

# Children in care and immigration

When dealing with children with care and immigration issues, both the Family Court and the Immigration Tribunal must act in the child's best interests.

13 May 2019

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When dealing with children with care and immigration issues, both the Family Court and the Immigration Tribunal must act in the child's best interests. Often the two may come into conflict if the child in question is tied to its parent's immigration matters.

Case law suggests that the immigration matters will trump the family issues, often resulting in the Family Court awaiting a decision from the Home Office before dealing with the Family proceedings.

This article provides an overview of what happens when a child with immigration issues is in the care of a local authority. Often a local authority can have difficulty justifying funding for a child that is not a UK citizen.

## How do children with immigration issues end up in local authority care?

Essentially, for the same reasons as any other children in England and Wales:

- General duty to safeguard and promote welfare - Section 17 (Children Act 1989)

The same rules apply when taking a child into the care of the local authority:

- By Section 20 agreement (Children Act 1989)
- Section 31 (Children Act 1989)
- Unaccompanied children placed into the care of the local authority by the Home Office (National Transfer Scheme).

The child then becomes a 'looked after child'.

## Entitlements as a looked after child

Section 22(3) Children Act 1989 and Care Planning, Placement and Case Review Regulations 2010 set out the entitlements of any child (including one with immigration issues) as a 'looked after child'. The legislation assigns the local authority as the Corporate Parent.

The local authority must prepare a care plan to consider:

1. The long-term plan for the child's upbringing
2. Arrange for the following:
  - health (Regulation 7 Care Planning, Placement and Case Review Regulations)
  - education and training
  - emotional and behavioural development
  - identity, having regard to the claimant's religion and culture
  - family and social relationships

- social presentation.

### 3. Self-care skills.

## Healthcare for a looked after child

Anyone can register with a local GP and can access primary care as set out in the [NHS entitlements: migrant health guide](#).

Automatic qualification for NHS health costs are provided to:

- Under 16-year-olds
- Under 19 and in full-time education
- Automatic qualification for NHS health costs for:
  - women who are pregnant or who have had a baby in the previous 12 months and have a valid maternity exemption
  - in receipt of benefits (such as income support)
  - asylum seekers
  - NHS Low Income Scheme.

## Education and training

Any child of compulsory school age should be provided with suitable full-time education regardless of their status. See [Schools admissions: applications from overseas children guide](#).

It can become more complicated for over 16s accessing further education. See Funding guidance for young people 2017 to 2018.

## Higher education

The case of [Kebede v Newcastle City Council \[2013\] EWCA Civ 960](#) related to two brothers who had illegally entered the country and were abandoned by their parents. They were taken into the care of the local authority and later sought to attend university. The issue of time-limited discretionary leave to remain arose, but it was nonetheless found that the local authority had a duty of care to former looked after children to provide relevant child assistance, access to welfare and educational needs as they required.

- Refugee children are normally entitled to student finance.
- Asylum seekers are not normally eligible for student finance.
- All others may be eligible if they meet certain criteria. See: The Education (Student Fees, Awards and Support) (Amendment) Regulations 2018.

## Dealing with care proceedings

As stated, there may initially be a battle between immigration and the Family Court.

Practically, the Family Court will first have to consider the issue of jurisdiction and habitual residence before proceeding to consider the issue of risk of significant harm and welfare.

The case of [RE: B \(A Minor: Habitual Residence\) \[2016\] UKSC 4](#) sets out the test.

If the Family Court has jurisdiction, then the assessments that the local authority must complete are essentially the same for proceedings involving a child from England or Wales. The other issues to consider are:

- International social work assessments – are there relatives abroad who can care for the child?
- Cultural needs.
- Ensuring that [care plans incorporate immigration applications](#) if the child is looked after.

## Useful resources to consider to assist with funding/supporting a child with immigration issues

It is accepted that local authorities are under a great deal of financial pressure and so it is always worth looking at what other funds may be available to help a child with immigration issues.

- Contacting the High Commission – who may be able to provide financial assistance to one of its nationals.
- Contacting immigration solicitors for guidance and to apply for leave to remain (or the relevant visa).
- Local immigration charities e.g. in Nottingham: Refugee Forum.
- Religious organisations/charitable work. A number of religious organisations have a charitable arm to their practice. It is always worth speaking to local religious groups or leaders who may be able to provide cultural or financial support.
- Local cultural centres.
- Sponsorship schemes in education.

A number of links to the types of groups listed will already be established within Councils.

## Human Rights Act considerations

**Article 3** – if support is not provided or withdrawn then would the individual/family be subject to inhuman or degrading treatment?

**Article 8** – will a child's right to family life be compromised? The child's right to a private and family life in the UK must be balanced against the Secretary of State's right to maintain an effective immigration system.

The important consideration to take away is that any failure to deal with children properly can lead to a retrospective claim under the Human Rights Act.

## Immigration considerations

Whilst the local authority is the corporate parent for the child, it is important that they support the child and seek legal advice to secure their immigration status. It is advisable to obtain formal advice from respected immigration solicitors. There is a narrow window for immigration applications that are available to children only.

The Home Office has provided specific [guidance to assist children in care](#).

Cases such as those set out that a local authority can be found to have failed to have acted appropriately to help looked after children with immigration issues. Local authorities should be mindful to the fact that the cost of a civil claim or a claim under the Human Rights Act may be much more expensive than paying for immigration advice and the cost of an immigration application.

See [Royal Borough of Greenwich \(13 019 106\)](#) and [Dudley Metropolitan Borough Council \(15 015 327\)](#).

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