

Child first

Looking after Unaccompanied
Asylum Seeking Children in Wales

A Best Practice Guide for
Social Workers in Wales
supporting Unaccompanied
Asylum Seeking Children



**Canolfan
Gyfreithiol
y Plant**
Children's
Legal
Centre

Introduction – supporting citizens of the future

The last few years have seen a real global humanitarian crisis developing as millions of people are forced to leave their homes and travel abroad to escape war and persecution. The young people caught up in this crisis are often those that suffer the most, many separated from their families and forced to make long and dangerous journeys to what they hope will be sanctuary. Although the UK is seen as a destination of choice for many, these young people face a hugely complex asylum system to negotiate when they arrive here, and are often treated as 'statistics', rather than individuals often with traumatic pasts – but hopefully, a brighter future.

Here in Wales, we recognise the rights of all young people, wherever they come from. Underlying everything, these young people are children. Their human rights are protected, with special protections given to them under the United Nations Convention on the Rights of the Child which Wales has adopted. As children, they have the same rights as any other child in Wales, albeit against the complex backdrop of immigration rules.

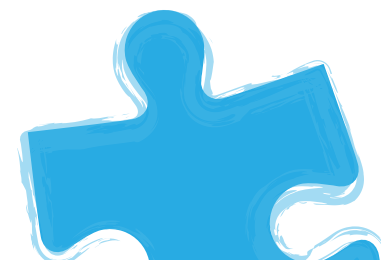
As social workers involved at the heart of their care, you are best placed to support these young people, to ensure that they access the care they need and the practical, cultural, medical and legal help they need. You can help give these young people voice and control, offering them respect and acting according to the Social Worker Professional Code of Practice, with integrity and honesty towards these citizens of the future.

The Welsh Government Children Receiving Care and Support Census 2018 suggested that there were a total of 105 asylum seeking children receiving care and support in Wales as at 31 March 2017. Although the numbers are not currently high, the needs of these young people are frequently complex and challenging. Their needs must also be set against the background of an ever-shifting immigration picture, and negative attitudes held by certain sections of the public and the British media in respect of these young people – almost overwhelmingly teenage males, many of whom will be close to the age of 18.

The major issues to address as social workers are

- ▶ Safeguarding the young person
- ▶ Supporting them through any age assessment, and the asylum process
- ▶ Determining a suitable placement
- ▶ Ensuring appropriate health and wellbeing support
- ▶ Securing education and ongoing support for their education
- ▶ Setting up suitable cultural and linguistic support
- ▶ Planning for the future

In many respects these young people have exactly the same needs as any other young person you will support in your role as social worker. For that reason, this document concentrates on the issues that arise from the young person's arrival in the UK, the age assessment and immigration processes, and pathway planning for someone who may not be able to stay in the UK.



Arrival/Referral

The majority of young people arrive in the UK and Wales 'spontaneously'. This means via a lorry drop or other clandestine means.

Some young people may arrive in the UK under the mechanism of s. 67 Immigration Act 2016 (known as the Dubs amendment). This is a commitment by the UK Government to transfer 480 young people to the UK from other areas of Europe, in particular France, Italy and Greece. A small number of young people have already been resettled in Wales and more may come.

Some young people come to the UK to join family members under the mechanism of the Dublin III Convention. If the young person has claimed asylum somewhere else in the EU but they have relatives in the UK, they can be transferred to the UK to join that family. In some cases, most commonly if the young person comes to the UK to join a sibling, the young person should still be identified as an unaccompanied asylum seeking child.

The National Transfer Scheme is now legally available in Wales and will soon become operational. This Scheme facilitates the transfer of asylum seeking children out of local authorities in England where there are large numbers being cared for, such as Kent and Croydon. The UASC National Transfer Team will work with the Wales Strategic Migration Partnership and your local authority, to identify any possible placements for these children.

At the time of writing, it is not clear what arrangements will continue after the UK leaves the EU, but it is anticipated that some form of reciprocal arrangement along the lines of Dublin III will continue.

Your role on arrival/referral

You may come into contact with a young person very soon after his or her arrival in the UK.

- ▶ If immigration officials or the police have apprehended a young person who appears to be under 18, they should immediately contact children's services. These agencies must also involve children's services straight away if the young person says they are 18 but there is no evidence that strongly suggests that he or she is significantly over the age of 18.
- ▶ In other cases, the young person may have avoided detection by the immigration authorities when they entered the UK, or may initially be treated as an adult, and only come to your attention at a later stage, after they have been in the UK for some time.
- ▶ Sometimes, a young person will claim to be older than 18, perhaps because they have been told to say this by the people who brought them into the UK, or because they are scared of what may happen if they admit to being under 18.
- ▶ If immigration officials consider that the evidence strongly suggests the young person is over 18, the young person will be treated as an adult, and placed into adult accommodation. If the young person claims to be over 18 they will also be placed into adult accommodation, under Home Office responsibility.

The young person may then come into contact with others – health professionals, legal representatives, accommodation providers, workers at drop in centres, churches or other agencies – who raise concerns that the young person might be under 18. The young person may have been living in adult accommodation for some time before he or she is referred to children's services and comes into contact with you in your role as a social worker.



Wellbeing Assessment

At the initial wellbeing assessment, your role as social worker is to gather information to establish the young person's immediate needs. One of the outcomes of this assessment may be that age assessment is a priority. Information gathered during the initial wellbeing assessment may be relevant to the age assessment process.

Communication with the young person is key to find out what he/she wants to happen, and their views about where they should stay, so that these can be taken into account in any decisions that are taken about them, and to make sure that decisions are in the young person's best interests.

Establish the young person's first language and ensure a suitable interpreter is available, not just in terms of language and dialect, but also the gender of the interpreter. Face to face interpreting with an interpreter from a reputable agency is essential:

- ▶ It ensures the likelihood of accurate and reliable interpretation
- ▶ It reduces the risk of the young person being put into contact with someone who might not have his or her best interests at heart
- ▶ It may be appropriate to record conversations involving an interpreter, even one from a reputable agency, and keep a record in case of any query later on

For more remote areas in Wales, it may be a challenge to secure these services at short notice. Language Line and the Wales Interpretation and Translation Service (WITS) are available to help.

If the young person speaks a language or dialect that is very unusual and Language Line or WITS cannot supply an appropriate interpreter, it is worth contacting the language department of the local universities, or SOAS (School of Oriental and African Studies), SSEES (School of Slavonic and East European Studies) or Birkbeck College, all three of which are part of London University.

Safeguarding is a priority – these young people are especially vulnerable to trafficking and exploitation, and often go missing from care.

- ▶ Consider whether the young person may have been trafficked, or is vulnerable to trafficking

- ▶ Consider the risk of the young person going missing from care
- ▶ Obtain a photograph of the young person (with consent). It can help with a young person's identity if they do go missing at a later date

If the young person is at serious risk of harm because of the other people he or she is with, it might be appropriate to seek a court order placing him or her in the local authority's care. The emergency provisions under the Children Act 1989 (s 46, 47) may be relevant, especially if the young person has arrived in your care following intervention by the police.

If a young person has been transferred to the UK under Dublin III to join family members, they may still need to be 'looked after' if they cannot live with the relative they have come to the UK to be with.

Accommodation If the young person is being held by the police or immigration authorities and is not 'age disputed', he or she will have an immediate need for accommodation. This means that he or she will, by default, become 'looked after'.

Age If there is any real doubt about the child's age, or the young person is 'age disputed' and has been referred to you after he or she has already spent time in adult accommodation, the immediate outcome of the welfare assessment will be to carry out an age assessment to determine whether the young person is actually a 'child' (under 18) or not. See the Age Assessment section for more information.

- ▶ UK Visas and Immigration (UKVI) must refer children and young people to children's services unless their physical appearance or demeanour 'very strongly suggests' that they are over 18.
- ▶ If UKVI appear to think that the individual is clearly over 18, but officially maintain that they are not sure, or that the young person may be under 18, you can challenge them to take responsibility for the young person. Otherwise, you may be putting other young people in your care at risk.
- ▶ If the young person is age disputed and you need to carry out an age assessment, case law suggests that you should accommodate the young person 'as a child' until the age assessment process has been completed.

You can accept that the young person is the age he or she claims to be, and use your discretion not to carry out an age assessment.

Meeting immediate needs – Care and Support Plan

Although the initial duty is to create a Care and Support Plan, if the young person is 16 or older, or once the young person reaches 16 this should convert into a Pathway Plan, to prepare the young person for adulthood. More information about Pathway Planning is included later in this Guide.

Accommodation

You are likely to be dealing with an older teenager, perhaps someone close to turning 18. Establishing suitable accommodation may be challenging for a number of reasons:

- ▶ Age of the young person
- ▶ Linguistic and cultural needs
- ▶ Health needs

While there will be occasions when foster care is appropriate, particularly with younger children, supported lodging placements or semi-independent placements with other young people can provide a more suitable environment for 16 and 17 year olds who may be in your care, many of whom will relish the independence this gives them.

If a young person has come to the UK to join a relative under Dublin III but cannot live with that relative, the local authority needs to promote contact with the relatives and, if necessary, fund transport to support that contact.

Health and Wellbeing

Health Assessment

You should follow your usual process, working with looked after children's nurses as appropriate. In addition to your own routine assessment, the local health board has to ensure that all asylum seekers have a health assessment to screen for transmissible diseases such as TB. The health board will also want to carry out immunisations as necessary. If you are in a dispersal area, there may be a clinic specifically for asylum seekers where these assessments can be carried out by specially trained health professionals. If not, the young person's GP will be responsible for progressing this. As with all looked after children, you have a duty to make sure the young person is registered with a GP within 10 days.

Are there other specific things to look out for?

Unaccompanied young people coming to Wales will have usually endured long and complex journeys and suffered hardship on the way. They may be traumatised by events in the country where they were living before they came to the UK as well as by what they have experienced travelling to the UK and being separated from their families.

Issues to look out for include

- ▶ Female Genital Mutilation (FGM)
- ▶ Post-Traumatic Stress Disorder (PTSD) and other mental health problems
- ▶ Malnutrition
- ▶ Physical/sexual abuse
- ▶ Extremist views

Some of these issues may also be indicators of **trafficking**.

Mental health issues

Many of the young people seeking asylum in the UK have shown themselves to be

extraordinarily resilient. However, in some cases, a young person's mental health may be of concern. He or she may have mental health issues as a result of their experiences in their home countries, on their journey to the UK, or as a result of the situation they find themselves in once they are here. The uncertainty related to immigration status, and potential social isolation experienced when they are in the UK can cause mental health issues.

You can be guided by health professionals here, but it is worth letting the young person settle into his or her placement before considering referral, unless the young person is struggling to function.

If a mental health assessment is appropriate at any point, it's important to ensure suitable interpretation services are on hand to make sure that ongoing contact with CAMHS is meaningful and beneficial for the young person.

To help you understand more about the health needs of young people, the UASC health website provides good information (see the Resources section).

Country information

You can find information where the young person has come from online, or from booklets such as:

corambaaf.org.uk/books/caring-unaccompanied-asylum-seeking-children-and-young-people

You can also look at the country information reports on the Human Rights Watch website:

www.hrw.org/countries,

the BBC website: news.bbc.co.uk/1/hi/country_profiles/default.stm

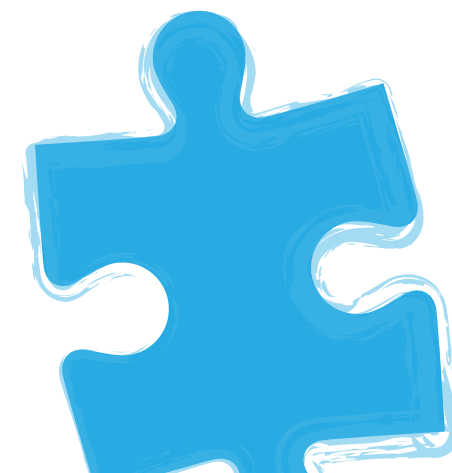
and Amnesty International website: www.amnesty.org/en/countries

Education and Training

Young people coming to the UK seeking asylum will have had very different experiences of education. Some young people arrive with a good command of English, others have almost no English. Some will have had a high level of schooling in their country of origin, some, almost none.

Whatever their background, many young people coming to the UK and to Wales are keen to continue their education or to receive training. It's vital that, once their needs have been identified, you work closely with education colleagues to ensure appropriate school, college or training places can be found to meet those needs.

Learning English is a priority for these young people. ESOL courses may be available locally. You may want to encourage people directly involved in the care of the young person – such as a foster carers, supported lodgings carers or support staff in semi-independent accommodation – to spend time speaking English with the young person to help their language development. Improving their English skills can help the young person demonstrate his or her commitment to settling in the UK.



Trafficking – and smuggling

What is Trafficking?

People – adults as well as children and young people – are trafficked when they are taken or kept somewhere for the purposes of exploitation. Some children may not be aware that they have been trafficked, and some may have been threatened so they will be unwilling to explain what has happened to them. An unaccompanied child may have been trafficked or may be vulnerable to trafficking even if they have come to your attention before any exploitation has taken place.

Concerns about the young person may not arise until after he or she has been placed with a foster carer, or given other accommodation.

Don't confuse smuggling with trafficking

A significant number of young people coming to the UK and claiming asylum will have been smuggled here. They will have paid someone to get them to the UK, and may have spent time working for an agent to raise the money – or in lieu of making a cash payment. If there is no ongoing intention of the smuggler beyond getting the young person to the UK, then trafficking is unlikely.

How to respond if you suspect trafficking

If you are worried about a child and suspect they may have been trafficked, you should contact Barnardos Independent Child Trafficking Service (barnardos.org.uk/cta.htm). Wales has access to Independent Child Trafficking Advocates (ICTAs) – specialist professionals able to support children who have potentially been trafficked.

If there is strong evidence that a young person has been trafficked, the local authority must contact The National Referral Mechanism (NRM) as a 'first responder'.

- ▶ You will need to complete a referral form to the UK Human Trafficking Centre www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre. This is part of the National Crime Agency.
- ▶ You don't have to have the young person's consent to make a referral.

Outcome of decision on trafficking

This initial decision will come through very quickly from the NRM – usually within 5 days. The young person may be entitled to 45 days 'recovery and reflection' in safe accommodation while his or her circumstances are investigated. In reality, this makes no day to day difference for the young person, as he or she will already be accommodated by the local authority. However, any decision may be important for the outcome of the young person's asylum claim.

Age Assessment

Age assessment can take up a huge part of the initial work you do with a young person who has arrived in the UK without their family. It is a complex process which has huge implications for the young person in terms of the care and support they will be eligible to receive in the UK. The information provided here is intended only as an introduction and brief overview of age assessment.

Practitioners should always refer to the Age Assessment Toolkit for more detailed advice and guidance www.wsm.org.uk/documents/wsm/News%20and%20Events/150330%20Age%20Assessment%20Toolkit%20Final%20July.pdf

The importance of age assessment

Establishing that you are dealing with a 'child' (under 18) is paramount to ensure that he or she receives the correct advice and support. It's also important to ensure the safety of any other vulnerable children/young people who might be in the same placement with the young person.

- ▶ Age affects which agencies are responsible for offering help and support to the young person while they are in the UK. It also affects how the asylum application is processed.
- ▶ Age assessment is not an event, it is a process. If information comes to light at a later date which suggests that the young person is older than he has claimed, or older than the age attributed to him or her by the initial age assessment, you can carry out a further age assessment.

You/the local authority may need to carry out an age assessment for your own purposes - to determine the support the young person should receive, and who should provide the support.

Even if you think that the young person may be older than 18, he or she should be treated as a child until the age assessment has been completed.

Who instigates age assessment?

The immigration officials who have come into contact with the young person may have made a decision about the young person and disputed their age, leading to the young person being treated as an adult. The Home Office has recently issued guidance to its own staff about the age assessment of young people, but this should not prevent you from carrying out your own age assessment if you believe this is necessary.

UKVI can only treat a young person claiming to be under 18 as an adult if their physical appearance or demeanour '*very strongly suggests*' that they are over 18.

The Home Office may also ask Children's Services to carry out a 'Merton compliant' age assessment. There is no obligation on the local authority to carry out an age assessment unless you have your own reasons to think that the young person you are being asked to look after is significantly over the age of 18, or new evidence has come to light relating to their age. The Home Office may challenge your decision not to age assess.

Accommodation during age assessment

If the young person is referred to you immediately on arrival and claims to be under 18, the local authority must treat them as a child, and provide accommodation until an age assessment can be carried out. You should bear in mind that this means that a young person who is eventually determined to be older than 18 may be accommodated for a time with younger children, for example in a foster home.

Key points about the age assessment process

The age assessment process can be stressful for the young person involved and it's worth remembering that the experiences of coming to Wales may have an impact on their appearance and demeanour and attitude. In addition some nationalities appear to mature more quickly than their white western counterparts, i.e. in relation to facial hair, height and build.

The young person is entitled to have an appropriate adult, or an advocate who can also act as an appropriate adult, with them during the age assessment process. Although the appropriate adult can't answer questions for the young person, they can – and should support them during the process. Specifically, the role of the appropriate adult involves:

- ▶ making sure the young person understands what's happening, and why (hopefully the young person will already understand this as a result of your work with him or her before the age assessment takes place)
- ▶ intervening to ask for breaks if the young person needs them, perhaps to consult with legal advisors, with the appropriate adult or if the young person is upset or appears tired or unwell
- ▶ intervening if the people conducting the age assessment are not acting properly and fairly
- ▶ assisting with communication by the young person with the people carrying out the age assessment
- ▶ ensuring that the young person understands that he or she can take legal advice and understands his/her rights through the age assessment process

The appropriate adult should be independent of the young person and the local authority carrying out the age assessment. For this reason, as the social workers responsible for the young person, you will not be regarded as 'independent' for the purposes of age assessment interviews.

If the young person decides not to have an appropriate adult present, you should check that the young person understands the role of the appropriate adult, and try and establish if there's a reason why he or she is objecting. If the young person continues to refuse an appropriate adult, these wishes should be respected.

If a translator/interpreter is required, this will need to be arranged. It is important to check with the young person the preferred gender of the translator/interpreter and if there are any special dialectical requirements.

The age assessment process can be lengthy. As practical points, make sure the young person in your care has food and drink with him/her, and suitable clothing so that s/he will be comfortable during the day. You should also check with the young person that the environment is comfortable for them.

The process of carrying out an age assessment is complex and involves a wide range of factors, all to be considered and taken into account.

What happens once the age assessment is completed?

- ▶ If the outcome of the age assessment is that the young person is 18 or over, they should be referred to the Home Office for support and accommodation.
- ▶ If the young person is assessed as under 18, he or she should continue to be accommodated by the local authority.
- ▶ If there has been a change in the assessed age of the young person you will need to contact the Home Office. The Home Office requires written notification to say that the young person is 18 or over before it will house and support them.
- ▶ Advise the Home Office of the outcome of the age assessment using the 'age assessment information-sharing pro forma'.
- ▶ You should provide the young person, and if appropriate their advocate or legal advisor, with a copy of the full age assessment. They may wish to challenge the outcome of the assessment.
- ▶ The Home Office may query the result of the age assessment process. Once the accepted age is agreed, all records and documents need to be amended to show the accepted date of birth. Where appropriate documents should be passed on to the young person and to any other relevant organisations.

Age Assessment and Judicial Review

Age assessment is a process which is open to judicial review. This is a legal process to challenge the way a decision has been made. It is not a challenge to the decision itself. The eventual outcome of an application for judicial review may be that you have to carry out the age assessment again – for example if a court finds that you didn't take account a piece of information that you should have considered, or you considered something that was irrelevant. This does not mean that you have to come to a different decision, only that you must show how you a piece of evidence was relevant or irrelevant. If the evidence suggests that you should have come to a different decision, the judicial review may succeed on the basis that your original decision was 'perverse'.

If the young person decides to judicially review your decision on age, the notes that you make at time of the age assessment, during the process and immediately following the process and decision making may provide important evidence to demonstrate what you did and did not take into account, and what weight you gave to the different factors. Keeping full notes and recording decisions that are made and the evidence to support those decisions will be helpful.

The Asylum Process

If the young person hasn't already made a claim for asylum, and wants to do this, he or she has to do so as soon as possible. In order to lodge an asylum claim, the young person will have to attend a First Encounter and Welfare interview. The claim for asylum will usually be made in Home Office Regional Offices – in Wales, at UKVI Newport Road, Cardiff. You must help the young person obtain a time and date for interview, and help them to get there. If, for some reason, it is not possible to have the meeting in Cardiff you may have to help the young person with arrangements to travel to UK Visas and Immigration offices in Croydon or Solihull to attend this meeting.

Until the young person has officially launched his/her asylum claim in this way, he/she is not yet an 'asylum seeker' and so is not eligible for legal aid to obtain legal advice. If you think the young person does need at least some legal advice, you should support the young person to find a solicitor who may be able to provide some initial advice on a free or pro bono basis, but it is more likely that there will be a cost.

Legal Aid is now available for all immigration matters in respect of unaccompanied young people. This can be accessed through exceptional case funding until the necessary legal changes have been made.

You should help the young person register their asylum claim as soon as possible. In order to show that it has complied with its duties to support the young person, the local authority has to be able to provide evidence of the steps it has taken to help the young person register their asylum application, and other steps it has taken.

A young person who has transferred to the UK under Dublin III to join their family will still be an asylum seeker and will need support to progress their asylum claim in the UK.

Asylum Application Interview

Young people aged 12 or over will have to attend a substantive asylum interview unless there are exceptional reasons why an interview shouldn't take place. Before the interview, he or she will have had to prepare a Statement of Evidence form. The young person should have legal support to complete this document.

If the young person fails to attend their substantive asylum interview, the asylum claim could be refused for non-compliance. Where you are involved as a social worker, and the young person doesn't attend for their interview, the UKVI case worker should contact

you to check why he or she did not attend. If you know in advance that there will be a problem attending the interview, for example illness or transport issues, you should discuss this with the case officer as soon as possible.

Being the 'responsible adult'

The young person is entitled to have someone they trust with them in the asylum interview as a 'responsible adult'. The responsible adult should also be present when the young person's finger prints are taken, and may also be present during the initial welfare interview. In many respects, the responsible adult has a similar role to that of the appropriate adult in the age assessment process.

Home Office Guidance on Children's Asylum Claims, last updated in October 2017 includes a detailed, but non-exhaustive list of the duties of the responsible adult, as follows:

- ▶ providing independent support to the child and acting in the child's best interests
- ▶ looking after the well-being of the child so they feel able to participate in the asylum procedures in a way that meets their welfare needs and recognises their maturity
- ▶ raising any welfare issues that the decision maker needs to be aware of, before, during or after interviews so that the welfare needs of the child are actively considered throughout that process
- ▶ ensuring that the child feels comfortable during the interview process
- ▶ ensuring that the child understands the interview process
- ▶ providing moral support and reassurance as necessary to the young person
- ▶ facilitating communication between the child and the interviewing officer where necessary
- ▶ ensuring that all welfare needs relating to the child are sufficiently provided for during the interview process, such as adequate breaks and refreshments
- ▶ offering any additional information to the interviewing officer which may have a bearing on the child's emotional wellbeing and fitness for interview (for example, bringing to the officer's attention that the child is fasting or that they have had a long journey and an early morning start to attend the interview)

The responsible adult should be offered the opportunity to speak privately with the

young person before the hearing and, if necessary, during a break in the interview, although the break will only be short and cannot add unduly to the overall length of the interview. The responsible adult cannot answer questions on behalf of the young person but can intervene if the young person becomes distressed or tired and needs a break. He or she should work with the young person's legal representative, who will also be at the interview.

The responsible adult and legal representative should reserve any comments they have until the end of the interview to avoid interrupting the flow of the interview. Exceptions to this are:

- ▶ the age or maturity of the young person suggests they are not able to properly understand the question and assistance may be necessary
- ▶ the age or maturity of the young person suggests they are not able to properly contextualise what is being asked
- ▶ the young person is clearly becoming upset by the subject matter and support is appropriate
- ▶ the young person clearly does not understand the questioning

It may not be appropriate for you, as the young person's social worker, to be the responsible adult as you may have information which is different to the information the young person gives during the interview.

You need to consider how you might respond if the child provides different information to the immigration authorities to that he has provided to you, or that you have learned through other channels. The 'responsible adult's role is not to assist the immigration authorities but to support the young person. If a conflict could arise, you may not be the best person to be the responsible adult.

Language Testing Interview

If the Home Office doesn't believe that the young person is from the country he or she says they are from, they may have to have a language testing interview. This will only happen to a young person who is 12 or older. It is a telephone interview.

Duties in relation to legal advice

The local authority must support the young person to obtain legal advice. Applying

for asylum is complicated and the young person you are responsible for will need legal advice and support through the process.

Once the young person has attended the initial screening interview and launched their asylum claim, they will be eligible for Legal Aid, but the availability of solicitors handling Legal Aid cases may make it difficult in practical terms for the young person to access advice quickly on this basis.

For a young person approaching their 18th birthday, it's especially important to make sure they receive good quality legal advice, in good time, about their immigration status and their asylum claim (or other claim). Delays in obtaining legal advice can mean that the young person's immigration status takes longer to resolve, and can impact negatively on the claim.

Although you cannot give the young person legal advice about his or her claim, you can help and support him/her to find a suitable legal adviser. You can only suggest possible advisors – the young person must make the decision about who should represent him or her. You should only suggest legal advisors who are properly accredited – either by the Law Society or by the Office of the Immigration Services Commissioner (OISC). It is a criminal offence to provide asylum advice unless you are a solicitor, regulated by the Solicitors Regulation Authority, a barrister regulated by the Bar Council or a non-lawyer who is authorised by the OISC at Level 2.

Legal advice on Legal Aid can be obtained from a solicitor with Level 2 accreditation under the Law Society scheme, or from a legal advisor accredited by the OISC to Level 2. If a legal advisor is to represent the young person at the Immigration Tribunal they must be Level 3 accredited.

If it is difficult to find a legal advisor who can represent the young person on Legal Aid, the local authority will need to consider funding the costs of that advice.

You may need to provide a letter to the chosen legal adviser confirming that the child is being looked after, and the level of support he or she receives. This will usually be enough evidence of the child being supported and accommodated by the local authority to warrant Legal Aid.

In at least one case that has been decided by the Local Government and Social Care Ombudsman in recent years, a council that refused to help fund legal advice in respect of the immigration status of looked after child was found to be at fault. The Ombudsman said that

“The Council failed to properly balance the cost of the legal advice against the impact of not obtaining appropriate advice to support a 'looked after child'. The Council's responsibility, as a corporate parent, was to safeguard and promote her welfare. Given the circumstances of this case, and the limited

costs involved, the Council's failure to fund the advice, or find free advice with a Legal Aid solicitor, was therefore fault.” [Investigation into a complaint against Royal Borough of Greenwich (reference number: 13 019 106)]

Immigration law specialists can be hard to track down, especially within Wales. Depending on where in Wales you are located – and where the young person is living, they may need to travel some distance to see their legal advisor. The local authority should facilitate this.

Outcomes of the asylum process

Refugee Status

If the young person is granted asylum, he or she has 'refugee' status and can stay in the UK for 5 years. Refugee status is granted if the young person has a well-founded fear of persecution in their home country. The refugee status will be reviewed at the 5 year point. At the 5 year point, the young person can also apply for indefinite leave to remain. If he or she is still looked after at this point, you may need to support the young person to access Legal Aid and obtain legal advice and support to complete this process.

Humanitarian Protection

If the young person does not qualify for refugee status, the immigration officials dealing with the application for asylum should go on to consider whether the young person can be granted humanitarian protection. This is granted if it is accepted that the young person faces a real risk of serious harm if he or she returns. It is granted for 3- 5 years, when the status will be reviewed. After 5 years in the UK under humanitarian protection, the young person can apply for Indefinite Leave to Remain.

UASC Leave

If asylum is refused and humanitarian protection is not granted, but the reception arrangements in the country where they would be returned to are inadequate, and the

young person is under 17.5 years' old, the Immigration officials should grant the young person temporary leave to remain in the UK as an Unaccompanied Asylum Seeking Child. This is known as UASC leave. UASC leave is granted until the young person is 17.5, or for 30 months, whichever is the shorter. In many cases, once UASC leave expires, the conditions for granting it will have expired so it is difficult to argue for a further extension of UASC leave. Because of the difficulties with UASC leave, it is important that the young person is fully advised about their right to appeal a decision not to grant asylum or humanitarian protection.

s.67 Leave

This new form of leave was announced in July 2018 and relates to young people transferred to the UK under s.67 Immigration Act 2018 (the Dubs amendment). If these young people fail in their asylum claim, they should be granted s.67 leave to remain in the UK, able to study, work, access health care and have recourse to public funds for 5 years. At the 5 year point, they can apply to settle permanently in the UK.

Calais Leave

This new form of leave was announced in September 2018 and relates to young people transferred to the UK from Calais, between October 2016-July 2017 via a form of Dublin III family reunification. This form of leave gives the young people rights to study, work, access healthcare and have recourse to public funds for 10 years. At the 10 year point, they can apply to settle permanently in the UK.

Family reunion

The young person may ask if they can bring other members of their family into the UK to live with them. The immigration rules do not currently allow this, only allowing for children to come to the UK to join their refugee parents who are already here, but not for siblings and parents to come and join a refugee child. In some cases, the young person may be able to argue that human rights law (and in particular Article 8 of the European Convention on Human Rights) means that other family members should be able to join him in the UK. A decision preventing the parent/sibling from joining the child in the UK may amount to a disproportionate interference with the young refugee's family life.

The law is often in the process of change. There are regular changes to immigration legislation and the Immigration Rules and there are often Private Members Bills introduced in to Parliament, with varying degrees of success. Brexit will likely result in further changes. It is important that you keep abreast of developments. The Right to Remain Toolkit and Free Movement website are good, accessible sources of regularly updated information (see the Resources section).

If it is established that the young person has parents, or someone with parental responsibility for them in another EU country, he or she may be returned to that country so that they can apply for asylum with the rest of their family.

If the young person wants to trace their family and there is no danger to the young person in doing this, you can help them access the British Red Cross Family Tracing Service.

Pathway Planning – Planning for the future

In many cases, the young people who come to the UK and fall within the definition of 'Unaccompanied Asylum Seeking Child' will be close to the age of 18. Although they will initially be accommodated by the local authority and 'looked after', you will need to give thought to what will happen to them once they turn 18.

It may be difficult to fit a young person at this age into appropriate education or training, and the need to regularise their immigration status will overshadow everything they do. Resolving this will be a priority, although this is likely to take some time, may be even months.

It is by no means certain that a young person will be granted asylum or humanitarian protection. S.67 leave will only be available to a very small number of young people. UASC leave is temporary and means that even if the young person is allowed to stay initially, they may be refused further leave to remain on turning 18. If this is the case, you may be looking after the young person until he/she can be safely returned to his/her country of origin.

Pathway planning should include the possibility that the young person will not be able to stay in the UK, but should also plan for the eventuality that he or she can stay, or that at the

age of 18, he or she still has unresolved immigration status. The young person may also decide that they would like to go back to their home country voluntarily.

Beyond 18

Anyone who has been looked after for 13 weeks is eligible for post-18 support under the Social Services and Wellbeing (Wales) Act 2014. Young people in Wales and seeking asylum should be offered this service by the local authority. The young person's immigration status doesn't immediately impact on their right to support as a 'looked after child', and as the social worker, you should be confident to continue offering support as you would any other child.

A young person whose asylum claim has failed and has no further avenue to pursue as far as obtaining permission to remain in the UK, may still be eligible to post-18 support, even though he or she is 'Appeal Rights Exhausted'. Post-18 support should continue until the point where arrangements have been made for the young person to return to his or her country of origin and he or she doesn't comply with the instructions given by UKVI to leave the UK.

It may be necessary to liaise with the Home Office which is responsible for adult asylum seekers in the UK during this period.

Post-18 support continues until the young person is 21 – or 25 if in full time education. If the young person's refugee status or humanitarian protection status is reviewed during this time or the young person wants to apply for indefinite leave to remain, the local authority will need to support them in that. This could include funding legal advice if legal aid is no longer available because the young person is 18 or older.

Ineligible for local authority support post-18

A young person who came into local authority care less than 13 weeks before their 18th birthday will not be eligible for post-18 support from the local authority, and will need to transition to adult services. You may be able to help the young person transition into the system as an adult asylum seeker. You can explain that he/she may be eligible to have somewhere to live and a weekly allowance.

Support for adults seeking asylum in the UK is provided by the Home Office not the local authority but it is not provided in every case and it can be difficult for adult asylum seekers to access this support.

The young person may also need to help to keep track of his asylum claim if there is no longer social worker/local authority support. The young person will need to take steps to regularise his status in some other way if the asylum claim is eventually refused. It may be possible to put the young person in touch with charities, community groups or other organisations that can provide this support and advice, so that the young person is not left feeling completely cut off from help once he turns 18.

UASC – citizens of the future

The complexities of the UK immigration rules mean that you will have to take into account additional factors above and beyond those that you come across with other young people in your care. While age assessment and immigration status may add extra layers to the care and support you provide, these young people are, fundamentally, children. Never be afraid to look beyond the label 'Unaccompanied Asylum Seeking Children' and recognise these young people as citizens of the future, with the same human rights as every other child in your care.

Your professionalism and integrity will play a huge part in helping these young people access their rights: allowing them to be treated with respect, and given support and a voice as they navigate the complex path of claiming asylum in the UK.

Resources

The legal framework

United Nations Convention on the Rights of the Child

www.unicef.org.uk/what-we-do/un-convention-child-rights

Social Services and Well-being (Wales) Act 2014

www.legislation.gov.uk/anaw/2014/4/contents

Social Services and Well-being (Wales) Act 2014 – Codes of Practice, Regulations and Guidance

socialcare.wales/hub/home

Legal advice and guidance for social workers on immigration matters

Right to Remain Toolkit. This is a comprehensive and regularly updated resource for practitioners and Refugees and Asylum Seekers. Six sections are translated in to other languages. righttoremain.org.uk/toolkit

Free Movement. This website is regularly updated and you can also sign up for the weekly email. www.freemovement.org.uk

Children's Asylum Claims – Home Office Guidance, October 2017

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/650514/children_s-asylum-claims-v2_0.pdf

Resources for young people

Child First – Factsheets for Young People; Children's Legal Centre Wales

A Guide to Applying to Stay in Wales for Unaccompanied Asylum Seeking Children

A Guide to Rights and Entitlements for Unaccompanied Asylum Seeking Children

A Guide to Being Looked After for Unaccompanied Asylum Seeking Children

Legal advice for children on immigration matters

Coram Children's Legal Centre

www.childrenslegalcentre.com

Legal advice for children on the law in Wales

Children's Legal Centre Wales

childrenslegalcentre.wales

Wales-specific guidance

Age Assessment

Age Assessment of Unaccompanied Asylum Seeking Children All Wales Multi-Agency Toolkit

<http://www.wsmc.org.uk/documents/wsmc/News%20and%20Events/150330%20Age%20Assessment%20Toolkit%20Final%20July.pdf>

Care and Safeguarding

All Wales Practice Guidance: Safeguarding and Promoting the Welfare of Unaccompanied Asylum Seeking Children and Young People 2011

socialcare.wales/research-and-data/research-on-care-finder/safeguarding-and-promoting-the-welfare-of-unaccompanied-asylum-seeking-children-and-young-people-all-wales-practice-guidance

All Wales Practice Guidance for Safeguarding Children Who May Have Been Trafficked 2011

socialcare.wales/research-and-data/research-on-care-finder/all-wales-practice-guidance-for-safeguarding-children-who-may-have-been-trafficked?record-language-choice=en-cy

Health

www.uaschealth.org

Age Assessment

Joint working Guidance on Age Assessment – approved by Home Office and Association of Directors of Children's Services

www.gov.uk/government/publications/age-assessment-joint-working-instruction;
adcs.org.uk/safeguarding/article/age-assessment-information-sharing-for-unaccompanied-asylum-seeking-children

Useful Contacts

Office of the Immigration Services Commissioner

www.gov.uk/government/organisations/office-of-the-immigration-services-commissioner for a list of approved immigration lawyers

UK Visas and Immigration

www.gov.uk/government/organisations/uk-visas-and-immigration

Wales Strategic Migration Partnership

www.wsmp.org.uk

National Referral Mechanism (Independent Child Trafficking Advocacy Service)

<http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism>

Welsh Refugee Council

welshrefugeecouncil.org.uk

Barnardo's Independent Child Trafficking Advocacy Service

www.barnardos.org.uk/cta.htm

British Red Cross Family Tracing Service

www.redcross.org.uk/get-help/find-missing-family

Wales Interpretation and Translation Services

www.wits.wales

Language Line

www.languageline.com/uk

0800 169 2879

TGP Cymru

www.trosgynnal.org.uk

Ethnic Youth Support Team

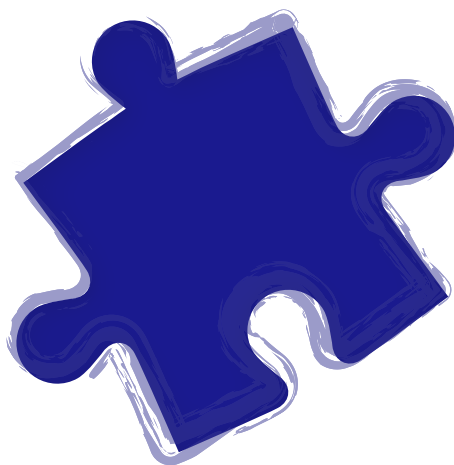
eyst.org.uk

National Youth Advocacy Service

www.nyas.net



Llywodraeth Cymru
Welsh Government



Children's Legal Centre

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