



SMILE Project

Being a 'Looked After' Child: Children's Social Services and Separated Children

Definitions

'Looked after' Child

The words '**looked after**' mean that a local authority is responsible for the support of a child. It means the same thing as a child 'being in care'. A child will become 'looked after' following the imposition of a care order or when a child is separated ('unaccompanied') and is not supported by parents or family.

Children can be looked after from their birth to the age of 18, and even further if they receive leaving care support.

Separated Child

In this context a **separated child** is an unaccompanied asylum seeking child who is applying for asylum in their own right and is separated from both parents and not being cared for by an adult who by law or custom has responsibility to do so.

Supporting 'looked after' Children and Young People

The Children Act 1989 (Section 17) defines a 'child in need' and places a statutory duty on the local authority to provide services necessary to safeguard and promote the welfare of all young people in their area deemed to fall into this category. Children who are defined as being 'in need' are those whose vulnerability is such that they are unlikely to reach or maintain a satisfactory level of health and development, or their health or development is likely to be significantly impaired without the provision of services. In the absence of their parents or customary care giver, separated asylum seeking children and young people are by definition children 'in need' and are therefore eligible for these services.

Types of support: Section 17 and 20

Children in need can be supported under either Section 17 or Section 20 of the Children Act 1989. The decision whether to support them under Section 17 or Section 20 must be made on the basis of an individual assessment of need. The section under which they receive support affects the type and length of services they receive.

Section 17: If supported under Section 17, a child will receive a level of services demanded by the Children Act 1989, as described above. Local authorities are allowed to arrange for someone else to act on behalf of the local authority to provide these services.

Section 20: If supported under Section 20, a child will be provided with a greater level of care. Accommodation will be provided for a child in need as the child is not supported by a parent, the child has been lost or abandoned or the person who usually provides accommodation and cares for the child is unable to do so. This duty also involves consulting with a child about a placement, keeping siblings together, when appropriate, and a general duty to safeguard the welfare of the child. The Children Act regulations give clear instructions on the writing and reviewing of a care plan for a child 'looked after', as well as on the regularity of visits by a named social worker. Section 20 also requires a local authority to provide a service to those leaving care.

In 2003, the Hillingdon Judgement ruled that the local authority did not have the power to provide accommodation for children in need under Section 17 of the Children Act 1989. The act of providing accommodation made the children 'looked after' by the local authority under Section 20. However, by this time the Children Act had been amended to allow local authorities to provide accommodation under Section 17 without the child automatically becoming 'looked after'.

Government guidance in LAC (2003) 13 (http://www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/LocalAuthorityCirculars/AllLocalAuthority/DH_4003946) is clear that the presumption should be that children with no parent or guardian to turn to in this country would need to be 'looked after' under Section 20 and that children should be cared for under Section 20 while the needs assessment is carried out. Services should be based on an assessment of need and should take into account the child's wishes. In the cases of 'H and others v London borough of Wandsworth and others' 2007, it was ruled that the duty laid out in Section 20(6) to ascertain and give due consideration to the child's wishes and feelings in an assessment of his needs does not override the duty in Section 20(1) to look after children who meet one other of the criteria.

A research report published in 2006¹ concluded that there is still much resistance to looking after separated children using section 20 of the Children Act 1989, in particular when those children are 16 or 17 years of age. The report claims that the reluctance to use section 20 was partly due to the leaving care duty resulting from treating the child as 'looked after'.

Types of Accommodation

There are a number of different types of accommodation in which a 'looked after' child may be housed. Children under the age of 16 are generally looked after in foster care. A minority will be cared for in children's homes. Children aged 16 and 17 will often be placed in a semi-independent accommodation, sharing with other young people.

Foster care: Most children under the age of 16 will live with a foster carer as part of their family. Foster carers are people who have been specially chosen to care for other peoples' children in their

¹ Bhabha and Finch (2006) *Seeking Asylum Alone*.

own homes. They are specially trained and will provide care to a child as if he/she were a member of their family. Children might live with a single carer, a couple or people who have children of their own. There may be more than one 'looked after' child in the foster home. Foster carers come from a variety of different backgrounds. Attempts will be made to ensure that children are placed with foster carers that they will get along with.

Residential care: Residential care may also be known as a Children's Home. Children stay in a large house with several other children. A team of social workers work in shifts to provide care and supervision at all times. Each child has a designated member of staff called a key worker who meets with them individually on a regular basis.

Semi-independent living: Children aged 16 or 17 will often live in semi-independent accommodation, such as supported lodgings, in preparation for leaving care. The local authority subcontract to private companies, charitable organisations or social housing associations, which then provide accommodation and services for the young people. The services provided should be tailored to the individual and be based on liaison with social workers and the child's Pathway Plan. One role of the support staff is to prepare young people for independent living, for example supporting and teaching key skills such as cooking, cleaning and knowledge of local amenities.

Additional Information:

Children with special needs will live in a foster home or children's home like any other child. Social Services will ensure that the place where the child stays is suitable for them.

The background of a child is taken into account when deciding how they will be looked after. Children's Services will attempt to place children with people from the same background as them. If this is not possible they will try to place children with people who understand the child's background even if they do not share it.

All foster carers have been through checks by the police and Children's Services to make sure that they are appropriate for the role. They are reviewed every year and the young person will be given a say within this process.

Role of Social Workers

Where the local authority looks after a child it is the role of the social worker to ensure that adequate arrangements are made for the child's care and that a plan is made to best address their needs and secure their future.

Irrespective of the setting in which children are accommodated, all looked after children will have a social worker and carers (e.g. foster carers, residential care staff, key workers) responsible for their day to day care, who should be involved in making plans or decisions about the young person. A child should have a designated and continuous social worker although it may be the case that this person will change where this is unavoidable due to staffing demands. If the child does not have a designated social worker it should be raised as matter of urgency.

Social workers are employed by the supporting local authority and are specialised in looking after children in partnership with other professionals involved in a child's support. It is their job to ensure that a child is safe and has opportunities to a good education, health care and leisure activities. Social workers should always talk to children about their wishes and feelings, and should ensure that their welfare comes first.

Social workers should be there to listen to children, support them and help them make decisions about their life. They should also help children understand why they are being looked after and help them to make plans about the future.

Social workers are legally obliged to visit a 'looked after' child where they live at least once every six weeks. If the child has been living in the same place for more than one year, a social worker may only visit them once every three months. If a child feels they require more visits, they should raise the issue with their social worker or reviewing officer.

Social workers should always:

1. Come and visit children regularly where they are living.
2. Listen to children and take their wishes and feelings into account.
3. Ensure they are safe and their needs are met.
4. Keep their promises and do what they say they are going to do.
5. Keep children informed of what is happening
6. Keep children informed of their rights.
7. See children's school and college reports.
8. Speak to them about their interests and things they want to do.
9. Celebrate children's birthdays and special occasions such as religious festivals.
10. Be available to listen and to support them, and to talk to them about things happening in their life.

If children are concerned that their needs are not being met or they do not agree with decisions made about their lives they can speak to their Independent Reviewing officer, an advocate, their social worker, or another trusted adult.

Care Plan

Every child who is looked after will have a written care plan following an initial and a core assessment. This plan is produced by the social worker and is based on the child's needs. The content is determined by the social worker's views, the child's feelings and the opinion of any other important adult in the child's life. It sets out how the child's needs should best be met and which individuals and agencies will be involved in the process. It may include issues such as where the child will live, their health and education needs, who will provide the child with help and support and what will happen if something goes wrong. The Care Plan is always written down and a copy will be given to the child.

Review Meetings

By law the Care Plan must be reviewed every six months to ensure that the child's needs are being met and that plans for the future are made. This is called a review meeting. The very first review meeting takes place four weeks after the child has been in care. The second meeting will be three months after the child has been in care and thereafter every six months or less. The meeting is run by an Independent Reviewing Officer (IRO), who is someone who is independent to the child's situation. They will act as a chairperson at the meeting, will take notes will ensure that the meeting is being run properly. They will also ensure that the agreed action is undertaken. The child will have a chance to speak to the IRO before the meeting.

The review meeting will be attended by the child (if over four years old), the social worker, the child's carer, and the child's parents (if applicable). It may also be attended by key workers, teachers, health visitors or other professionals involved with the child's life. The child should be given the chance to say if there is anyone they do not want to attend or if there is anyone additional who they do want to attend.

In addition to attending, or instead if the child is adamant that they do not want to attend, the child could: complete a review consultation form/leaflet (see below); call, meet or write a letter to the IRO beforehand and/or invite an advocate to the meeting to say their views.

Before the review meeting a review consultation form will be sent to the child. The form should be completed by the child and sent to the IRO before the meeting. This ensures that the IRO knows about the child's views and wishes.

The review meeting should be:

1. Child centred.
2. An open and relaxed atmosphere.
3. Relevant to the child's needs.
4. Not paperwork orientated (the IRO will later send out a copy of what was discussed and the child can request that this is translated into another language).
5. At a venue the child is happy with.
6. Comfortable and interesting for the child.
7. Easy for the child – for example language needs should be met.
8. A chance to celebrate the child's achievements.

Leaving care support

Any child who is 'looked after' under Section 20 for at least 13 weeks after their 14th birthday is entitled to leaving care support. This means that local authorities cannot force young people to leave care at 18 and that they have a duty to assess, plan and review care arrangements up to the age of 21 (24 if in full-time education).

For separated children who are leaving care, the Children (Leaving Care) Act 2000 places a duty on local authorities to assess and meet the needs of young people who were looked after or subject to a care order and are moving to live independently. The local authority is required to carry out an assessment of each child's needs with a view to determining what advice, assistance and support is required when he or she is no longer being looked after.

Young people should be referred to the leaving care team by their social worker just before their 16th birthday. The social worker will prepare a pre-Pathway Plan assessment for the young person. The young person is then provided with a Personal Advisor who (sometimes alongside the social worker) will help them create a Pathway Plan. The Pathway Plan takes over from the Care Plan and looks at the support a young person will need to live independently and plan for the future. This may include living arrangements, education and training, employment, finances, cultural needs and health and lifestyle. As a young person's plans and ideas might change then the Pathway Plan should be reviewed at least every six months. The Personal Advisor should keep in touch with the young person until they are at least 21, whether or not the young person is still living in the same area.

Separated children face additional difficulties on top of those that their peers are experiencing at this age. If a child has been refused asylum then discretionary leave to remain (DL- Discretionary Leave) will expire at the age of 17 and a half and an application for extension of leave will have to be made. This can be an uncertain and worrying time for separated children and so the support of leaving care services may be particularly important for them. Social Services will hopefully support separated children through this difficult time and help them prepare for what the future may hold, be this staying in the UK with leave to remain, staying in the UK having been refused asylum or being removed/returned to country of origin.

'Looked After' Separated Children and Young People

Local authorities have a statutory duty to provide services to safeguard and promote the welfare of children 'in need'. Separated asylum seeking children necessarily fall within the ambit of this duty. However, before they assess the need, local authorities may have to make a decision on whether the young person who has approached them for services is indeed a child. In this case they will undertake an age assessment.

An asylum seeking child may be age disputed (where their stated age is doubted) by either UKBA and/or the local authority. The local authority has, in most circumstances, the ultimate decision-making power to determine someone's age. A child may be age disputed by the Home Office and then later be age assessed by the local authority who may also dispute the child's age or accept the child's claimed age. Alternatively the Home Office may not age dispute the child and make a referral to the local authority who may then dispute the child's age.

If a young person is age assessed as over 18 they will enter the asylum process as an adult and will not be eligible for support from social services. This raises potentially serious child protection concerns if children are not safeguarded, particularly if housed with adults. If a child is accepted as under 18 but their age is disputed as above 16 (for example claimed 15, assessed as 17) this will also affect the support they are entitled to. It will affect whether or not they are placed in foster care or semi-independent living and it may also affect whether or not they are entitled to leaving care services.

Age Assessment

Assessing age is a complicated process. It can be difficult to determine the age of some separated children and young people because they may arrive with false identity documents (possibly because this was the only way they could leave the country) or no documents at all. A third of all births worldwide are not registered and many countries do not issue birth certificates. Birth dates are not important in some countries and cultures so that children and young people may not know their date of birth and be vague about when they were born. This does not necessarily mean that they are trying to misrepresent or conceal their age.

There may be confusion over age because different calendars are used in some countries, for example, Iran and Sri Lanka. Converting from one calendar to another can be difficult. Mistakes are sometimes made and children or their interpreters can give the wrong date of birth.

Children and young people may look and act older than they are because of their experience in their country of origin. Reasons for this include, but are not limited to, the fact that children and young people have worked and taken on 'adult' responsibilities from an early age, the experiences and traumas associated with migration, differences in cultural norms, or biological characteristics specific to an ethnic background. For example, boys in some parts of the world, notably the Indian sub-continent, grow facial hair earlier than most boys in Europe.

There is no scientific or medical assessment process which can accurately determine age. Medical assessment methods can be helpful but are associated with a margin of error of at least two years in either direction.

Some children may claim to be adults when they are not, perhaps because of bad advice, a lack of understanding, or because an adult (including a trafficker) makes them. If this is the case then the individual concerned should be treated as a child and referred to social services. The police should also be contacted if there is reason to believe that the child may be a victim of trafficking or prostitution, or may have been coerced into some other criminal activity.

Some adults may claim to be children, perhaps because of bad advice, the belief that they will get preferential treatment, or a lack of understanding.

Age Assessment Process – Social Services

There is currently no statutory procedure for local authorities to follow when conducting an assessment of age of a person claiming to be child. Rather the current approach for undertaking age assessments has evolved through practice by social service departments and a growing number of legal challenges to the process. Practice guidelines have emerged which provide a pro-forma on which to base the assessment interview for a young asylum seeker claiming to be under the age of 18. These guidelines were approved by Burnton J in the High Court in July 2003 and have become known as the Merton judgement. A local authority age assessment should be lawful, including being Merton-compliant.

Particularly noteworthy aspects of the Merton judgment (paraphrased) include:

- Physical appearance and behaviour should not be isolated from the credibility of the applicant's account (paragraph 28).
- The assessment of age in borderline cases is a difficult matter but it can be determined informally, provided that safeguards of minimum standards of inquiry and of fairness are adhered to (paragraph 36).
- The decision maker cannot determine age solely on the basis of the appearance of the applicant. Family circumstances, educational background, activities during the previous few years and ethnic and cultural information should be taken into account. If there is a reason to doubt the applicant's statement as to his or her age, the decision maker will have to make an assessment of the applicant's credibility, and will have to ask questions designed to test credibility (paragraph 37).
- The local authority must make an assessment on the material available to and obtained by it. No prior assumptions should be made (paragraph 38).
- The local authority cannot simply adopt a decision made by the Home Office. It must make its own independent decision (paragraph 39).
- A local authority is obliged to give adequate reasons for its decision that an applicant claiming to be a child is not a child (paragraph 45).
- It is not necessary to obtain medical evidence (paragraph 51).
- Where an interpreter is required, he or she should ideally be present during the interview (paragraph 52).
- The decision maker must explain to an applicant the purpose of the interview (paragraph 55).
- Procedural fairness requires that the assessing officers tell the child about matters which they may hold against him or her in order to rectify any misunderstanding (paragraph 55).
- A long assessment is not necessarily a good one; a short assessment is not necessarily a poor one (for example there will be cases where the age is very obviously different from the claimed age – in this case it is possible that the age assessment is determined quickly).
- Children may lie about a number of things for a number of reasons (for example to avoid return to their country of origin). This does not make them adults.

Research shows² that the Merton judgment has had both positive and negative implications for the process of age assessment. The majority are positive however there is evidence that the judgment, particularly the wording of paragraph 37, has encouraged some local authorities to focus disproportionately on the credibility of an asylum seeker's account. The research also finds there is

² Crawley, H (2007) *When is a child not a child?* ILPA research report.

considerable variation in the quality of the assessment process undertaken by local authorities. Whilst some good practice exists the quality of the age assessment process can also be poor.

The age assessment may have three outcomes. Firstly, that the young person is accepted as a child and is supported by social services. Secondly, that the young person is assessed as an adult (or as a child but older than the young person maintained) and the young person accepts this decision. Thirdly, that the young person is assessed as an adult (or as a child but older than the age maintained by the young person) and the young person does not accept this decision. If outcome three occurs then there are options for the young person including being referred to a welfare legal representative. The legal representative may challenge the particular practice of the social worker's age assessment (for example if it was not Merton-compliant) or may try to provide further information regarding the child's age, for example identification documents or a paediatrician's age exam. The result may be that the child is referred back to social services for re-assessment. The case may be taken to judicial review if children's services refuse to reassess or if the child is re-assessed as an adult. However the local authority still remains the decision making body for age assessments.

Useful Websites & Phone Numbers

www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_1.htm

Link to the Children Act 1989.

www.carelaw.org.uk

Provides useful information on rights, education and health care etc. to children and young people in care.

www.nyas.net/

Provides information, advice, advocacy and legal representation to children and young people up to the age of 25

www.voiceyp.org

Voice is a national charity that works with young people to speak up for them and support them in getting improvements to their lives

www.thewhocarestrust.org.uk

The Who Cares Trust is a national charity working to improve the lives for children and young people in care. They provide useful information for young people and also produce a magazine.

www.anationalvoice.org Tel: 0161 237 5577

A National Voice is an organisation run for and by young people who are or have been in care. Involved in awareness raising, promoting positive images and informing decision-making about the care system.

NSPCC Child Protection Helpline - 0800 800 500 (Free and 24 hours a day)

Childline - 0800 1111 (Free and 24 hours a day)

Childline for looked after children 0800 88 4444 (Free, Mon-Fri 3.30 - 9.30pm, Sat & Sun 2 - 8pm)

Children's Legal Centre - 01206 873 820 (advice service)