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After-care: Advice, assistance and support for young people leaving the care system

References

CA: Children Act 1989
IAA: Immigration and Asylum Act 1999
LCA: Children (Leaving Care) Act 2000
LCA Reg: Children (Leaving Care) Act (England) Regulations 2001
LCAR&G: Children (Leaving Care) Act 2000 Regulations and Guidance
NIAA: Nationality Immigration and Asylum Act 2002

Introduction:

When children have been looked after by the local authority in the care system after they reach 16, whether they are in accommodation or in care, the local authority is obliged to provide some support to them when they are no longer looked after.

- **‘Accommodation’** means that a child is being looked after by the local authority with agreement of his/her parents or others with parental responsibility (PR¹).
- **‘In care’** means that a child is being looked after by the local authority under a care order or an emergency protection order.

In this advice sheet, we have set out the specific legal requirements regarding the local authority’s duties towards children when they cease to be looked after. The legal references for these requirements are listed in the narrow column on the right.

What does the law say?

Local authorities are under a duty to every young person they look after (whether in care or in accommodation) to advise, assist and befriend him/her with a view to promoting his/her welfare when s/he is no longer looked after.

CA Sch 2 para 19A

A ‘looked after’ child is one who is either in care, or who is provided with accommodation by the local authority under s20 of the Children Act 1989. A young person who is accommodated under s17 CA

S22 (1) CA

¹ **The following people have parental responsibility:** mothers, fathers who are or have been married to the mother at any time since the birth of the child or who jointly registered on the birth certificate as the father (for children born after 1.12.03) or who have acquired PR by formal agreement with the mother or court order under s.4 CA, anyone who has a residence, special guardianship or adoption order in their favour on the child, guardians, step-parents who have acquired PR by formal agreement with both parents with PR or court order under s.4A CA, prospective adopters who have a child formally placed with them for adoption and the local authority when there is an emergency protection or care order in force. For further information, see advice sheet on parental responsibility.

1989 is not 'looked after'.

The presumption is that lone children (including unaccompanied asylum seeking children) will be accommodated under s20 CA, unless a needs assessment reveals particular factors that suggest an alternative approach is appropriate.

Local authorities are under a duty to assess and meet the care and support needs of 'eligible' and 'relevant' children and young people, and to assist 'former relevant' children in particular in respect of their employment, education and training.

- Local authorities must publish information about the services they provide to care leavers under the Children (Leaving Care) Act (LCA).

Department of Health
LAC (2003)13
"Guidance on
Accommodating
Children in Need and
their Families"
R(Berhe) v London
Borough of Hillingdon
(2003)EWHC 2075
(Admin); H, X & B v
Wandsworth LBC,
Hackney LBC &
Islington LBC (2007)
EWHC 1082 (Admin)
CA Sch 2 para 19B(4)
& 23B(3)

CA Sch 2 para 1 (2)

What are the rights of young people leaving care?

There are four categories of young people contained within the Children (Leaving Care) Act 2000. Each category offers entitlements to certain services or provisions:

1. Eligible Children

You will be in this category if you are:

- Aged 16 or 17
- Have been looked after by a local authority for a period of 13 weeks since you were 14 (this does not have to be continuous). You will still be eligible if the period of 13 weeks began after you turned 16.
- Still looked after

CA Sch 2 para 19B(2)

R(Berhe) v London
Borough of Hillingdon
(2003) EWHC 2075
(Admin)

You are entitled to:

- All the provisions of the Looked After System until you leave care
- Personal Adviser
- Needs Assessment
- Pathway Plan

CA Sch 2 paras 19B,
19C

2. Relevant Children

You are in this category if you are:

- Under 18
- No longer looked after
- Previously an 'Eligible Child'

CA s23A (2)

You are entitled to:

- Personal Adviser
- Needs Assessment

- Pathway Plan
 - Accommodation & Maintenance
 - Contact from local authority
- CA s23B

1B/2B. Unaccompanied Asylum Seeking Children

- Unaccompanied asylum seeking children who are under 18 and satisfy the above criteria for 'eligible children', and/or 'relevant children' are entitled to the same support as set out above.

3. Former Relevant Child

You are in this category if you have:

- Reached 18 but are not yet 21
- Previously been an Eligible or Relevant Child

CA s23C

You are entitled to:

- Personal Adviser
- Pathway Plan
- Contact from local authority
- Assistance (to the extent that your welfare requires it) with expenses incurred by living near the place where you are employed, or seeking employment, or in education or training
- Other assistance, to the extent your welfare requires it
- Your accommodation needs being met during vacations (if you are in full time education)

CA s23C

CA s23C(4),
s24B(1)&(2)

CA s23C(4)(c))

CA s24B(5)

4. Persons Qualifying for advice and assistance

You are in this category if you:

- Are under 21(or under 24 if in education or training and
- Were looked after by a local authority at any time after reaching 16 and are not under any of the above categories.

CA s24B (3)
LCAR&G

You are entitled to:

- Advice and assistance, which may, in exceptional circumstances, be in cash
- Local authorities also have the power to offer you assistance with living expenses related to employment and living or other expenses related to education and training.

CA s24B(1)&(2)

3B/4B. Unaccompanied Asylum Seeking Children

- Unaccompanied asylum seeking children who have reached 18 may qualify for support under categories 3 or 4 above, if they satisfy the criteria listed; **BUT**, depending on their asylum status when they reach 18, restrictions in the asylum and immigration legislation may exclude them from receiving that support. See further below at '**Unaccompanied Asylum Seeking Children/ Young People**'

What do these services include?

- **Needs Assessment:** This is an assessment of your needs in relation to health, training, education and employment, support from family and others, financial needs, practical skills for living, care support and accommodation.

LCA Reg 5,6,7,8

The assessment should take account of the views of the young person, as well as their parents or any person who has parental responsibility for them.

The assessment must be completed within 3 months of a young person becoming an eligible or relevant child – i.e. on reaching the age of 16 and meeting the ‘time looked after criteria’ of 14 weeks.

The local authority must draw up a statement saying how and when the assessment is to be carried out, and who is responsible for it. A copy of this statement should be provided to the young person.

- **Pathway Plan:** This is the plan of services to be provided, and should be informed by the needs assessment. It must be recorded in writing, with a copy given to the young person in a form that is understandable to them. The personal adviser should not be involved in drawing up the pathway plan. The plan must give details of who will provide personal support and contact with the young person, and how frequently this will happen. The pathway plan “*ought to set out operational objectives with sufficient detail – including detail of the ‘how, who, what and when’ - to enable the plan to be used as a means of checking whether or not those objectives are being met*”. It should be reviewed at least every six months and the results of this review should be recorded in writing.

LCA Regs 8 & 9

R (G) –v- Nottingham CC and Another [2008] 1 FLR 1669

J v Caerphilly CBC (2005) 2 FLR 860

LCA Reg 12

- **Personal Adviser:** S/he is responsible for the provision and or co-ordination of advice and support to the young person. S/he should have regular contact with the young person and keep records of this.

LCA Reg 11

- **Accommodation:** The accommodation needs of a young person should be agreed in the pathway plan. The accommodation identified should be suitable meeting the identified needs of the young person in their pathway plan.

LCA Reg 11

- **Employment, Education & Training:** Local authorities have a duty to provide assistance to former relevant children in relation to expenses associated with employment, education and training. This duty extends beyond a young person’s 21st birthday if the agreed training course, set out in the pathway plan, has not been completed.

CA s 23C

Responsible Authority is the term used within the Children Leaving Care Act. It refers to whichever authority last looked after an eligible or relevant child. All duties and powers outlined within the LCA are the responsibility of that local authority wherever the young person may be living in England or Wales.

Some Key Questions

What happens if I have been looked after but I return to live with my parents before I am 16?

- ❑ In these circumstances you will not meet the criteria for services under the LCA. You may however, be eligible for services provided to 'children in need' in your area. Your first step is to ask your social services department to carry out a 'child in need' assessment.
- ❑ If a child over 14 is looked after for several periods of time and each of these periods is less than four weeks, and at the end of each the child returns to a parent or someone with parental responsibility, then he will not be classed as an eligible child. *LCA Reg 4*

What happens if I return home to live with my parents after I am 16?

- ❑ If a young person who qualifies as a 'relevant child' returns to live with a parent or someone with parental responsibility for a period longer than six months, they cease to be classed as a relevant child. *LCA Reg 5*

Can I claim benefits when I leave care?

- ❑ Children's Services Departments in England and Wales are responsible for financially supporting young people who fall within the categories of eligible children, relevant children and those who 16 and 17 year olds who were looked after for at least a day when aged 16 or 17 or are still being looked after aged 16 or 17. These young people cannot claim income support or housing benefit, or jobseekers allowance. *LCA Section 6*
- ❑ Exceptions to the above are lone parents and young people who are sick or disabled – these young people can claim income support but not housing benefit.
- ❑ Local authorities should continue to give financial support to the above listed young people even if they are living in another local authority area.
- ❑ If a relevant child moves to another local authority area and needs help, the secondary authority should provide short-term

assistance under s.17 of Children Act 1989.

Can I complain...can someone help me do this?

- Local authorities have a duty to provide eligible children with full representations and complaints process and a further duty to establish specific arrangements for dealing with complaints about leaving care services.

Unaccompanied Asylum Seeking Children/ Young People

I am over 18, am I covered by the Children (Leaving Care) Act?

If you satisfy the criteria for a 'former relevant child' (see above), AND:

(i) At the time of your 18th birthday you have been granted refugee status, or humanitarian protection / discretionary leave to remain in the UK beyond your 18th birthday, then you will be entitled to all the services available to a 'former relevant child' as set out above.

(ii) At the time of your 18th birthday your asylum claim has been not been determined, or you have been refused asylum:

- Your immigration status will be taken into account by the local authorities when considering which services you are eligible for under the Leaving Care Act
- If your asylum claim has not been determined (i.e. you have a claim or an appeal pending) you are eligible for all of the support services available to a 'former relevant child' (as set out above) while your claim is undetermined. In addition, you may be entitled to asylum support (accommodation and subsistence) under s95 of the Immigration and Asylum Act 1999. Any payments made under section 23C and section 24, will be taken into account by the asylum support service
- Once your asylum claim and any appeal rights are finally determined (after you reach 18) your continuing access to leaving care support will depend upon how you made your original application for asylum. If you made you claim at port of entry, you will be entitled to continuing leaving care support until you fail to comply with removal directions. If you made your claim in-country, at an asylum screening unit, you will become unlawfully in the UK as soon as your claim is finally determined, so that para 7 sch 3 NIAA will operate to deny you any further access to support (see below), unless support is necessary to avoid a breach of your human rights.
- If you were refused asylum before your 18th birthday and any grant of discretionary leave ended before 18th birthday, then unless you have an application for extension of leave or fresh

*AW v Croydon LBC
[2005] EWHC 2950
(Admin)*

claim outstanding you are likely to be denied leaving care support services after your 18th birthday because you fall within para 7 of Sch 3 NIAA (unlawfully in the UK and not an asylum seeker). Some services, such as the continued provision of a personal advisor, and review of pathway plans, should still be available as these are not strictly 'support and assistance'. If you have no other accommodation you may be able to claim that the local authority should accommodate you in order to avoid a breach of your human rights.

See FRG Advice sheet 5

Binomugisha v Southwark (18/9/06) EWCH 2254 (Admin)

Schedule 3 of the Nationality, Immigration and Asylum Act 2002 applies to:

an asylum seeker whose claim has been refused AND

(i) who has been certified by the Secretary of State as failing to leave voluntarily (this only applies to families); Or

(ii) has failed to co-operate with removal directions;

And to a person who is not an asylum seeker and who is unlawfully in the UK (this will apply where the original claim for asylum was made in country).

For the purposes of Schedule 3, an asylum seeker is a person who is over 18 years of age.

If you are a former relevant child who has been refused support on the basis of your immigration status you should seek further advice from the Refugee Council Children's Panel or from a solicitor (details at the end of this advice sheet).

What does research say?

- Young people leaving care are a relatively small but highly disadvantaged group, more likely to experience changes and disruption, homelessness, unemployment and other problems.
- 80% of all young people in care return to, or make their home with, family members. One third of all children go home after their sixteenth birthday and many young people who do not wish to return home nevertheless wish to maintain or increase their contact with their families.

Biehal, Clayden, Stein and Wade, 1995, Moving On (HMSO); Gooch, 1996, Leaving Care and Returning Home, (Dartington Social Research Unit); Sinclair and Gibbs, 1996, Quality of Care in Children's Homes, (University of York SSI), 1996, When Leaving Home is also Leaving Care, (Department of Health)

Tips for parents to negotiate

- Although social services should do this as a matter of law, do draw to their attention their responsibilities to prepare your child for leaving care at the earliest opportunity.
- Social services must ask the parents' views at every review of your child. This would be an appropriate time for you to raise any suggestions you have as to the sort of aftercare your child

might benefit from.

- Ask for a copy of the local authority's written information about leaving care services
- If you disagree with the plan or feel that you have not been properly consulted, ask for details of the representations and complaints procedure, which the local authority must have by law.

Where can I get more information?

Contact Family Rights Group Telephone Advice Line on Freephone 0808 801 0366 if you want to discuss your case further. It is open from 10.00am – 3.30pm Monday-Friday. You can also write to us at : The Print House, 18 Ashwin Street, London, E8 3DL or Email to office@frg.org.uk

Contact a solicitor who specialises in child care law to help you negotiate with the local authority, and /or represent you in court. Your local Citizen's Advice Bureau should be able to recommend one, or search

<http://www.lawsociety.org.uk/choosingandusing/findasolicitor.law>

If you are on a low wage or receiving welfare benefits, you should be able to get free advice under the legal aid scheme. Ask your solicitor to advise you about this.

Unaccompanied asylum seeking children can get further advice from:

Refugee Council Unaccompanied Children's Panel

240-250 Ferndale Road

Brixton

London SW9 8BB

Advice line: 0207 346 1134

Open Mondays to Fridays: 9.30am – 5.30pm

Refugee Council online www.refugeecouncil.org.uk

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