

Impact of asylum legislative/guidance changes on children

Date: 6 September 2023

Report of: Director of Children and Families

Report to: Children and Families Scrutiny Board

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

Brief summary

The report summarises Leeds's response to the impact of asylum changes for children.

Consideration will be given to the impact of national and local issues in relation to children supported whose family have no recourse to public funds (NRPF) as well as children who travel to the UK unaccompanied, known nationally as Unaccompanied Asylum-Seeking Children (UASC).

The report is an update for Scrutiny and is not seeking decisions at this time.

Recommendations

- a) Scrutiny is asked to note and endorse this update report.

What is this report about?

- 1 There have been several significant changes over the last 3 years in relation to asylum legislation and guidance that have impacted on children and families nationally. The impact has been substantial and far reaching, with a number of concerns being raised by organisations such as the Association of Director of Children Services (ADCS), Local Government Association (LGA), British Association Social Workers (BASW), Social Workers without Borders and Migration Yorkshire.
- 2 This report will outline how Leeds continues to support and address any potential impact on:
 - a) asylum seeking families who have no recourse to public funds status, however; due to their pending asylum application are entitled to support from the Home Office under s4 of the Immigration and Asylum Act 1999. The local authority will support these families on an urgent, interim basis under s17 of the Children’s Act until the s4 support is put in place.
 - b) unaccompanied asylum-seeking children (UASC). Provision for this vulnerable group is continually shifting given ongoing legal changes, the most recent being in relation to the National Transfer Scheme (NTS) and the Illegal Migration Act 2023 which received Royal Assent in July 2023. Unaccompanied children who are in Leeds are supported via children looked after arrangements, and therefore the Local Authority remain responsible as a corporate parent.

What impact will this proposal have?

- 3 This is an update report, with no new proposals.

How does this proposal impact the three pillars of the Best City Ambition?

Health and Wellbeing Inclusive Growth Zero Carbon

- 4 Leeds City Council has made commitments relating to the health and wellbeing of children within the city, outlined as part of the Best City Ambition and Children and Young People’s Plan, which has been updated for 2023. The arrangements described in this report support the delivery of services to meet ongoing need in relation to corporate responsibilities.

What consultation and engagement has taken place?

Wards affected:
Have ward members been consulted? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

- 5 This is an update report, with no specific consultation or engagement.

What are the resource implications?

- 6 There are no new proposals with resource implications presented in this report.

What are the key risks and how are they being managed?

No Resource to Public Funds

- 7 Children and families who are supported due to no recourse to public funds are those that are subject to “immigration control” and have no entitlement to welfare benefits or public housing. The definition of “subject to immigration control” is outlined in Section 115 of the Immigration and Asylum Act 1999 and includes people who have a condition attached to them staying in the UK. When someone has this type of condition the term “no public funds” is stated on their residence permit. Public funds are any type of allowance or benefit given by the welfare system,

this could be monetary, or can be in relation to access to social housing. Compulsory school age education and NHS treatment does not fall within the definition of public funds for immigration purposes, however if an individual has been in the UK for more than 6 months (and they do not have settled status) then they are required to pay an Immigration Health Surcharge.

- 8 Individuals who are seeking asylum and have no recourse to public funds receive support from the Home Office via Section 4 Immigration and Asylum Act 1999. Accessing Section 4 can incur delay as it is not immediate receipt on application, therefore families are referred (or can refer themselves) to Children's Services to be able to access support via Section 17 of the Children Act 1989 in the interim. As part of the referral a Child and Family Assessment will be undertaken to explore the needs of the family and what is required.
- 9 There are other individuals who are considered to have no recourse to public funds who are not considered to be asylum seekers. These families will come from all over the world and may find themselves in their situation due to several reasons. Examples include – families that have overstayed their student visas, mothers with children that are in the UK on a spousal visa and are fleeing domestic abuse, or individuals who have come into the country without appropriate visas and have gone on to have children.
- 10 To ensure that appropriate support is in place for children and families in Leeds, the No Recourse to Public Funds Panel (NRPF Panel) sits regularly to review each case and the local authority's legal duties. Furthermore, the Panel ensures that the local authority is acting in accordance with the current legislation. The Panel also outlines guidance for practitioners in relation to human rights, to ensure that these are sufficiently met, as well as appropriate communication with the Home Office over applications for Section 4 support. This is a complex area and one which requires ongoing legal oversight. The No Recourse to Public Funds Panel has recently had oversight by the Council Audit Team to ensure full compliance with local authority policies and procedures.
- 11 The Children and Families directorate has seen a steady reduction in families being supported due to no recourse to public funds. This has been reflected across the country. In Leeds, pre pandemic numbers of families being supported formally by Children Social Work Services was in excess of 50 families at any one time, however in more recent times this has reduced to approximately 20 families during the summer of 2023.
- 12 It is unclear as to why there has been a decline in the children and families being referred for support, however the fluctuating changes in immigration support may have had an impact. Since the implementation of the Nationality and Borders Act 2022 and the Illegal Migration Act 2023, families that enter the country illegally will have no recourse to public funds. They will be unable to remain in the UK and if presented to the Home Office they could be detained and then returned to their country of origin or a "third country". As the Illegal Migration Act 2023 is still very new, it remains unclear how this will impact on children and families in the short and longer term, however its intention is to deter people from entering the UK if they are unable to support themselves or through approved routes. The Children and Families Directorate are working closely with Housing and Environments to support emerging need.

Unaccompanied Asylum Seeking Children

- 13 Nationally there is a steady increase in the demand for placements for unaccompanied asylum-seeking children (UASC). Children can arrive in our city alone having travelled through the UK, often in lorries having been exploited or fleeing maltreatment and or abuse, or they can arrive as part of the National Transfer Scheme. The number of young people who arrive by their own volition into the city has significantly declined, and appears to have ceased, since the additional security measures that have been implemented across the UK borders over the past 12 months. During 2019 – 2021 local authorities, including Leeds received a set amount of funding from the Home Office in relation to sporadic arrivals. That funding was less than the cost of

supporting an unaccompanied asylum-seeking child either with providing appropriate accommodation or ensuring that their health and wellbeing needs were met.

- 14 The National Transfer Scheme (NTS) was introduced by the Government on the 1st July 2016. It was established to enable the safe transfer of unaccompanied children in the UK from one local authority to another to ensure a fairer distribution of this vulnerable cohort of young people across the country as well as ensuring that local authorities could meet their legal duties and the overall best interests of the children. When the NTS commenced it was based on a voluntary agreement made between local authorities. Amendments were made in 2018 to extend the scheme to include local authorities in Scotland, Wales and Northern Ireland.
- 15 Throughout 2021, it was recognised that there was increased pressure for border local authorities (such as Kent) in relation to the support required for unaccompanied asylum-seeking children arriving in the UK. The increasing national pressures for local authorities at this time meant that arranging and accepting transfers was challenging and this left a large proportion of children in border local authorities. This led to a letter being sent in November 2021 by the Minister for Safe and Legal Migration (Kevin Foster MP) to all local authorities outlining the Government's intention to direct all Local Authorities to participate in the NTS. From the 15th February 2022, following the required consultation, all local authorities with children's services in the UK have been directed to participate in the NTS which is now mandated. The duration of the mandatory period has not yet been set, instead the Government have indicated that they will keep this under review.
- 16 In August 2022 there was a threshold adjustment in relation to how many unaccompanied asylum seeking children each local authority is required to accommodate. The original threshold was 0.07% of its general child population. This increased to 0.1% of its general child population. In addition to this the transfer deadlines for unaccompanied children became tighter, with unaccompanied children currently in emergency accommodation (such as hotels) needing to be transferred within 5 working days, whilst unaccompanied children utilising the NTS should be transferred in 10 working days.
- 17 Leeds made the decision in 2016 to cooperate with the NTS and have encouraged a supportive and welcoming framework for unaccompanied children. As a welcoming and inclusive city, Leeds has a strong reputation in relation to the welcome that these children receive, and the support offered. However, it should be noted that the ongoing offer of such support is a challenge, for example, this group of young people are usually aged between 15 – 17 ½ years old. The increasing numbers fall within the age group where demand is already high in relation to our children looked after in the city and impacts on our ability to provide sufficient placements and supported accommodation. Leeds also feels the impact of other local authorities, regionally and from other areas of the country, who seek to place their children looked after within the Leeds local authority boundary utilising our local placements.
- 18 Numbers of unaccompanied children have remained steady over the past 12 months, with a comparison of 75 unaccompanied asylum-seeking children in our care in June 2022 compared with 74 unaccompanied asylum-seeking children in our care in June 2023. The Home Office offers funding for children who are unaccompanied which is £143 per person per night for local authorities who are at or above 0.07%, or £114 per person per night for local authorities who are below 0.07%. To plan for an appropriate placement which meets a child's needs an assessment is required. This can be difficult within the suggested timeframes as outlined in the NTS for transfer. In general, many unaccompanied children in Leeds will be placed in semi-independent living or group living pending the outcome of assessments. Accommodation can alter as part of continued plans, along with tailored support to address individual need. The costs of such provision vary enormously. The current highest weekly cost for an unaccompanied child is £8,680 per week, with 6 others costing more than £2,939 per week. An average Supported Accommodation cost for a 16- or 17-year-old is £1,440 per week (totalling approximately £74,899 per annum). Providers offer different levels of support which do not necessarily correspond to the amount paid, for example the higher the placement cost does not necessarily mean that more support is offered. The costs of the accommodation do not take in to account the other associated costs with a child in our care, including allocated social workers,

independent reviewing officers, or costs of food, activities or those associated with being a parent. This outlines that whilst there is financial remuneration in relation to providing care for unaccompanied children, it does not cover the amount that will be expended by the local authority as an overall cost.

19 Unaccompanied children need a raft of support to ensure their health and wellbeing as well as accommodation needs are met. This is alongside their application for asylum which requires an independent solicitor to act in their best interest and can be a complex and difficult area to navigate. To ensure that we meet our duty there are specialist workers within the Children Looked After Service who ensure a high level of support and guidance is tailored to the needs of this vulnerable group. The following support is offered to all unaccompanied asylum-seeking children –

- a) 8 week welcome and induction programme to help orientate Leeds and outline support available to them whilst also ensuring they are aware of cultural norms and expectations in the UK.
- b) Linking in with existing friendship groups and other young people of similar backgrounds
- c) Outlining opportunities for activities and day trips in the Yorkshire dales
- d) Offering support around the celebrations of religious celebrations and events
- e) Participation in therapeutic projects such as “Cooked with Love” a cookbook celebrating home countries and traditions.

There has been much learning from the work outlined above, including that unaccompanied children have helped shape our own service delivery for the benefit of other young people in similar circumstances. The ‘Cooked with Love’ project was nominated in June 2023 for the Children and Young People (CYP) Now Awards in the category of *Supporting Child Refugees*. We are delighted that the Children Looked After Service have been shortlisted and will hear if we have won at the Awards event in November 2023.

20 The overall population of unaccompanied young people who become care leavers (17 ½ - 25 years) has increased since 2019 by on average 17% each year, with the highest rise seen in 2019- 2020 increasing by 32% in one year alone. In 2022 the unaccompanied young people care leaver population stood at 228, with a current approximation of 280. Again, support for this group of young people has become more complex due to the changes in legislation around their asylum claims. Most unaccompanied children will have an asylum claim processed which gives time limited leave to remain until 18 years old. Young people then must make an additional claim before their 18th birthday to explore what will happen at this time. Young people could be granted additional leave to remain (either on a time limited or ongoing basis) or face removal from the UK. Given the ongoing implementation of the Nationality and Borders Act 2022 and the Illegal Migration Act 2023 it remains unknown how unaccompanied young people reaching 18 years old will continue to be processed by the Home Office. Charitable organisations are challenging the Home Office to ascertain implementation effect; however, this continues to be complex with little progress in procedures, but immense potential impact for individual young people. Given this, we are uncertain of the number of young people who will require a care leaver offer as they may be removed from the country immediately at 18 years of age. At present local authorities are not given sufficient financial support for young people who arrived as unaccompanied children when they become care leavers. The Home Office currently sets this at £270 weekly.

21 Additional challenges which have been noted in relation to current asylum legislation, is that for the dispersal of adults from Kent to hotels across the country. Leeds currently has 5 hotels across the city that are accessed and contracted to the Home Office. The Home Office routinely disperses individuals to Leeds hotels direct from Kent. Many of these individuals will have arrived in the country direct from boats across the channel. At the point of arrival, the Home Office, in their view, have assessed everyone as an “adult” to ensure that when dispersed they are not moving unaccompanied children. However, upon arrival in Leeds the hotels welfare officers (employed via MEARS - a privately contracted housing solution provider) are raising

concerns when they suspect some individuals are children. This results in a referral direct to Children's Social Work Services in Leeds. In 2023, Children's Services received 35 referrals raising concerns about the assessed age of some individuals. As part of Children's Services duties each individual needs to be seen and spoken to. Leeds Children Looked After Service follow the guidance outlined by the ADCS as to how to undertake age assessments and to ascertain age. From utilising the guidance, we have deemed 30 out of 35 individuals to be under 18 years of age. Therefore, this has resulted in Children's Services removing those children from the hotel accommodation and formally accepting duty of care under Children Act 1989.

- 22 Until the summer of 2023 there were 400 adult male beds in Leeds used for dispersed asylum seekers. The Home Office has recently made the decision to increase the bed space from 400 adult males to 800 adult males. Children's Services can therefore safely assume that there is likely to be a significant increase of unaccompanied children dispersed into those hotels who have been wrongly assessed as over 18 years of age.
- 23 At the beginning of June 2023, the Home Office wrote to all local authorities informing them that hostels and hotels were likely to be opened around the country to house unaccompanied asylum-seeking children that have arrived in Kent from illegal crossings across the Channel. This may have had a significant impact on Leeds as it was a possibility that with the number of adult asylum beds in Leeds, and the Afghanistan hotels closing in Leeds this summer, Leeds might have been seen as an appropriate place to locate these provisions. However, the Judicial Review (July 2023) completed by Brighton & Hove Council has resulted in this move by the Home Office to be deemed illegal, consequently it will no longer occur in its current manifestation. Whilst this is ultimately the right response and was supported by other local authorities, the consequence of this action is likely to lead to greater numbers of unaccompanied asylum-seeking children awaiting transfer via the NTS. It is therefore likely that the Home Office will request additional speed in transfers occurring, until a local authority reaches an unaccompanied asylum-seeking child population which reflects 0.1% of its general child population. This could therefore mean that Leeds could face more than 48 additional unaccompanied children arriving in Leeds.

What are the legal implications?

- 24 The Illegal Migration Act 2023 aims to end illegal migration into the UK by removing the incentive to make dangerous small boat crossings, whilst also speeding up the removal of those with no right to remain. In doing so there are a number of legal changes that will occur over a period of time, which has not yet been set.
- 25 A collection of organisations (including Social Workers Without Borders) continues to challenge the Government in relation to its implementation. There are several concerns that are raised in relation to forced removals, detention, unequal treatment and reduced child protection for separated children, and guidance for age assessments.
- a) In relation to forced removals new clauses mean that the Home Secretary has a duty to remove people from the UK as soon as possible. This means that once an unaccompanied child reaches 18 years old their removal plans will be implemented. This is extended to under 18-year-olds, as while there is not a duty to remove there is a power to remove under certain circumstances. This would impact on Pathway Planning and leaving care support for a young person, increasing the likelihood of children going missing as well as ongoing trauma and emotional distress.
- b) In relation to detention, the Act allows the Home Secretary to indefinitely detain unaccompanied children if it feels it needs to. Concerns are raised that whilst it may not be the intention to detain unaccompanied asylum-seeking children, the threat to do so is emotionally harmful and again adds to trauma already incurred.

- c) In relation to unequal treatment and reduced child protection for separated children, the Act gives the Home Office additional powers to provide accommodation and support children outside the scope of the Children Act 1989. This could therefore mean that unaccompanied asylum-seeking children will be accommodated in a local authority area that does not have a duty to safeguard. This is combative with the Children Act 1989 which clearly outlines that the local authority has a safeguarding and welfare duty to children in their area. In addition to this, the Home Secretary has the power to transfer children into the care of the local authority whilst also having the power to remove them without any timescale, creating uncertainty and instability. Supplementary duties on the local authority are to comply with requests from the Home Secretary, this could be in relation to sharing information about individual children, or in relation to relinquishing a child into the care of the Home Office for deportation. If such compliance were to place a child at risk, it is unclear how a local authority could act on such a compliance request, or how this will impact on individual practitioners who are being asked to act in a way which contravenes their Professional Standards and Registration through Social Work England.
- d) In relation to age assessments, a significant change is the ability of an individual to appeal an age assessment decision. The Home Secretary has the power to not delay removing an age disputed individual whilst their likely age is established, and a further decision made. In 2022, the Refugee Children's Consortium reported that over 850 children were wrongly assessed to be adults when arriving in the UK. As already reported, this has been demonstrated in Leeds when individuals arrive in the city believed to be adults and are then assessed as unaccompanied children.

26 There remains a myriad of other legal implications that could be seen over coming months as a result of the changing asylum legislation. Leeds will continue to be part of regional and national discussions with the DfE, ADCS, Migration Yorkshire, and the Yorkshire and Humber regional forums to ensure up to date knowledge and understanding of the impact of changes.

Options, timescales and measuring success

What other options were considered?

27 There are no options considered in this report as it is an update report.

How will success be measured?

28 As above

What is the timetable and who will be responsible for implementation?

29 As above

Appendices

- None

Background papers

- [Families with No Recourse to Public Funds \(trixonline.co.uk\)](https://trixonline.co.uk)
- [Unaccompanied Migrant Children and Child Victims of... \(trixonline.co.uk\)](https://trixonline.co.uk)
- [Assessing age for asylum applicants: caseworker guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk)
- [Age Assessment Guidance and Information Sharing Guidance for UASC | ADCS](https://www.gov.uk)
- [RMCC-IMB-HoL-Report-Stage-Age-Assessments-June-23.pdf \(refugeechildrenconsortium.org.uk\)](https://refugeechildrenconsortium.org.uk)
- [Processing children's asylum claims: caseworker guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk)
- [National Transfer Scheme \(NTS\) Protocol for unaccompanied asylum seeking children \(UASC\) \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

- [Unaccompanied asylum seeking children: national transfer scheme - GOV.UK \(www.gov.uk\)](https://www.gov.uk)
- [UASC funding instructions to local authorities 2022 to 2023 \(accessible version\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk)
- [Suitable placements for UASC updated \(adcs.org.uk\)](https://adcs.org.uk)
- [Social workers join outcry over children vanishing from Home Office hotels | www.basw.co.uk](https://www.basw.co.uk)
- [Debate on accommodation of asylum-seeking children in hotels, House of Commons, 7 June 2023 | Local Government Association](https://www.localgovernmentassociation.org.uk)
- [ECPAT -v- Kent Council judgment \(judiciary.uk\)](https://www.judiciary.uk)
- [Kent makes renewed legal threat over National Transfer Scheme for unaccompanied asylum-seeking children \(localgovernmentlawyer.co.uk\)](https://www.localgovernmentlawyer.co.uk)