient has documentation confirming that he/she is an asylum seeker. Enquiries can be made to the Home Office - 0208 686 0688.

Health Costs - Additional Information.

- 14.3.51 **HC 2** form is used to claim help with paying for: NHS prescriptions, NHS dental treatment, NHS wigs and fabric supports, sight tests, glasses and contact lenses and travel to hospital for NHS treatment.

Some asylum seekers, including families, may have permission to work. They may also be entitled to help with health costs and should be provided with leaflet **HC11**.

Prescription Charges.

Free if the patient is under 16 or under 19 and remaining in full time education or holding an exemption certificate on maternity or medical grounds.

- Refunds for prescription charges may be made by requesting a NHS receipt form **FP57** from the pharmacist, doctor or hospital at the time of payment.

- Refund claims for prescriptions, NHS dental treatment, sight tests and glasses **must** be made within 3 months of the payment date using an **HC5** form - available through Job Centre Plus offices and NHS Hospitals

Dental Services

- 14.3.52 Asylum seekers may face additional difficulty in obtaining dental treatment. Good practice should dictate that dentists use interpreter services to ensure a full medical history is obtained as certain health conditions may impact upon dental treatment. An **HC2** form is required in order to access free NHS treatment. **See previous section**

Dental Access Centres are available across the county in Corby, Towcester and Northampton. These centres take non-registered patients for crisis treatment only and will provide the patient with a list of NHS dentists. The patient should register with a dentist as soon as possible. **Charges at these centres are as per NHS.**

Community Dental Services are for Special Needs Adults and children only.

Role of Housing Departments

- 14.3.53 When a family is granted Indefinite Leave to Remain they become entitled to apply for housing, housing benefit and other forms of benefits including Job Seekers Allowance, Income Support and Child Benefit. The Asylum Support Team will support families to access housing and there is a positive working liaison with the Borough/District councils.
- 14.3.54 Some families have been granted Discretionary Leave to Remain, normally for a prescribed/limited period. They are eligible to apply for the various forms of benefit, as outlined above, during their period of 'Leave to Remain'.
- 14.3.55 Most families currently supported, under the Interim Provisions, are being actively considered for ILR under the Asylum Amnesty. Links among relevant agencies are in place to achieve positive outcomes with minimal disruption to families.

Good Practice

- 14.3.56 The Local Authority Housing Department will check eligibility at the point of contact with them. The Home Office Letter substantiating their 'Leave to Remain' status will establish their eligibility and support.
- 14.3.57 Additional advice/assistance may be sought from the Asylum Support Team for asylum seeking families and young people who are granted 'leave to remain'.

Role of the Local Education Authority

- 14.3.58 The Local Education Authority (LEA) has a duty towards asylum seeking children in that they:
- must provide a full time education for all children of compulsory school age resident in their area. Entitlement to 'early years' and 'post 16' education in schools is the same as for other 'resident' children;
 - have a duty to provide certain additional educational support for children in public care or who are looked after under the Children Act 1989, Section 20;
 - have a duty to provide free school meals for children supported by NASS;

- are bound by the Race Relations Act 1976 and Race Relations (Amendment) Act 2000 to ensure there is no discrimination on grounds of ethnicity and to positively promote good race relations.

14.3.59 Asylum seeking children in Further Education are treated as overseas students with regard to fees, grants and loans. Concessionary fees apply to asylum seekers on part-time courses who are supported by NASS.

Good Practice

14.3.60 It is important that the educational setting establishes principles of good practice relating to these children, particularly around the following areas:

- rapid admission;
- admission and induction procedures sensitive to the child's background and needs;
- an assessment of educational need;
- awareness raising amongst staff of issues relating to asylum seeking pupils;
- reporting of all racist incidents.

Educational establishments should be aware that:

- asylum seeking children will be living on a low income
- asylum seeking pupils will be entitled to sit Statutory Assessment Tests and GCSE's.
- there may be special provision for late arrivals to the school system who are unable to access GCSE courses
- Connexions workers should be assigned to all asylum seeking children, who may be at risk of leaving school with no educational or work destination

Additional Advice for Practitioners

14.5.61 As outlined earlier in this guidance, you may encounter individuals, or families, who may not be asylum seekers though still require advice and assistance. It is important to try and ascertain their status and you may need to seek advice through other agencies including NASS, Welfare Rights and the Asylum Support Team.

14.5.62 Where advice is required, outside of office hours, the Out of Hours Duty Team may be contacted. It should be acknowledged, however, that this team is available to deal with emergencies that arise outside of normal working hours. If the situation is not urgent then the enquiry should be pursued on the following working day through the agencies listed above.

14.5.63 Where there is difficulty in ascertaining a person's immigration status an approach can be made to the Asylum Support Team to assist. We will attempt to undertake the necessary enquiry with the Home Office.

14.5.64 Professionals and support workers from various agencies may encounter issues of domestic violence, and be faced with concerns for the safety of asylum seeking children and children who form part of asylum seeking families. The response to such situations should be as detailed in the **INTER-AGENCY CHILD PROTECTION PROCEDURES – issued by the Northamptonshire Child Protection Committee.**

Note: New guidance on - Sharing Information in Domestic Violence from the Adoption and Children Act 2002, s.120 - to be implemented January 2005.

Membership of Working Group

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Information gathered, Research and Evidence base

- Immigration Act 1971
- Nationality, Immigration and Asylum Act 2002
- Surrey County Council 2003
- Immigration and Asylum Act 1999
- Refugee Act 1996
- Immigration and Nationality Directorate
- Looked After Children (2003) 13 Guidance on Accommodating Children and Their Families
- Asylum Support- Asylum Seekers with Care Needs – Consultation Document March 2004
- Hillingdon Judicial Report Aug 2003
- ADSS Briefing – Care and Support of UASCs 2003
- Caring for Dispersed Asylum Seekers – June 2003
- The Health of Refugee Children – Guidelines for Paediatricians. June 2003
- Asylum Support to Families with Children and UASCs – Procedure Document Draft (1) April 2004
- Support for Asylum Seekers (2nd Edition) – a guide to legal & welfare rights – Legal Action Group, 2004