

1. Corporate parenting principles

It is positive that the overall aim of the new provisions will enhance and clarify a local authority's obligations to act in the best interests of unaccompanied asylum seeking children (UASCs) and other migrant children in its care. However, in order to ensure that the existing statutory framework and relevant case law can be implemented correctly and effectively, the draft guidance needs make reference to this and provide further clarity on some issues that are specific to migrant children and care leavers.

Reference needs to be made to the statutory guidance, *Care of unaccompanied migrant children and child victims of modern slavery*, in order to ensure that the specific requirements relating to this group of looked after children and care leavers are taken into account when meeting the corporate parenting duties.

2. Local offer for care leavers

Again, reference needs to be made to the statutory guidance, *Care of unaccompanied migrant children and child victims of modern slavery*, in order to ensure that the specific requirements relating to this group of care leavers are taken into account when preparing the local offer.

For example, in order to reflect the requirements of that statutory guidance, information about the availability of immigration advice and the local authority's role in helping a care leaver to access this should be added as an example of what can be included in the local offer. This will be an essential component of leaving care support provided to former UASCs, EEA nationals, and young people following other migration routes.

Additionally, there is no reference in the guidance documents relating to the local offer for care leavers to the immigration exclusion which is set out in Schedule 3 of the Nationality, Immigration and Asylum Act 2002, and will, in some cases, limit the leaving care assistance that certain groups of young people can receive. Information about this is included in the *Care of unaccompanied migrant children and child victims of modern slavery* statutory guidance.

3. Extending personal adviser support to 25

The draft guidance does not provide any information about how this duty applies to young people who have NRPF, in terms of the local authority's obligations to provide housing and financial support. Given that this has significant funding implications, there needs to be further consultation with local government about how this provision will apply to young people with NRPF and what information may need to be added to the guidance. Further details of the duty to provide accommodation and how the schedule 3 exclusion affects this are set out below.

Also, due to the broad scope of the new section 23CZB, further clarity is required about what can and cannot be provided when Schedule 3 of the Nationality, Immigration and Asylum Act 2002 applies.

Details of the duty to provide accommodation and how the Schedule 3 exclusion affects this are set out below for information.

(a) Providing housing and financial support to young people with NRPF

Section 23C(4)(c) of the Children Act 1989 states:

'It is the duty of the local authority to give a former relevant child—

(a) assistance of the kind referred to in section 24B(1), to the extent that his welfare requires it;

(b) assistance of the kind referred to in section 24B(2), to the extent that his welfare and his educational or training needs require it;

(c) other assistance, to the extent that his welfare requires it.'

The court in *SO v Barking and Dagenham* [2010] [EWCA 1101](#) made it clear that section 23C(4)(c) of the Children Act 1989 requires a local authority to provide accommodation and financial support if a young person's welfare requires this, even if the young person may be eligible for asylum support from the Home Office. This means that for a young person with NRPF, the local authority will need to fund housing and financial support whilst leaving care duties apply.

The Children and Social Work Act 2017 does not repeal or amend section 23C(4)(c) of the Children Act, which will continue to apply.

The following list sets out examples of when accommodation will need to be funded under section 23C(4)(c) for young people when they are 18-21 (or 25 if pursuing a course of education or training).

Where the young person has:

- A pending asylum claim (including an appeal)
- Leave to remain with NRPF
- An EU derivative right to reside in the UK (for example, as the primary carer of a British child)
- No current immigration status (e.g. ARE former UASC) and where they have a legal or practical barrier preventing them from returning to their country of origin, for example, an outstanding human rights application or appeal.
- EEA nationality and is exercising a right to reside in the UK under European law and/or there is a legal or practical barrier preventing them from returning to their country of origin.

Section 3 of the Children and Social Work Act 2017 establishes a new duty (section 23CZB of the Children Act 1989), which includes requiring local authorities to:

- Within the needs assessment determine whether any services offered by the local authority (under the Children Act or otherwise) may assist in meeting the young person's needs and what advice or support it would be appropriate to provide for the purpose of helping the young person obtain those services

- Provide any advice and support that the assessment has identified as being appropriate

Section 2(2) of the Act states that

'For the purposes of [the local offer], services which may assist care leavers in, or in preparing for, adulthood and independent living include services relating to—

- (a) health and well-being;*
- (b) relationships;*
- (c) education and training;*
- (d) employment;*
- (e) accommodation;***
- (f) participation in society.'*

The draft guidance gives the following example of good practice in supporting care leavers to access housing at paragraph 5:

'..preventing homelessness amongst care leavers and – where a care leaver does become homeless - taking action to assist the young person to secure accommodation'

The draft guidance states at paragraph 8:

'The new duty provides only for the provision of PA support through to age 25. It does not place any other duties on local authorities, for example, in relation to housing support, over and above the provisions for care leavers that already exist in current legislation, such as their priority need in homelessness legislation.'

The legislation and guidance is therefore clear that the new duty encompasses services relating to accommodation and action to prevent homelessness. Additionally, in order for any other assistance to be meaningful, it is likely that the local authority will be required to provide housing and financial support where the young person has no other means of accessing this. Paragraph 8 of the guidance does not prevent this, because current leaving care duties require accommodation and financial support to be provided in such circumstances.

Section 3 of the Children and Social Work Act 2017 therefore extends the existing duty to provide accommodation and financial support under section 23C(4)(c) up until the age of 25 where a young person is unable to access this through mainstream benefits/housing services due to their immigration status.

(b) Applying Schedule 3 of the Nationality, Immigration and Asylum Act 2002

Schedule 2(5) of the Children and Social Work Act 2017 amends Schedule 3 of the Nationality, Immigration and Asylum Act 2002 to include 'support or assistance' provided under the new section 23CZB of the Children Act 1989.

This means that for EEA nationals and young people who do not have any current immigration status (including most ARE former UASCs), 'support or assistance' under section 23CZB may only be provided if this is necessary to prevent a breach of the young person's human rights. In practice this means that the local authority will need to undertake a human rights assessment to determine whether support can be provided. Where the young

person has a human rights application or appeal pending then the local authority will be required to provide support until the claim has been determined. This means that many young people who are affected by the Schedule 3 exclusion will be eligible for housing and financial support from the local authority.

In the case of *Binomugisha v LB Southwark* [2006] EWHC 2254, the court was clear that Schedule 3 only applies to the provision of 'material support or assistance' and not 'advice', so even where a young person is excluded from the provision of accommodation by Schedule 3, this does not prevent them from being provided with advice from their personal adviser and reviews of their pathway plan.

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