Support for asylum seeking children and their families

Introduction

All families need help from time to time to bring up their children and this includes asylum seeking families. The following help is available from outside agencies:

- **Universal services** which are open to all children. These include schools, nurseries and GP services.
- Services for children who have been assessed by professionals as having **extra needs** which can be met by help from agencies which are not Children’s Services.
- **Support from Children’s Services** which is available for children who are disabled, or who are assessed by Children’s Services to be in need of extra support for their safety, health and/or development under ‘Child In Need’ plans.

The children of asylum seeking families **may** receive this kind of support from Children’s Services, but immigration law places some limits on their right to get this kind of help.

This advice sheet is mainly written for parents who are asylum seekers, or who have been refused asylum, and their advisers. It gives information about when Children’s Services can give you help with raising your children, the types of support available and the legal limits on them giving you that support. It is long because there is a lot...
of relevant information in it, so we have divided it into different parts to make it easier to read:

✓ **Part 1**: explains who is an ‘asylum seeker’ for support purposes (page 3).
✓ **Part 2**: explains what support is available to asylum seekers from the UK Border Agency (page 4).
✓ **Part 3**: outlines what support is available to asylum seeking families from the UK Border Agency (page 7).
✓ **Part 4**: sets out what support asylum seeking families can get from Children’s services to help them raise their children (page 10).
✓ **Part 5**: sets out how Children’s Services decide what support they will give a child and their family (page 16).
✓ **Part 6**: sets out the support that is available for disabled children who are children of asylum seekers (page 23).
✓ **Part 7**: explains how a person’s human rights are taken into account by Children’s Services (page 25).
✓ **Part 8**: explains how to challenge a decision by Children’s Services (page 27).
✓ **Part 9**: suggests where to go for more information and help (page 28).

Getting support from Children’s Services can be a complicated process, so you may want to ask a friend, adviser or a solicitor to go through this advice sheet with you and explain anything you don’t understand. You can also call Family Rights Group advice line for further information/advice – contact details in part 9 of this advice sheet.

We have included the references for all the legal and practice requirements in the endnotes which you can find at the end of this advice sheet. For full details of the law referred to in the endnotes, see the references section at the end of the advice sheet.

**Note:**
1. **“Social services” are now known as “Children’s Services”. This is how they are referred to throughout this advice sheet.**

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PART 1: WHO IS AN ‘ASYLUM SEEKER’ FOR SUPPORT PURPOSES

In this section, we set out the definitions of an ‘asylum seeker’, a ‘refused asylum seeker’ and a ‘Schedule 3 refused asylum seeker’ that will be used by Children’s Services when they decide whether or not they will give you support.

Who is an ‘asylum seeker’?

*For support purposes only*, you will be an ‘asylum seeker’ if you are at least 18 years old, in the UK and you have made a claim for asylum.¹

If you are an asylum seeker with dependent children and you are over the age of 18, you will still be regarded as an asylum seeker for support purposes even after your claim is refused, unless

- You have failed to co-operate with directions to remove you from the UK;² OR
- You are unlawfully in the UK (i.e.: you made your original asylum claim after you had already entered the UK and not at the border when you first arrived).³

In either of these situations you will be a Schedule 3 refused asylum seeker:

Who is a ‘refused asylum seeker’?

You will be a ‘refused asylum seeker’, *for support purposes only*, if you do not have dependent children, you are over 18 and

- your claim for asylum has been refused and
- you have exhausted all rights of appeal.

If you are an asylum seeker, and your first child was born 21 days or more *after* your claim for asylum was finally decided you will be a ‘refused asylum seeker’.

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Who is a ‘Schedule 3 refused asylum seeker’?

You will be a Schedule 3 refused asylum seeker if:
- you were an asylum seeker (with or without children) AND
- your claim for asylum has been refused (including appeals) AND
- you have failed to co-operate with removal directions OR
- you are unlawfully in the UK (i.e.: you made your original claim for asylum after you had already entered the UK and not at the border when you first arrived).

PART 2: WHAT SUPPORT IS AVAILABLE TO ASYLUM SEEKING FAMILIES FROM THE UK BORDER AGENCY?

In this section, we give only very basic information about the support you can get from the UK Border Agency (UKBA).

For more information about this, see Asylum Support Appeals Project Fact sheet at http://asaproject.org/web/index.php?option=com_content&view=category&id=39&Itemid=102

For more information and assistance on how to claim asylum support, go to the Refugee Council website - www.refugeecouncil.org or your nearest One Stop Service office www.refugeecouncil.org.uk/howwehelp/partners/partnership/asp.htm

As an asylum seeker, can I work or claim state benefits?

No. Asylum seekers are not allowed to work or to claim state benefits. Instead you can get support from the UK Border Agency (UKBA). The types of support you can get are named according to the sections of the Immigration and Asylum Act 1999 (IAA) eg: s.95 support and s.4 (hard case) support.

Who can claim s95 support?

The UKBA must help destitute, asylum seeking families who have dependent children. The law says you will be considered destitute if you do ‘not have adequate accommodation or any means of obtaining it (whether or not your other essential living needs are met)’ or you have ‘adequate accommodation or the means of obtaining it, but cannot meet your other essential living needs’.
So, if you are an asylum seeker who is in the UK and you would be destitute\(^9\) if you do not receive support, you can apply to the UKBA for support for yourself and your children under s.95.

What is included in s.95 support?

As a destitute asylum seeker, you can apply for one of three packages of support:\(^{10}\)

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

Subsistence support is meant to cover your family’s ‘essential living needs’\(^{11}\) and no more.

How long does s95 support continue?

**If you are an asylum seeker and you have dependent children**, you should continue to receive s.95 support whilst your asylum claim is being considered. If your claim for asylum is later refused, you should continue to receive s.95 support from the UKBA until you leave the UK, unless you become Schedule 3 refused asylum seeker – see Part 1 of this advice sheet for definition of a schedule 3 refused asylum seeker.\(^{12}\)

**If you are an asylum seeker and you do not have dependent children** with you in the UK when your claim for asylum is refused (including any appeals you make), you will lose your s.95 support 21 days after your claim has been refused. At this point you become a refused asylum seeker, and you may then become eligible for a different type of support under s.4 (IAA) also known as ‘hard case’ support (see below).

**If you are an asylum seeker and you are pregnant, or your first child was born more than 21 days after your claim for asylum was finally refused** (including any appeals you make), you will be treated as a refused asylum seeker. This means that
you will lose your s.95 support 21 days after your claim is refused. But you may then be eligible for s.4 support (see below).

Who can claim s.4 (hard case) support?

S.4 (hard case) support is meant to be a temporary and limited package of support available from the UKBA for any refused asylum seeker who is destitute. But you will only be able to get this kind of support if you can prove that:

a) you are a refused asylum seeker;

b) you are destitute AND:

i) you are taking all reasonable steps to leave the UK OR

ii) you are unable to leave the UK due to medical or physical problems OR

iii) there is no viable route of return to your country of origin available OR

iv) you have been granted permission to apply for judicial review OR

v) you need to be given accommodation to avoid a breach of your human rights.

However, although s.4 (hard case) support is meant to be temporary, in reality, you may get hard case support for a long time whilst your asylum situation is resolved.

Note: if you are a schedule 3 refused asylum seeker (see part 1 of this advice sheet on page 3) you will not able to get s4 (hard case) support, whether you have dependent children or not.

What is included in s.4 (hard case) support?

This kind of support includes:

- self catering accommodation and
- An Azure payment card. The money element of this support is loaded onto the card every week (currently you can get £35.39 per person per week) as a credit. No cash is given. These cards can be used at most of the major supermarket chains, and a limited number of other places.

In addition, the UKBA can give you extra payments if you have specific additional needs. These are:
• Travel expenses for healthcare treatment or to register a birth
• Phone cards / stationary / stamps
• One-off payment of £250 for pregnant women / new mothers
• Additional weekly payments (£3/£5) for pregnant women and children under 3 years
• Clothing for children (£5 pw)
• Exceptional specific needs
This extra support is also given to you via the Azure payment card, but travel expenses are given to you by whoever provides you with accommodation.

PART 3: WHAT SUPPORT IS AVAILABLE FOR CHILDREN OF ASYLUM SEEKING FAMILIES?

(1) All children

All children have access to a range of ‘universal services’ from different agencies, for example health visitors, GP services and school based services, depending on their needs and in some cases their age. These services are available whatever the immigration status of the child.

Also some other services, which are provided by voluntary and community organisations or through government funded children’s centres, are open to all families living in a certain area or living in certain circumstances. These services can often be accessed directly.

Can my child go to school?

• All children of school age up to the age of 16: a child or their family’s immigration status does not affect their right to go to school. This means that all children aged 5 to 15 have the same right to (and in fact must) go to school or be educated in some other way.

• All children under 5: a child or their family’s immigration status does not affect their right to go to pre-school either. This means that they also have the same right to go to pre-school facilities as other children in the UK.

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• **Young people aged 16 to 18 years whose parents are seeking asylum or have been refused asylum:** whether they can go to school is at the discretion of the head teacher and the local council.

For more information see the Refugee Council information sheet on Education to 18, available at [www.refugeecouncil.org.uk/practice/advisers/supportpack/education](http://www.refugeecouncil.org.uk/practice/advisers/supportpack/education).

### Can my child receive medical treatment?

The rules relating to **access** medical treatment are different in all parts of the UK. The following advice applies to England only:

- **Primary health care services are free to everyone:** This means that all asylum seekers, refused and schedule 3 asylum seekers should be able to register their family with a GP to receive primary health care. A certificate can be obtained from the UKBA that will give you a right to free prescriptions, either because you are an asylum seeker, or because you are on low income.

- **Other healthcare which is free to everyone** includes:
  - treatment of certain specified communicable diseases (for example tuberculosis (TB), Hepatitis B and measles),
  - compulsory mental health treatment and
  - treatment provided in an accident and emergency department

*Hospitals must also provide treatment that is either “immediately necessary” or “urgent”, whether or not they can pay*[^18]. Treatment which is ‘immediately necessary’ includes:

  - all maternity treatment including routine antenatal care; and
  - treatment which the patient needs to save their life, or to prevent an illness from becoming immediately life threatening or to prevent serious damage.[^19]

- **Refused asylum seekers and their families who get s.95 or s.4 (hard case) support from the UKBA** (see Parts 1 & 2 above) **do not have to pay** for other NHS hospital treatment.

- **Refused asylum seekers and their families who do not get support from UKBA do have to pay** for non-urgent medical treatment.


For further information about getting health care, contact:

1. **Project London**: (see contact details in Part 9 of this advice sheet)
2. **Refugee Council** (see contact details in Part 9 of this advice sheet)

**(2) Children with additional needs**

When children are not making progress in some way, they may be able to get extra help, for example, speech therapy or bereavement counselling. The idea is that they should be able to get this help in a co-ordinated way, through agencies that already know them (for example via their school or health visitor) without necessarily having to be referred to Children’s Services.

If you think your child needs this sort of extra help, you can ask any professional that already knows your child like their teacher or health visitor. They will arrange for your child’s needs to be assessed. This assessment should follow government guidance known as the **Common Assessment Framework** (CAF) which is a standard way of assessing a child in this situation to see what extra help they need (if any). You and your child should be involved in this CAF assessment and in drawing up any plan to give your child extra help. **A lead professional** should be appointed to arrange this help.

You don’t have to have a CAF Assessment on your child or have help you are offered after a CAF assessment has taken place but it may be a good idea and you won’t be able to get the extra help without the CAF assessment taking place.

- You can find out more about CAF at the department of education website: [http://www.education.gov.uk/childrenandyoungpeople/strategy/integratedworking/caf](http://www.education.gov.uk/childrenandyoungpeople/strategy/integratedworking/caf).
- You can find out about **Early Support**: an Early Intervention programme for disabled children available in some areas emphasising integrated early support services for disabled children: [http://www.education.gov.uk/childrenandyoungpeople/sen/earlysupport](http://www.education.gov.uk/childrenandyoungpeople/sen/earlysupport)
(3) Children ‘in need’ of support from Children’s Services:

If your child has more substantial needs, they could receive extra help from Children’s Services, if they are assessed as being a child ‘in need’ – see Part 4 of this advice sheet below.

PART 4: WHAT SUPPORT CAN ASYLUM SEEKING FAMILIES GET FOR THEIR CHILDREN FROM CHILDREN’S SERVICES?

In this section we set out the kinds of support that are available from Children’s Services for the children of families who are seeking asylum or have been refused asylum. We also explain the circumstances in which this support is limited by immigration law.

What is family support?

Children’s Services must provide a range of support for children who are assessed as being in need in their area, by helping their families to care for them and keep them safe. This applies to the children of asylum seeking families as well as all other children.

Who is a child in need?

A child is usually considered to be in need if they have substantial needs. The legal definition of who is a child in need is set out in the notes at the end of this advice sheet. But in practice it means a child:

(i) who is disabled – this usually needs to be a substantial disability; OR
(ii) whose health or development is being damaged, or soon will be, without the support services being provided; AND
(iii) whose needs are assessed as being severe or complex enough to meet local eligibility criteria set by the local council (see next page)

A child is disabled if they

• are blind, deaf or unable to speak due to verbal impairment;
• have substantial mental health disorder; and

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• have some other substantial or permanent disability whether it is caused by illness, injury or a genetic reason.

A child who has been diagnosed by a professional as having a condition such as Autistic Spectrum Condition, Aspergers Syndrome or Attention Deficit Hyperactive Disorder (ADHD) as well as a child with a learning disability will be treated as disabled, if the condition is ‘substantial’.

If your child has a diagnosed disability which is not ‘substantial’, they can still be treated as a child ‘in need’ if you can show that their health or development is (or will be) damaged if you are not given support.

Health doesn’t just mean your child’s physical health but also their mental health.\textsuperscript{22}

Development means your child developing the skills and abilities they should at their age. It is not just physical development but also intellectual, emotional, social and behavioural progress and development.\textsuperscript{23}

Here are some examples of when a child would be considered by Children’s Services as being a child in need of support:

• Children and young people without accommodation or who are living in an unsafe physical environment
• Unaccompanied children and young people from abroad
• Children and young people who are substantially disabled
• Children and young people with significant emotional and behavioural difficulties (including children and young people at risk of exclusion from school).
• Children and young people with significant caring responsibilities, including young people who are parents.\textsuperscript{24}
• Children and young people in detention
• Vulnerable teenagers where relationships have broken down at home.
• Children and young people who persistently self harm or run away

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What are the Eligibility Criteria?

Children’s services will only give support to a child if:

i) they are assessed as being \textit{in need} (see page 10 above) \textit{and also}

ii) they have needs which meet the local eligibility criteria for getting help from Children’s Services.

Local eligibility criteria are set by Children’s services to help them decide (in view of their limited budget) which children in their area they will help and in what order, taking into account their limited budget. The criteria should be set out in a local policy and they must be fair, lawful and available to members of the public. You can look on your local council’s website or ask Children’s services for a copy so you are clear what the eligibility criteria are in your area.

The eligibility criteria will give you a good idea of whether Children’s Services are likely to give you help to look after your child. But Children’s Services are not allowed to have rigid eligibility criteria which state that certain groups of children who are not in the list will never get help.

Whether or not a child gets help should be based on what their needs are assessed to be and how acute those needs are.

What kinds of support can Children’s Services give us?

Children’s Services must publish information about what support is available for families with children in need in your area. This information should be made available to the public; it should be translated into different languages, be sensitive to different cultural groups and be made available to people with a sensory disability.

The range of support they give generally includes:

- \textit{Day Care} – there should be a variety of day care services so that there is some choice for children \textit{in need}. This could include day nurseries, playgroups, childminding, and out of school clubs.
• **Help provided in the family home** – this could include befriending schemes which recruit and train volunteers to be ‘home helps’ who give parents direct help in their home. This help is often provided by voluntary organisations, such as Homestart and Family Action but may also be provided by Children’s Services.

• **Parenting Skills Programmes** – these can be provided in different settings, such as family centres. They range from self-help/self support groups to sessions run like an evening class by Children’s Services. Parent and carers who want 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 guidance clinics and specialist counselling organisations. They can help with a range of difficult experiences including when children are bereaved or traumatised.

• **Advice and guidance** – this can be provided in a variety of places, from family centres to specialist organisations.

• **Promoting contact for children away from home**: Children’s Services must help a child in need who is living apart from his or her family to return home and promote contact between them if they think the child needs it.\(^{25}\)

• **Providing accommodation to an adult in order to protect a child**: Where a child is living with someone who is alleged to have harmed them and that person is willing to move out, Children’s services may help the alleged abuser with accommodation.\(^{26}\) This means that the person accused of abusing the child is helped to move out of the family home rather than the child.

• **Practical assistance, including accommodation and cash**: Children’s Services may provide families with practical help (including cash) for example help to buy essential equipment for children, food and other necessities or even help with housing costs.\(^{27}\) Each Children’s Services department will have its own guidance about when they give this form of help.
- **Short breaks**: Typically this service is only available to disabled children, but local authorities have the power to provide short breaks for any children *in need* who would benefit from this.\(^{28}\)

- **Accommodation**: There are legal restrictions on when Children’s Services can help asylum seeking families by providing accommodation - see below on page 15 and 16.

Since the range of help available *varies* between different areas it is a good idea to ask Children’s Services or your social worker if you have one for information about the services available in your area.

### Do Children’s Services only help children (who are in need) or can they help their families too?

Children’s Services can provide many different kinds of support to help families care for their children and to prevent family breakdown. This help can be given to:

i) a child who is assessed as being *in need* or

ii) any member of their family

as long as it’s for that child’s safety or wellbeing.\(^{29}\) As well as parents, the term ‘family’ includes anyone with parental responsibility for the child and anyone the child is living with or used to live with.\(^{30}\) For more information see FRG advice sheet: Parental Responsibility: [http://www.frg.org.uk/need-help-or-advice/advice-sheets](http://www.frg.org.uk/need-help-or-advice/advice-sheets)

However, *Children’s Services are further limited by law about the support they can give to asylum seeking and refused asylum seeking families* (see definitions of who is in these categories in Part 1 on page 3). *In practice, they will consider these limits first before going on to assess a child’s need for support*. These limits are:

- **Asylum seekers** who have dependent children (under 18) will usually get basic housing and subsistence support from UKBA under s95 IAA.\(^{31}\) So the general rule is that they cannot receive housing and subsistence support from Children’s
A refused asylum seeker with a dependent child who is born 21 days or more after their claim is finally decided, may be eligible for s4 (hard case) support if they meet the criteria (see Part 2 above on pages 5-6). But the court decided in a recent case\textsuperscript{33} that if a child of a refused asylum seeker is found to be a child in need and is destitute, children’s services can also provide them with accommodation and assistance.\textsuperscript{34} The refused asylum seeker does not have to apply for s4 hard case support first.

A refused asylum seeker with dependent children can also ask children’s services for other social care support to help them care for their children (such as those listed above).\textsuperscript{35}

A refused asylum seeker with dependent children can also ask children’s services for other social care support to help them care for their children (such as those listed above).\textsuperscript{35}

- Adult Schedule 3 refused asylum seekers are NOT entitled to any support from Children’s Services,\textsuperscript{36} but their children can get support separately from their parents. In practice this means that where the family is destitute, the children could be accommodated by Children’s Services separately from their parents either with the agreement of the parents (see next paragraph below) or as a result of care proceedings.\textsuperscript{37} However, Children’s Services must give support to a refused asylum seeker and their family together if this is necessary to avoid a breach of their human rights.\textsuperscript{38} For more information, see part 8 below.

Can an asylum seeking family be offered temporary accommodation just for their children?

Children’s Services can provide accommodation to a child, who is assessed as being in need, without their parents, whatever the child’s immigration status, in the following circumstances

- their parent or carer is prevented from providing them with suitable accommodation, whether temporarily or permanently and for whatever reason or...
• the child is abandoned, lost, or has no one with legal responsibility for them.\textsuperscript{39}

This might arise in the following situations:
• When a parent who is destitute and homeless on the street, is unable to provide their child with suitable accommodation;
• When parents are sick or disabled or have to go to hospital eg: for an operation;
• When there is a serious family breakdown with teenage young people;
• When unaccompanied asylum seeking children arrive from abroad;\textsuperscript{40}
• When parents of disabled children feel that the family needs support/respite because they are at breaking point.

However, this accommodation can only be provided if the parents or others with parental responsibility (or the young person themselves if they are over 16) agree. When a child is given accommodation like this, it is called s.20 accommodation and the child becomes ‘looked after’, which means that all the duties on Children’s Services towards looked after children apply. For further information on this, see FRG advice sheet Duties on Children’s Services towards children in the care system http://www.frg.org.uk/need-help-or-advice/advice-sheets

PART 5: HOW DO CHILDREN’S SERVICES DECIDE WHETHER MY CHILD CAN GET SUPPORT SERVICES?

Children’s services will only give your child and your family support if your child is assessed as being in need and they fall within the local eligibility criteria (for information about this, see page 11 and 12 above). This means that in order to get support Children’s Services will want to assess your child’s needs.

How do I get my child’s needs assessed?

The following people can ask Children’s Services to assess a child’s need for support:
i) a parent or anyone caring for a child,
ii) the child themselves if they are old enough and mature enough, or...
iii) a professional (with the carer’s permission),

**Practical tips to getting your child’s needs assessed:**

- Find out the eligibility criteria set by your local Children Services department
- Discuss with your family the type of help you and your child might need and why it would make a difference to you and your child. Then
- Write a letter to Children’s Services:
  - asking for your child’s needs to be assessed;
  - explaining how their health or development is currently being harmed or if your child is disabled, the kind of disability they have;
  - setting out what help you need and why it would help your child to stay safe and thrive; and
  - explaining why you think your child fits the local eligibility criteria, or why their needs are serious enough to need services anyway.

Date the letter and keep a copy of it before you send it in to the Children in Need team at your local Children’s Services Department. If your child has a significant disability, send your request to the Children with Disabilities Team.

- Consider whether a professional who knows your child can write a letter supporting your request for help or make the referral themselves. They may already have done a CAF assessment – see page 9 above

**Do I have a right to have my child’s needs assessed?**

As part of their general duty to provide help for children in need in the area, Children’s Services must carry out an assessment of a child’s needs if it appears to them that the child is in need. So they should assess your child’s need for support if you ask for help and either:

i) you can show that they have a diagnosed disability; or

ii) you explain why your think your child’s health or development is being (or will be) significantly damaged without help from them (see above for when a child is in need).

If you have done this and they refuse to assess your child’s needs, it may be unlawful. For more information on challenging decisions see part 9 (page 28) or

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seek further advice from Family Rights Group advice service – contact details in part 9 of this advice sheet.

How will they assess my child’s needs?

Your child’s needs should be assessed following official government guidance called the Framework for Assessment of Children in Need and their Families. This is statutory guidance, which must be followed unless there are exceptional local reasons to justify not following it. This would be very unusual.

If the social worker does not follow the Framework for Assessment, the assessment could be unlawful.

Once you ask for help for your child, there are 3 possible responses from Children’s Services:

- **Initial response within 24 hours**: Following your request for help, they must decide within one working day whether they will do an initial assessment or whether they will take no action. They must tell you what they decide;

- **Initial Assessment**: This involves the social worker gathering basic information about your child’s needs from you and other professionals working with your child to see what help you need. It must be done within 10 working days of you asking for help. Your child should be involved of this process and you and your child (if old enough and mature enough) should be told in writing of the decisions made and be offered the opportunity to comment on these and correct any inaccurate information. It can lead to you being offered support that will meet your child’s needs.

- **A core assessment of a child in need**: This is a much more detailed gathering of information about your child’s needs which is then analysed by the social worker to help them decide what support your child needs and draw up a child in need plan setting out the help you and your child will be offered. If a core assessment is carried out, it should be completed within 35 working days of the end of the initial assessment, unless it involves a specialist assessment by another agency in which case it may take longer.
Note The Government is planning to change these time frames in September 2012 to give social workers more flexibility on when they do these assessments.

What will Children’s Services do if I ask for an assessment?

Once you have asked for help to look after your child, Children’s Services should tell you within 24 hours whether or not they will carry out an initial or core assessment (described above).

They will begin by establishing whether you are eligible for support which means they 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 asking your immigration solicitor for information.
- They will ask you for evidence of your nationality and your ordinary residence (the place where you live).
- They will also be looking to see whether they are allowed to give you support or not because:
  - If you are a **schedule 3 refused asylum seeker** (see part I above for definition) you are not normally entitled to support from children’s services. In these circumstances they must tell the Home Office you have asked for help (see below); or
  - You may be able to get support from the UKBA (see Parts 1 & 2 above on pages 3-5 above).

Can information about my child and myself be shared between different agencies?

The social worker will usually want to gather information about your child and your family from other professionals working with your child so as to get a full picture. But confidentiality means they (and the other agencies) should always get your **consent before sharing information unless they need to share the information**

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in order to protect a child from significant harm, or there is some other public interest reason like crime prevention.

BUT PLEASE NOTE: Children’s Services must tell the Home Office if someone they think is Schedule 3 refused asylum seeker asks them for support or to have their child’s needs assessed. They do not need your consent for this. So if you are a schedule 3 asylum seeker, the Home Office may find out where you are as a result of you asking Children’s Services for help. The Home Office may then try to deport you. So make sure you take legal advice BEFORE you ask Children’s Services for help so you are aware of what could happen to you.46

What does the assessment cover?

Whatever the level of assessment, the social worker should consider:47

- your child’s developmental stage and needs. This includes your child’s health and developmental needs, any disability they may have, their education, religion, racial origin, and their cultural and language background;48
- your (i.e.: the parents’) capacity to meet these needs, taking into account any help you may need in your parenting role, for example, help for disabled parents; and
- your child’s wider family and environment, such as what support is available from other people in the family and the local community.

How will I know the outcome of the assessment?

The social worker should tell you in writing about the outcome of any initial or core assessment of need, and what will happen next. 49

If you are a Schedule 3 refused asylum seeker, but Children’s Services consider, that your child meets the eligibility criteria as a child ‘in need’, they must carry out a human rights assessment to decide whether they have a duty to support you and your child together in order to prevent a breach of your human rights.50 For more information, see Part 8, page 27.

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What happens if my child is assessed as being ‘in need’ and eligible for support?

If your child is assessed as being in need and eligible for support according to the local eligibility criteria, the social worker should work with you, your child and other key professionals who are involved with your child, to draw up a plan of support they will give you to meet your child’s identified needs. A Child In Need planning meeting may take place. You should be invited to this meeting. The plan should set out:

- What support you or your child will be given and who will give it
- How long this support will be given
- What the aim of the support is
- What other agencies are expected to do
- How and when the plan for support will be reviewed
- Any areas of disagreement and arrangements for dealing with problems.

The kinds of support they can give out is outlined on pages 12-13 but you may also want to ask them for information about what help is available for children and families in your local area.

What if Children’s Services are concerned about my child’s safety following the assessment?

If Children’s Services suspect that your child is suffering (or is likely to suffer) significant harm, they have to make further enquiries (under s47 Children Act 1989) to help them decide whether they should take any action to make sure the child is safe and well-cared for. The child protection procedures they would follow are the same for asylum seeking/refused asylum families as for any other family in the UK. For more information see FRG advice sheet on Child Protection procedures http://www.frg.org.uk/need-help-or-advice/advice-sheets

Note also: 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 (contact details in part 9 of this advice sheet).

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However note that if a care order is made in care proceedings, this will not override immigration rules so it will not, for example, stop a child or their parents being removed from the UK by immigration officials.53

What can I do if I am refused an assessment or I am unhappy with the outcome of the assessment?

First of all, you should ask the social worker why they think you are not entitled to an assessment and/or why they aren’t giving you the help that you have asked for. You have a right to know why they have made a particular decision and the reasons for it in writing.

You could also ask the social worker for the local eligibility criteria for supporting children who are in need and see whether they match your child’s needs. If you feel that your child’s needs fit within the local criteria, you need to make this clear to the social worker.

You can also:

- **Contact other local agencies that provide support:** You can ask local voluntary agencies and children’s centres if they can give you support to meet your child’s needs. (See further information in Part 4 of this advice sheet).
- **Ask the social worker** about other help that you can get directly. Children’s Services must keep a directory of local services for children and make them available to families. Most have **Family Information Services** (FIS). You can find them online or get the number from your local council’s switchboard. The National Association of Family Information Services also has an online search facility – contract details in Part 9 of this advice sheet.
- **Ask for a CAF assessment instead** (for more information, see page 9 above)
- **Complaints:** You can ask for the decision to be formally reviewed through the complaints procedure.54 For further information see Part 8 of this advice sheet and also FRG advice sheet on challenging decisions and making complaints: [http://www.frg.org.uk/need-help-or-advice/advice-sheets](http://www.frg.org.uk/need-help-or-advice/advice-sheets)

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- **Judicial Review**: In exceptional circumstances you may be able to challenge Children’s Services’ decision by taking legal action. For further information see part 8 of this advice sheet and also FRG advice sheet on challenging decisions and making complaints: [http://www.frg.org.uk/need-help-or-advice/advice-sheets](http://www.frg.org.uk/need-help-or-advice/advice-sheets).

**PART 6: WHAT SUPPORT CAN I GET IF MY CHILD HAS A DISABILITY?**

Parts 4 & 5 of this Advice Sheet explain how you can get support for children *in need* (including disabled children) from Children’s Services under the Children Act 1989. This section adds some specific rules that apply to disabled children only.

**Does my disabled child have a right to an assessment?**

Yes. There are two routes to assessment for a disabled child:

- **Children Act 1989**: As stated above, a disabled child has a right to an assessment of their needs for services under the Children Act 1989. So if your child has a disability and needs help, Children’s Services must assess their needs if you ask (but they do not then have an absolute right to be given support to meet their identified needs – see next page). If Children’s services refuse to do an assessment of your disabled child’s needs, it is likely to be unlawful (for more information see page 24 above on challenging unlawful decisions); and

- **S.2 Chronically Sick and Disabled Persons Act 1970**: says that help may be provided to a person who is suffering from serious disability i.e.: is blind, deaf, dumb or suffering mental disorder or permanent handicap. If a disabled child needs services which can be provided under this Act they also have a right to an assessment and to support to meet their needs – see below on page 27.

Children’s Services must specify which legislation they are providing services under, as the eligibility criteria are different.55
How is the assessment of a disabled child carried out?

The assessment of a disabled child’s needs should follow the Framework guidance as described on page 20 above. Extra time should be given if the disabled child has communication difficulties or the assessment is particularly complex.

What is a carer’s assessment?

This is a separate assessment which the carer of a disabled child has a right to. It looks at the carer’s ability to provide care for the disabled child and whether they need support to do so. Children’s Services must tell carers that they have this additional right to an assessment.56

Does my child have a right to receive support to meet their needs after the assessment has taken place?

This depends on which legal route they used to assess your child’s needs:

i) The Children Act 1989:
You do not have a right to support under the Children Act 1989 even if your child is assessed as being a child in need. To get help, your child’s needs must also fall within the local eligibility criteria for getting support in your area (see 11-12 above). However, if Children’s Services say they will provide support, it can be for you or other adult family members/carers for your child’s benefit as well as your child and the amount of support they can give is not limited. But please note if your family are asylum seekers supported by UKBA:

- **Children’s Services cannot provide accommodation**, even where a child of the family is disabled. However, the accommodation you are given by UKBA must be adequate to meet your disabled child’s needs.57

- Asylum seekers who get cash from the UKBA should have enough to cover their ‘essential living needs’ (i.e. the same food, nourishment, clothing and warmth needed by someone who does not have a disability). So, this means that **Children’s services can give you extra money** if they think this is necessary to help you meet your child’s specific needs.58

ii) S2 Chronically Sick and Disabled Persons Act 1970 (CSDPA)

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If your child is disabled and is assessed as needing help under CSDPA they have a right to receive that help. The council can still decide the best and most cost-effective way to meet your child’s needs, but they must meet them. For further information about support for disabled children see Family Rights Group Advice Sheet on Family Support http://www.frg.org.uk/need-help-or-advice/advice-sheets

PART 7: HOW ARE MY HUMAN RIGHTS TAKEN INTO ACCOUNT?

The Human Rights Act 1998 (HRA) says that Children’s Services (and other public authorities) must make sure they do not breach a person’s human rights when making any decision which affects them. The human rights which are most relevant to decisions they make about giving support to children in need and their families are:

- Article 3 the prohibition of torture, inhuman or degrading treatment – this can be relied on in cases where Children’s Services refuse support and as a result the person will become destitute. But for this right to be breached that person must face ‘an imminent prospect of suffering caused or materially aggravated by denial of shelter, food or the most basic necessities of life’.

- Article 6 the right to a fair hearing in relation to decisions which affect a person’s civil rights – this applies to decisions about the detention and mistreatment of, and/or removal of support or removal of children from asylum seekers; and

- Article 8 the right to respect for privacy and family life. This includes the right of people in family relationships to be in each other’s company without interference from the State. But the State may interfere with family life provided that it is lawful, necessary and proportionate. ‘Immigration control’ is a justification which is given considerable weight by the courts.

Both children and adults benefit from these rights. If decisions are made about support for a child or their family which breach the child or parents’ human 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.

**Do Children’s Services have to consider my human rights before they refuse to give me support?**

The law prevents Children’s Services from providing support to the majority of schedule 3 refused asylum seekers (see Page 16 above). But, when Children’s Services is deciding whether to provide support to a refused asylum seeker and their children, **they should conduct a human rights assessment before refusing to provide services**. If they conclude that it would be a breach of the family’s human rights to withhold or withdraw support, then support should be provided using powers under s17 CA89.

**What information will my human rights assessment consider?**

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

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

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PART 8 - HOW CAN I CHALLENGE THE DECISION OF CHILDRENS SERVICES?

We have already set out on page 21-22 our advice on how to respond to the social worker if you are refused an assessment or you are unhappy about the outcome of the assessment. However if you have not been able to reach agreement with the social worker after further discussion and negotiation you may want to:

a) **Make a formal complaint:** You can ask for the decision to be formally reviewed through the complaints procedure.55

b) **Consider applying for Judicial Review:** In exceptional circumstances you may be able to challenge Children’s Services’ decision by taking legal action. Judicial review is a process whereby the High Court will review the decision, action or inaction by Children’s Services to see whether or not they have acted lawfully. Judicial review is a discretionary remedy which is very expensive. It is therefore vital that you talk to 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). But note: There are strict time limits for judicial review. You must apply for judicial review as soon as possible after Children’s Services make their decision and in any case within 3 months of their decision.

c) **See a solicitor:** You may also want to talk to a solicitor about whether you can make a claim for breach of your (or your child’s) human rights

Any legal challenge for any of these reasons is expensive and it is difficult to get public funding to cover your legal costs unless you have a very good case. If you lose you may also be ordered to pay Children’s services legal costs. It is therefore vital that you consult a solicitor specialising in this area of law before making a legal challenge. The solicitor will help you work out if you qualify for public funding (formerly legal aid) and if you have a good case or not.

For more information see FRG Advice Sheet Challenging Decisions:
http://www.frg.org.uk/need-help-or-advice/advice-sheets

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PART 9 WHERE TO GET MORE INFORMATION

A) TO GET ADVICE AND INFORMATION ON ASYLUM SUPPORT:

Asylum Aid: The advice line offers free one-off legal advice to asylum seekers, refugees, and individuals or organisations who work to support them.
Advice line Tuesdays between 1.00 pm – 4:00pm.
Asylum Aid’s Advice Line: 0207 354 9264

Website: www.asylumaid.org.uk

Asylum Support Appeals Project (ASAP) is a charity organisation which aims to end destitution of asylum seekers by defending their legal rights to food and shelter. They can provide legal advice and representation at asylum support appeals.
Advice Line: 020 7729 3042
Website: www.asaproject.org

British Red Cross – Can provide voluntary services (including emergency food and clothing) available to destitute asylum seekers
Telephone 020 7793 3360
website: www.redcross.org.uk/yourarea

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.
Tel: 020 7251 8708
Website: www.jcwi.org.uk

Project London: is a free and confidential service provided by a charity, Doctors of the World UK. They provide information and support to people to help them reach mainstream health services. They also provide basic healthcare for people who have problems accessing services. Their walk-in clinic operates on a first come first served basis, no appointment is needed. It is open Monday, Wednesday and Friday
Refugee Action provides support to asylum seekers who have made an asylum application and are receiving Asylum Support from the United Kingdom Border Agency (UKBA). Their One Stop service can help with a range of problems including access to asylum support, the asylum application process, welfare benefits, employment and housing. Tel: 0207 952 1511

Website: www.refugee-action.org.uk

Refugee Council: The Refugee Council provides free advice and information to refugees and asylum seekers in their own language through our One Stop Services. Clients can discuss any problems they may have as an asylum seeker or refugee including the asylum process and support and entitlement. To speak directly to one of an advisers in the language of your choice, please call 0808 808 2255.

Website: www.refugeecouncil.org.uk
B) TO GET ADVICE AND INFORMATION ON IMMIGRATION & ASYLUM LAW:

Citizens Advice is an independent organisation providing free, confidential and impartial advice on all subjects to anyone. The address and telephone number of your local CAB can be found in the telephone directory. There is also advice on line on their website: www.citizensadvice.org.uk

www.adviceguide.org.uk

Community Legal Advice A free and confidential advice service. It provides information directly to the public on a range of common legal issues and helps people find legal help and information. It can also help you find legal advisors and find out if you are eligible for publicly funded free legal help. Telephone: 0845 345 4345. The CLA website has now closed and been replaced by Directgov. but you can still use the number above or the CLA find a legal advisor service at http://legaladviserfinder.justice.gov.uk/AdviserSearch.do

The Coram Children's Legal Centre provides free independent legal advice to children, parents, carers and professionals. Their Child Law Advice Line provides free legal advice and information covering all aspects of law and policy affecting children. An advisor can be contacted on 08088 020 008. The advice line is open from 9.00am to 5.00pm Monday to Friday.

Specialist immigration solicitor: To find a specialist solicitor contact:

i) Solicitors Regulation Authority, Ipsley Court, Redditch, Worcestershire B98 0TD
Telephone: 0870 606 2555  http://www.sra.org.uk/consumers/find-use-instruct-solicitor.page; or

ii) The Law Society of England and Wales, 113 Chancery Lane, London WC2A 1PL
Tel: 020 7242 1222  Minicom: 0870 600 1560  Fax: 020 7831 0344
E-mail: info.services@lawsociety.org.uk  www.lawsociety.org.uk

You can search their website for details of local solicitors who are accredited as immigration specialists:

http://www.lawsociety.org.uk/choosingandusing/findasolicitor.law ;
C) TO GET ADVICE AND INFORMATION ON GETTING HELP FOR CHILDREN AND FAMILIES

Contact a Family: National Charity supporting parents and families of disabled children. Information about disability, benefits, support from Children’s Services including detailed information about direct payments. Access to parent befrienders and family support workers

Free Helpline: 0808 808 3555
Email: helpline@cafamily.org.uk
http://www.cafamily.org.uk/

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Directgov: Useful government website. Information about caring for disabled children (including the early support programme of coordinated support for children with disabilities and direct payments can be found here.

Family Action Includes direct services to support parents through schools and children centres
501-505 Kingsland Road London E8 4AU
Tel: 020 7254 6251
www.family-action.co.uk

Family Lives is a parenting advice and support charity. You can contact their
Helpline: 0808 800 2222
textphone: 0800 783 6783
Online chat, text support and email available via website: http://familylives.org.uk/
Family Rights Group: is an organisation which provides free telephone and email advice to family members who are involved with Children's Services about the care and protection of their children.

- Contact FRG’s free advice line on 0808 801 0366. It is open Monday-Friday 9.30am-3.00pm. You can also email to advice@frg.org.uk.
- You can also visit http://www.frg.org.uk/need-help-or-advice/advice-sheets where you can download other relevant advice sheets.
- There are parent and family and friends carers discussion boards at: http://www.frg.org.uk/discussion-board-for-homepage
- Family Rights group can also put you in touch with a Family Group Conference Service. Email office@frg.org.uk

Homestart UK offers support directly to parents including freephone line and volunteer home support workers
8 – 10 West Walk Leicester, LE1 7NA
Tel: 01162587900
www.homestart.org.uk
Free information line on 0800 068 63 68 for details of your local scheme. Open 8am-8pm Monday to Friday and 9am-12pm Saturdays.

National Association of Family Information Services (NAFIS) operates a search facility to find local Children’s Services Family Information Services:
www.daycaretrust.org.uk/nafis
### References

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1 The claim for asylum must be either under the Refugee Convention or Article 3 ECHR and have been recorded by the Secretary of State

2 Para 6 NIAA

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