

11_A Family support services for asylum seekers

References

ASR: Asylum Support Regulations 2000
CA: Children Act 1989
ECHR: European Convention on Human Rights and Fundamental Freedoms
Framework: Framework for Assessment of Children and their Families, 2000, Department of Health, www.doh.gov.uk
G&R: Guidance and Regulations, Vol. 2 Family Support, Day Care and Educational Provision for Young Children
HRA: Human Rights Act 1998
IAR: The Immigration and Asylum (Provision of Services or Facilities) Regulations 2007
IAA : Immigration and Asylum Act 1999
NAA : National Assistance Act 1948
NASS: National Asylum Support Service
NHSCCA: National Health Service and Community Care Act 1990
NIAA : Nationality, Immigration and Asylum Act 2002
Refugee Convention : 1951 Convention relating to the Status of Refugees
UKBA: UK Border Agency

A. WHAT ARE FAMILY SUPPORT SERVICES?

Local Authorities are under a general duty to safeguard and promote the welfare of children in need, and to provide family support services to help families to care for such children.

The Children Act 1989 sets out the basic legal framework which gives local authorities the power to provide these family support services. The relevant parts of the legal framework and guidance are set out in the narrow column on the right hand side of this advice sheet; the key to the references are at the end.

S 17 CA

In principle, this power to provide families with support services to help them care for their children extends to asylum seekers and their families. However, the legislation places some limits on their entitlement to this help.

These limitations are set at **'Section D, paragraph 3 below .**

This advice sheet covers services provided to families. Unaccompanied children and young people leaving care are dealt with in FRG advice sheet 9

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B. WHO IS AN ASYLUM SEEKER?

The following definitions are used for the purposes of this advice sheet only and are only for the purposes of asylum support :

An '**asylum seeker**', for support purposes only, is a person

*S94 IAA and s18
NIAA*

- who is at least 18 yrs old;
- who is in the UK;
- who has made a claim for asylum (either under the Refugee Convention or Article 3 ECHR) which has been recorded by the Secretary of State ; AND
 - whose claim has not been **determined**¹, including any outstanding appeals lodged within the required time limits; OR
 - whose claim has been refused but whose household includes dependents under the age of 18 (born before the claim was refused) and who remains in the UK.

S 94(5) IAA

A '**refused asylum seeker**', for support purposes only, is an asylum seeker

- whose claim has been refused and
- who has exhausted any rights of appeal.

A refused asylum seeker whose child is born *after* her claim is *determined* will fall within this category.

A **Schedule 3 refused asylum seeker** is a refused asylum seeker with or without dependents whose claim has been *determined* AND

*Sch 3 NIAA
Para 7A (otherwise
known as 'section 9')*

- who has been certified by the Secretary of State as failing to leave voluntarily (applies only to those with dependents); OR
- has failed to co-operate with removal directions; OR
- is unlawfully in the UK – for asylum seekers, this applies if made the original claim for asylum was made in country (i.e.: not at port of entry).

Para 6

Para 7

At time of writing, the Home Office has stated that the 'section 9' provisions (first bullet point above) will not be used on a blanket basis by UKBA case owners. However, the provision remains in the statute, its use may still be considered on a case by case basis.

*'Family asylum
policy – the section 9
implementation
project', BIA July 07*

¹ A claim is determined either (i) 21 days after the Home Office notifies the applicant of the decision on the claim for asylum by a notice in writing OR (ii) if the applicant brings an appeal, 21 days after the disposal of the final appeal.

C. WHAT SUPPORT IS AVAILABLE FOR ASYLUM SEEKING FAMILIES FROM THE BORDER AND IMMIGRATION AUTHORITY?

Asylum seekers are not allowed to work or to claim state benefits. Instead, basic support for asylum seekers (including housing and income) is provided under sections 4 and 95 of the IAA.

Support is administered by the UK Border Agency (formerly the Border Immigration Authority). Prior to March 2007 support was administered by NASS (National Asylum Support Service). From 5 March 2007, all new cases will be administered by a caseworker appointed to them under the New Asylum Model (NAM). Old NASS cases will be dealt with as 'legacy cases' by the UKBA. The present situation is confusing as many people continue to refer to asylum support as 'NASS support'.

1. Basic support for asylum seekers: housing and income

All asylum seekers (as defined in section B), whether single adults or families with dependents (including a child under 18) who are in the UK and who would otherwise be **destitute**², can apply for support for themselves and their dependents under section 95 IAA.

S95 IAA

They can apply for one of three packages of support:

- subsistence and accommodation;
- subsistence only (if they are staying with friends or relatives); or
- accommodation only.

S96 IAA

UKBA *must* support eligible families with dependent children.

S122 IAA
R(A) v LB Waltham Forest (2003) EWCA Civ 1473.
NASS policy bulletin 82, s.8

Subsistence support is intended to meet an individual or family's 'essential living needs' and no more³.

Asylum seekers with dependent children should continue to receive support under s95 IAA after their claim is refused until such time as they leave the UK or support is withdrawn under Schedule 3 NIAA (see section B above).

S96(1)(b) IAA

² An applicant must be destitute, or likely to become destitute within a prescribed period, currently 14 days for new applicants, 56 days for those already receiving support. **A person is destitute if** "he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met) or "he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs" s95(3) IAA

³ This phrase 'essential living needs' has been held to mean the basic living needs (food, nourishment, clothing and warmth) of an ordinary person with no peculiarities or disabilities – R v Secretary of State, ex parte Ouji [2002] EWHC 1839 (Admin)

Asylum seekers **who do not have dependent children with them in the UK at the time their asylum claim (including any appeals) is refused**, will lose this basic support 21 days after their claim has been refused. At this point they become refused asylum seekers, and may be eligible for 'section 4' support – **see paragraph 2 below**.

Pregnant women whose first child is born more than 21 days after their claim for asylum (is finally refused including any appeals) will be treated as refused asylum-seekers. After refusal, they are not entitled to ongoing support under s95 IAA (as set out above) but may be eligible for 'section 4' support - **see paragraph 2 below**.

2. 'Section 4' support for refused asylum-seekers: housing and vouchers

Section 4 support (provided under s.4 IAA and also known as 'hard case' support) is intended to be a temporary and limited package of support available from UKBA for any refused asylum seeker who is **destitute** AND meets one of the following conditions:

S4 IAA

- o s/he is taking all reasonable steps to leave the UK/ OR
- o is unable to leave the UK due to medical or physical impediment OR
- o there is no viable route of return to his/her country of origin available⁴ OR
- o permission has been granted for an application for judicial review to be made OR
- o Provision of accommodation is necessary to avoid a breach of his/her human rights.

*Regs 2 and 3
Asylum (Provision of
Accommodation to
Failed Asylum
Seekers)
Regulations 2005.*

Whether these conditions are met will depend on the evidence available in each individual case.

If one of these conditions is met, the support provided consists of either full-board accommodation, or accommodation plus food/toiletries vouchers worth £35 a week. These vouchers can only be exchanged at a limited number of outlets. In reality, people may be in receipt of hard case support for a substantial period of time.

New regulations which came into force 31 January 2008 provide for additional payments by way of vouchers for specific additional needs. These are:

*The Immigration and
Asylum (Provision of
Services or Facilities)
Regulations 2007*

- *Travel for healthcare treatment or to register a birth*
- *Phone cards / stationary / stamps –*
- *One-off voucher of £250 for pregnant women / new mothers*

⁴ Countries where there is no viable route of return are only those which are defined as such by the Home Office.

- *Additional weekly vouchers (£3/£5) for pregnant women and children under 3 years*
- *Clothing for children (£5 pw)*
- *Exceptional specific needs*

Further information on and assistance with claiming asylum support can be obtained from the Asylum Support Appeals Project – www.asaproject.org.uk. Contact details at the end of this advice sheet.

D. WHAT SUPPORT IS AVAILABLE FROM THE LOCAL AUTHORITY FOR ASYLUM SEEKING FAMILIES?

1. Educational provision

Up to the age of 16, immigration status has no bearing on educational entitlement. This means that all asylum-seeking children aged five to 15 are entitled (and indeed are required) to go to school or to be educated and all such children under 5 have the same entitlements to pre-school facilities as other children in the UK.

For young people aged 16 years and above, placement within a school is at the discretion of the head teacher and the LEA. For more information see the Refugee Council information sheet on Education to 18, available at <http://www.refugeecouncil.org.uk/practice/asylum/supportpack/education.htm>

2. Family support services

The local authority is under a general duty:

- to safeguard and promote the welfare of children within their area who are **in need**⁵; and
- so far as is consistent with that duty, to promote the upbringing of such children by their families

S17(1)(a)CA

by providing a range and level of services appropriate to those children's needs.

This means that the local authority can, and indeed should, provide support to families with vulnerable children and their families. However, the **provision of family support by local authorities will be subject to two important restrictions.**

S17(3)CA

⁵ A "child in need" is defined as a child who is aged under 18 and (i) who is unlikely to achieve or maintain a reasonable standard of health or development without the provision of appropriate services by a local authority; or (ii) whose health or development is likely to be significantly impaired or further impaired without the provision of appropriate services by a local authority; or (iii) who is disabled. Section 17(10) CA

3. Restrictions on provision of support

i) Assessment

Support will only be provided to a particular child and their family if the local authority has carried out an **assessment of the child's needs** (see below at section E) and has decided to provide services to meet those needs. This decision will be influenced by whether or not the child's needs fit into the local authority's priorities for service provision. These priorities are public information which you can request from any local authority Children's Services department.

ii) Specific restrictions on the right of asylum seeking families to receive support

Asylum seekers with dependent children (under 18) will usually be in receipt of basic housing and subsistence support from UKBA. The general rule is therefore that they are excluded from housing and subsistence support from the local authority, but they can apply to the local authority for other social care support services to help them care for their children. See below at section F.

S 95 IAA
ASR reg 9

S122(5),(6) IAA

Ø However, where basic support for an **asylum seeking family** has been stopped by UKBA because they have failed to comply with conditions attached to the provision of support (e.g. a condition of residence), they may (subject to assessment) be eligible for support and assistance from the local authority, including provision of accommodation and/or essential living needs.

S122 IAA no longer applies; s17, s20 CA

Ø A **refused asylum seeker** with a dependent child born after her claim is determined may be eligible (subject to assessment) for support and assistance from the local authority, including accommodation and essential living needs. See below at section F.

S122 IAA no longer applies; S17 CA; S21 NAA

Ø **Sch 3 refused asylum seekers** are NOT entitled to any support from the local authority. But their children will remain eligible for support separately from their parents. In practice this means that where the family is destitute, the children may be accommodated by the local authority separately from their parents either by agreement of the parents or as a result of care proceedings.

Sch 3 NIAA:
Para 1

Para 2(1)(b)

BUT the local authority may provide services to support a refused asylum seeker and his/her family together if it is necessary to avoid a breach of their human rights. See further below at section I.

Para 3

4. Children in need

Here are some examples of the kind of situations where the local authority

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could provide support services to vulnerable asylum seeking children and their families (subject to an assessment of their needs and none of the above restrictions preventing them from being eligible for local authority support):

- Disabled children and young people, and those with significant emotional and behavioural difficulties (including children and young people at risk of exclusion from school).
- Children and young people with caring responsibilities, including young people who are parents.
- Children and young people at high risk of family breakdown for example children whose parent(s) are living on low wages or Income Support, in one-parent families, in overcrowded conditions or in temporary accommodation or large families with limited informal support
- Children without accommodation or living in an unsafe physical environment
- Children in detention

E. HOW DOES THE LOCAL AUTHORITY ASSESS A CHILD OR FAMILY'S NEED FOR FAMILY SUPPORT SERVICES?

Some services, which are provided by voluntary and community organisations or by Sure Start, are open to all families living in a certain area or living in certain circumstances. These services can often be accessed directly.

However, other services can only be obtained following an assessment by local authority children's services. This will be conducted in accordance with government guidance in the Framework for Assessment of Children in Need, which provides for three different levels of response to a request for help:

1. What does the local authority's assessment involve?

Initial response within 24 hours: When a child/family seeks help from local authority children's services, they are required to decide within one working day whether they will take no action or undertake an initial assessment. They must inform the child/family of this decision.

Initial assessment: An initial assessment should be undertaken within a maximum of 7 working days. The child or young person should be seen as part of this process and the parents and child, if appropriate, should be

Framework for the Assessment of Children in Need and their Families, DoH, 2000 and Working Together to Safeguard Children, DfES 2006

<http://www.asylumsupport.info/publications/doh/guidance.pdf>

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informed in writing of the decisions made and offered the opportunity to comment on these and correct any inaccurate information.

A core assessment of a child in need: If the initial assessment indicates that the child is in need, but there is no cause for concern about the child's welfare and protection, a core assessment will be carried out. This should be completed within 35 working days of the completion of the initial assessment unless it involves a specialist assessment by another agency.

Whichever level, the assessment will focus on three areas:

- the child's developmental needs;
- the parents' or care givers capacity to meet these needs (including any services that might be needed, for example, help to disabled parents in their parenting role) ;and
- the wider family and environmental factors.

The local authority should also:

- consider all the child's needs including health, development, disability, education, religious persuasion, racial origin, cultural and linguistic background;
- provide an interpreter if the family's preferred language is not English or they have other communication difficulties; and
- should work cooperatively with the child and family in undertaking the assessment. This means that they should discuss their plans for collecting information with the child/family, they should explain who they want to see and why, they should tell you how long it will take and how any decisions will be made.

Child protection enquiries: Where a child is suspected to be suffering, or likely to suffer, significant harm, the LA is required by s47 CA to make enquiries, to enable it to decide whether it should take any action to safeguard and promote the welfare of the child. Child protection procedures are the same for asylum seeking families as for any other family in the UK. But note that any order made in child care proceedings (such as a care order) will not override the Secretary of State's powers under the immigration legislation. It will not, for example, prevent the removal of a child or their parents. **For further information about child protection procedures see FRG Advice Sheet 12**

Re L (Care Order: Immigration Powers to Remove) [2007] EWHC 158 (Fam); Rotherham BC v M & Ors [2003] EWHC 1086 (Fam)

In some circumstances it may be possible for a parent to obtain leave to remain in the UK for the duration of care proceedings. Further advice should be sought from a lawyer specialising in immigration law (see end of this advice sheet)

MS (Ivory Coast) v Secretary of State for the Home Department [2007] EWCA Civ 133,

2. Am I entitled to an assessment for support?

Anyone who is looking after a child under 18, or has parental responsibility for a child, is entitled to **ask** for an assessment if s/he thinks the child may

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be in need.

Children who are old enough (there is no fixed age) are also entitled to ask for an assessment of their own needs.

For a specimen letter requesting an assessment for support services see Appendix A

Cases of disability: If the dependent of an asylum seeker is a child with a disability, or is affected by disability the local authority must conduct an assessment of the child's needs and of the child's carer and her/his ability to provide care for the child. **For further information about children or parents who have a disability, see section G below**

3. What will the local authority do if I ask for an assessment?

Upon receiving the request for help from the child/family, the local authority should respond within 24 hours to say whether or not they will carry out an initial or full assessment (as above).

The local authority will check your immigration status. They will ask for your passport, a birth certificate or a Home Office letter confirming your status. They may check with the Home Office (if you have made a claim for asylum) or by ask your immigration solicitor for information. They will ask you for evidence of your nationality, your ordinary residence (the place where you live). They will also be looking to see if you are ineligible for support because you are a *schedule 3 refused asylum seeker* (see above at section D for restrictions on entitlement).

Please note: The local authority has a duty to notify the Home Office if a person they suspect is Sch 3 refused asylum seeker applies to them for support or assistance. This may result in the Home Office becoming aware of a persons whereabouts and taking enforcement action against them. Clients should be advised of this when considering their options for support.

Sch 3 para 14 NIAA

If you are a *Schedule 3 refused asylum seeker*, but the local authority consider that your child meets the eligibility criteria as a 'child in need', they must carry out a human rights assessment to consider whether they have an obligation to support you and your child together in order to prevent a breach of your or your child's human rights. See below at section I.

*R(AW) v Croydon;
R(A, D & Y) v
Hackney (2005)
EWCH 2950 (Admin)*

4. How should I prepare for the assessment process?

When you seek support from local authority children's services, it may help if you and your family can get together and discuss the type of help and services you might need. Some people find it helpful to write down the help that they want and reasons why. You can give this to the local authority and encourage them to use it as the basis for any assessment they undertake.

Family Group Conference (FGC): You can also ask for an FGC which is a

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meeting that brings the child's whole family together to make a plan for the child. It is sometimes used where there are child protection concerns running alongside the family's need for support services. The role of the professionals is to provide you with information about their concerns (if any) and local resources. The family then uses this information to make a plan, as a group, without professionals being present. The local authority may agree the plan unless it does not provide protection to the child/children.

5. What happens after the assessment of the child/family's needs?

The local authority should inform the family of the outcome of any assessment of need, and what will happen next. If services are to be provided, they should draw up a plan of how this will be done.

i) If the local authority has decided that the child is in need:

Once the local authority has made a decision about whether the child is in need, it will, in conjunction with the child and family, make a plan to address the child's needs which will include the provision of appropriate services. The plan should set out:

- The types of family support services to be provided and by whom
- The length of time the service will be required
- The objective of each service
- What other service providers are expected to do
- How and when the plan will be reviewed
- Any specific areas of disagreement and arrangements for dealing with problems

The types of services which may be provided are set out below at Section F

ii) if the local authority has refused services or the child/family do not agree with the outcome of the assessment:

You will need to ask the local authority why they consider you are not entitled to family support services, or why they have offered you the service they have. Ask for a copy of their decision in writing. Look at their published priorities for service provision to see how they match with your needs. If you feel that you fit within those priorities, you need to make this clear to them.

Framework for the Assessment of Children in Need and their Families, DoH, 2000

Sometimes local authorities refuse to provide services unless the child's name is on the child protection register. This is very bad practice and has been disapproved by the government. If you are told this you should make a complaint or even consider judicial review – ***For information about this see below in section H.***

Child Protection: Messages from Research, DoH 1995

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If the refusal is based on your ineligibility for services because you are an asylum seeker you should ask the local authority for a copy of their decision in writing which should state clearly why you are not eligible. If you disagree with their decision, you should seek further advice from Family Rights Group, from law centre, a citizens advice bureau or a refugee/asylum advice organisation.

iii) If the local authority has refused services on the basis that the family are refused asylum seekers or schedule 3 refused asylum seekers:

Where the family are refused asylum seekers, or Sch 3 refused asylum seekers, a local authority may, after assessment, decide that a child's needs are best met by a return of the family to their country of origin. Provided the family have not failed to comply with removal directions, the local authority has the power to provide short term accommodation and funds for travel to the country of origin if necessary to avoid a breach of their Article 8 rights (due to separation). **See further 'what about my human rights' below section I.**

In some circumstances, it may be possible to argue that an offer of funds for travel is not sufficient to avoid a breach of Article 8 rights (due to separation of the family), where some members of the family have the right to remain (and will remain) in the UK; Or where children are the subject of care proceedings.

If you disagree with their decision, you should seek further advice from Family Rights Group, from a solicitor, a law centre, citizens advice bureau or a refugee/asylum advice organisation.

Grant v Lambeth BC
(2004) EWCA Civ 1711; Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002; S17 CA; S2 Local Government Act 2000;

M v Islington BC
[2004]EWCA Civ 1343; BS v Lambeth
[2007] EWHC 767: N v SoS for the Home Department : [2006] EWCA Civ 414; PB v Haringey [2006] EWCH 2255
See also Huang v SoS [2007]UKHL 11 at para 18

F. WHICH SERVICES CAN THE LOCAL AUTHORITY PROVIDE?

Here are some of the key services which the local authority may provide either to the particular child whom they have assessed as being in need, or to any member of the child's family if it is with a view to safeguarding and promoting the child's welfare:

- **Day Care** –this could include day nurseries, playgroups, sponsored childminding, and out of school clubs.
- **Help provided in the family home** –this type of service can also be provided by the local authority in the form of a family aide worker who gives families practical help and support at home.

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- **Parenting Skills Programme** – these can be provided in a number of different settings, such as family centres and range from self-help/self support groups to sessions which are run like an evening class. Parent and carers who would like help with their parenting will need to consider which approach best suits their needs
- **Family Centres** – there are many different types of family centres, ranging from those described as therapeutic, providing in depth help to families, to those that are community based and self help in nature
- **Counselling** – counselling for adults and children can be provided by family centres, child and adolescent mental health services and specialist counselling organisations
- **Advice and guidance** – this can be provided in a variety of places, from family centres to specialist organisations. Parents will be provided with advice about benefits, work and childcare, and may be offered training and support to work.
- **Promoting contact for children away from home:** The local authority must take reasonable steps to enable a child in need who is living apart from his or her family to resume living with their family and to promote contact between them provided it is consistent with the child's welfare
- **Provision of accommodation and cash, under s.17(6) CA:** Local authorities may provide families with practical assistance, such as help to buy essential equipment for children, or for food and other necessities, and even help with housing costs or some other form of accommodation for the family together. In exceptional circumstances they may also provide cash help. Each local authority will have its own guidance about this form of help.
- **Respite accommodation:** Accommodation of children by the local authority should be seen as a service to support parents. The legal framework for the local authority to provide accommodation to vulnerable children applies, irrespective of the child's immigration status, as follows:

Sched 2, para 10, CA

s.17(6) CA as amended by s.116 ACA

Every LA shall provide accommodation for any child in need within their area who appears to them to require accommodation, as a result of:

s.20(1) CA

- there being no person with parental responsibility;
- the child being lost/abandoned; or
- the person who has been caring for him being prevented (whether or not permanently and for whatever reason) from providing him with suitable accommodation or care.

However, accommodation may not be provided where any person

with parental responsibility for the child objects, unless:

- there is a residence or special guardianship order in force and the person holding the order has given their agreement to the child being accommodated.; or
- the child is over 16 and agrees to being accommodated.

s20(7) & (9) CA

When a child is accommodated under s20 s/he is 'looked after', which means that all the duties on the local authority in relation to looked after children apply.

For further information about the local authority's duties towards looked after children, see FRG Advice Sheets 1,2, 3, 9, 9A

- **Accommodation for homeless children:** Where the local authority provides accommodation for an unaccompanied homeless child, this should normally be under s.20 CA.
- S17 might be appropriate in the case of an unaccompanied asylum seeking child who is themselves a parent. But, note that a child given help with accommodation under s17 will not be 'looked after' child and will not be entitled the benefit of the leaving care provisions for looked after children.

Department of Health LAC (2003)13 "Guidance on Accommodating Children in Need and their Families"

H v Wandsworth [2007] EWHC 1082(Admin);

For further information on leaving care entitlements see FRG Advice sheet 9A

Note: Where the child is a member of a family which is homeless the Local Authority may accommodate the child alone under s20, or the family under s17 (if they have no other housing support available). In the case of asylum seeking families, the decision whether to accommodate the family under s17 will be dependent upon their immigration status and any human rights assessment. **See section D above**

R (G) v Barnet LBC; R (W) v Lambeth LBC; R (A) v Lambeth LBC [2003] UKHL 57

G. WHAT SUPPORT IS AVAILABLE WHEN THE CHILD OR PARENT / CARER HAS A DISABILITY?

The local authority also has the power to make direct payments to parents and carers of disabled children, to enable them to buy the services they need.

S17A CA

1. If the child has a disability

If a child has a disability the local authority must conduct an assessment of the child's needs and of the parent/carer and his/her ability to care for the child.

S17(10)CA; Sch 2 para 1 CA

Where the local authority provides any services to a child with a disability,

Sch 2, para 6 CA

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any services should be designed to minimise the effects of disability and to provide children with the opportunity to lead lives which are as normal as possible.

Housing: Where the family is supported by UKBA, the local authority is not responsible for providing accommodation to a disabled child. However, the accommodation provided by UKBA must be adequate for the disabled child's needs.

R(A) v LB Waltham Forest (2003) EWCA Civ 1473. NASS policy bulletin 82, s.8

'Essential living needs': Asylum seekers who are in receipt of UKBA support will receive accommodation and/or cash for 'essential living needs'. 'Essential living needs' are limited to the basic living needs (food, nourishment, clothing and warmth) of an ordinary person with no peculiarities or disabilities. Therefore any extra payments necessary to meet the needs of a particular child with a disability may be provided by the local authority following assessment.

R v Secretary of State, ex parte Ouyi (2002) EWHC 1839 (Admin)

2. If a child's parent or carer has a disability

The local authority should consider whether providing services to the parent through community care legislation would be a more appropriate way of helping the child, and they should not automatically see the child as "in need". The local authority has a duty to carry out an assessment and to make a decision based on that assessment as to whether a person is in need of community care services.

S47NAA

Fair Access to Care Services, DoH,

For further information on the rights of disabled parents and carers, see FRG advice sheet number 15A

H. HOW CAN I CHALLENGE THE LOCAL AUTHORITY'S ASSESSMENT OR DECISION?

1. Complaints

You can make a complaint to the local authority about the services you receive/the lack of services. **For further information see FRG advice sheet number 18.**

2. Judicial Review

In exceptional circumstances it may be appropriate to consider challenging the decision of a local authority by taking legal action. This is a process whereby the High Court will review the decision, action or inaction by the authority to see whether or not the authority has acted lawfully. The most common grounds for judicial review are:

- The decision is unlawful;

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- The authority has misunderstood the relevant law;
- The decision is unreasonable given the facts;
- The decision shows an improper exercise of discretionary power – for example the authority fetters its discretion by applying a blanket policy to all families;
- The authority has taken into account an irrelevant consideration;
- The authority acts in a way which is in breach of Human Rights law.

Judicial review is a discretionary remedy which is very expensive. It is therefore vital that you consult a solicitor specialising in this area of law before embarking on a judicial review. The solicitor will help you to establish whether or not you qualify for public funding (formerly legal aid). In addition there are strict time limits for judicial review. The action must be brought as soon as possible after the decision is given by the authority and in any case within 3 months of the decision.

I. WHAT ABOUT MY HUMAN RIGHTS?

1. Introduction

The Human Rights Act 1998 (HRA) came into force in October 2000. The main effect of it is that it incorporates into domestic law the European Convention of Human Rights (ECHR). More specifically, it is now “unlawful for any public authority to act in a way which is incompatible with a Convention Right”, unless they are following legislation and have no discretion to do otherwise.

S 6 HRA

S 6 (2)

2. Local Authority duty to respect human rights

Generally, any decision made by a local authority must be compatible with a person’s rights under the Convention. The ones which are most relevant to decisions about the provision of family support services are:

- ∅ the prohibition of torture, inhuman or degrading treatment – this can be relied on in cases where the denial of support services by the local authority will lead to the person becoming destitute. An individual must face ‘an imminent prospect of suffering caused or materially aggravated by denial of shelter, food or the most basic necessities of life’.
- ∅ the right to a fair trial in relation to decisions which affect a person’s civil rights – this applies to decisions relating to asylum seekers such as their detention, mistreatment, removal of support or removal of children; and
- ∅ the right to respect for privacy and family life. This includes the right of people in family relationships to enjoy each other’s company. Article 8 is not an absolute right. The State may interfere with family

Article 3: ECHR

R(Limbuela and others) v Secretary of State for the Home Department [2005]UKHL 66

Article 6: ECHR

Article 8: ECHR

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life provided that it is in accordance with the law, “necessary in a democratic society for the protection of health or morals, or the protection of the rights and freedoms of others”, and that the interference is proportionate in the circumstances of the case. ‘Immigration control’ is a justification which is given considerable weight by the courts.

See Huang v SoS
[2007]UKHL 11 at
para 18

Both children and adults benefit from these rights. If decisions made about the provision of services to a family are not compatible with the child or parents’ rights, it is possible for the victim (i.e the person whose Convention rights have been breached) to apply to the court for an injunction to stop the breach, and/or for damages. If care proceedings are brought by the local authority, it is possible for the parents and/or the child to rely on their rights in support of their case in those proceedings.

3. How are these relevant to the local authority’s duty to provide family support for parents who are asylum seekers?

There are specific provisions in Schedule 3 NIAA which prevent local authorities from exercising their powers to provide community care support to the majority of refused asylum seekers.

However, paragraph 3 of Sch 3 NIAA makes an exception to this rule by specifically allowing a local authority to exercise their powers, which they would otherwise be prevented from using, if to do so **‘is necessary to avoid a breach of the persons Convention rights’**. This applies in relation to schedule 3 refused asylum seekers - **see above at section B**.

Sch 3, para 3 NIAA

Therefore, when a local authority is deciding whether to provide support to a refused asylum seeker and his/her children, **they should conduct a human rights assessment before refusing to provide services**.

4. What factors should a human rights assessment consider?

A human rights assessment should include consideration of the following :-

- Ø Family composition – who are the relevant family members (with whom there are existing relationships), where are they, and what is their immigration status?
- Ø How will family relationships be affected if support is not provided?
- Ø Asylum application – are there any claims or appeals outstanding? Is there a fresh claim?
- Ø What are the medical needs of the family? How are these being met? How will they be met if support is not provided?
- Ø What are the educational needs of the family? How will these be met if support is not provided?
- Ø Is any other form of support available – through friends, family, faith groups, and voluntary organisations?
- Ø What are the reasons the family cannot return to their country of origin? What difficulties would they face if they were to return?

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4. Here are some examples of court decisions about families' and asylum seeking families' human rights:

Where members of a family are prevented from sharing family life together, there is likely to be an interference with Article 8(1). This can only be justified if it is in accordance with the law, "necessary in a democratic society" and the interference is proportionate in the circumstances of the case.

Anufrijeva v Southwark LBC
[2003] EWCA Civ 1406

The placement of children in foster homes or other accommodation which they do not share with their parents constitutes an interference with Article 8. Whether it can be justified will depend upon the particular circumstances of the case.

Kutzner v Germany
(2002) 35 EHRR 25

There is no Convention duty to provide support to foreign nationals who are in a position freely to return home - even if they choose not to. The family is deemed able to avoid the violation of their rights (by destitution or separation) by returning to their country of origin.

R (Kimani) v Lambeth LBC [2004]
1 WLR 272

Where the family are refused asylum seekers, or Sch 3 refused asylum seekers who have not failed to comply with removal directions, the local authority has the power to provide short term accommodation and funds for travel to the country of origin if necessary to avoid a breach of their Article 8 rights (due to separation).

R(Grant) v Lambeth LBC (2004) EWCA Civ 1711

The right to family life is not infringed because it must be conducted outside the United Kingdom in a country with a lower standard of living.

(Mahmood) v Secretary of State for the Home Department [2001] 1 WLR 840;

Where the child has a relationship with a close family member who is a British citizen (i.e. a parent or sibling) this relationship should be taken into account when considering the proportionality of any interference with Article 8 rights flowing from separation.

R(M) v Islington BC
(2004) EWCA civ 235

The core value which Article 8 seeks to protect : *"Human beings are social animals. They depend on others. Their family, or extended family, is the group on which many people most heavily depend, socially, emotionally and often financially. There comes a point at which, for some, prolonged and unavoidable separation from this group seriously inhibits their ability to live full and fulfilling lives. Matters such as the age, health and vulnerability of the applicant, the closeness and previous history of the family, the applicant's dependence on the financial and emotional support of the family, the prevailing cultural tradition and conditions in the country of origin and many other factors may all be relevant."*

See Huang v SoS
[2007]UKHL 11 at para 18

J. WHERE CAN I GET MORE INFORMATION?

The information contained in this advice sheet is intended for guidance only and whilst every effort is made to ensure it is correct at time of publication it should not be used as a substitute for legal advice. For client specific advice please contact Family Rights Group.

You can telephone Family Rights Group's advice service to discuss your case with an adviser, or visit our website to find our other advice sheets.

Call FRG on freephone 0800 731 1696 between 10.00am – 12.00 noon and 1.30 pm – 3.30 pm every weekday. You can also email us at advice@frg.org.uk

You can contact a solicitor who specialises in childcare law to help you negotiate with the local authority. If you are on a low wage or receiving benefits, you should be able to get free advice under the legal advice and assistance scheme.

Call Community Legal Services Directory 0845 608 1122, or see www.clsdirect.org.uk

The following organisations also provide support to families across the country. You can contact the head offices listed below for details or local services.

Barnardo's
Tanners Lane
Barkingside, Ilford
Essex IG6 1QG
Tel: 020 8551 0011

Family Service Unit
Central Office
207 Marylebone Road
London NW1 5QP
Tel: 020 7402 5175

Family Welfare Association
501-505 Kingsland Road
London E8 4AU
Tel: 020 7254 6251

National Newpin
Sutherland House
35 Sutherland Square
London SE17 3EE
Tel: 020-7358 5900

NCH Action for Children
85 Highbury Park
London N5 1UD
Tel: 020 7226 2033

Sure Start
DfES and DWP
Level 2, Caxton House
Tothill Street
London SW1H 9NA
Tel: 0870 0002288

Homestart UK
2 Salisbury Road
Leicester LE7 7QR
Tel: 01533 554 988

Parentline Plus
520 Highgate Studios
53-79 Highgate Road
London NW5 1TL
Helpline: 0808 800 2222

For further information about asylum support

Asylum Support Appeals Project (ASAP)

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Cornerstone House
14 Willis Road
Croydon CR0 2XX
Tel : 020 8684 5873
Fax : 020 8684 5973
<http://www.asaproject.org.uk>

Refugee Council

London advice line: 020 7346 6777
Open Mondays, Tuesdays, Thursdays, Fridays: 10am – 1pm and 2 – 4pm,
Wednesdays 2-4pm

Refugee Action

Head Office
The Old Fire Station
150 Waterloo Road
London SE1 8SB
tel: 020 7654 7700
fax: 020 7401 3699

For further information about asylum claims

Law Centres Federation

Find a law centre near you:-
<http://www.lawcentres.org.uk/lawcentres/>

Refugee Legal Centre

<http://www.refugee-legal-centre.org.uk/advice.htm>

Advice Line 020 7780 3220.

This line is open from 10.30 am to 4.30 pm on Monday, Wednesday and Friday, closed for lunch between 1.00 pm and 2.00 pm.

Joint Council for the Welfare of Immigrants

JCWI offers free legal advice on immigration, nationality and asylum matters to immigration law professionals and private individuals

Phone 020 7251 8706

Tuesday & Thursday 2.00 - 5.00 pm

Asylum Aid

Advice line

Monday: 2.00 – 4.30 pm

Thursday: 10.00 am – 12.30 pm

020 73549264

For voluntary services (including emergency food and clothing) available to destitute asylum seekers

British Red Cross – London office

Address 10th Floor

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Westminster Tower
3 Albert Embankment
London
SE1 7SP
Telephone 020 7793 3360
Fax 020 7793 3361
Email london_enquiries@redcross.org.uk
For British Red Cross offices in other UK areas see -
<http://www.redcross.org.uk/yourarea>

Praxis

Pott Street
London, E2 0EF +44 (0)20 7729 7985

EMAIL:admin@praxis.org.uk

For a map of Refugee Community Organisations in London see
<http://www.praxis.org.uk/map.aspx>

The Diana, Princess of Wales Memorial Fund

The Diana, Princess of Wales Memorial Fund is an independent grant-giving charity established in September 1997 to continue the Princess's humanitarian work in the United Kingdom and overseas. Our vision is a world in which the rights of the disadvantaged are respected.