

Leaders in social care



KEY TRANSITIONS FOR UNACCOMPANIED ASYLUM SEEKING CHILDREN

*Guidance for Social Workers, Personal Advisers and
their Managers working with unaccompanied asylum
seeking children (UASC).*

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EXECUTIVE SUMMARY

1. The 'Transitions Work Group' was set up to map the challenges facing social workers and personal advisers working on the pathway plans for former unaccompanied asylum seeking children (UASC). At that time the key transition was at the 18th birthday and the change to adult status. The challenges in this situation were, and remain significant, as the young person no longer benefited from Immigration and Nationality Directorate (IND) concessions to children. If the asylum application has been unsuccessful there are severe restrictions on rights to access services in the UK. Indeed while the outcomes of individual asylum applications cannot be known in advance, the overall low rate of success is a fact. The low success rate poses a continuing challenge to social workers and personal advisers and this guidance offers a fresh perspective.
2. The care and the immigration contexts both changed dramatically within the lifetime of the work group. Planning responsibilities increased and periods of leave granted by IND got shorter. Previously the concession not to remove children unless there were suitable reception arrangements in their country of origin effectively prevented the removal of any lone child under 18 from the UK. An unintended consequence was that crucial and difficult decisions about integration, return or removal were deferred to age 18 and beyond. IND active review teams have begun to take post 18 delays out of the system and returns have become a real possibility for under 18s. The work group accepted the challenge of this wider agenda and looked at how to build in a tailored approach taking account of immigration issues from the earliest possible point in the process. This is not to say that it has developed the necessary guidance for early returns but merely that it has noted them as an increasing possibility. Given these changes decisions about the right to remain in the UK for UASC will be faster and have more immediate impact on care planning. UASC are thus children in transition in a special sense and it would be a failure of imagination and empathy to confuse these transitions with those faced by citizen children.
3. However at the time of preparing this guidance it is still the case that most UASC approach this crucial transition with important decisions about their future stay in the UK still not finally resolved. The young person's need for rapid decisions and certainty has to be tempered with their right to due process under complex rules governing immigration decisions and appeals. In the meantime plans have to cope with this uncertainty and a range of different possible outcomes.
4. UASC and former UASC are entitled to have pathway plans since the Department of Health Guidance LAC (2003) 13 and the consequent 'Hillingdon' judgment in late August 2003. The plans need to have a breadth and flexibility to meet the many challenges facing this group. Transitional planning for this group must not reduce the commitment to delivering the 5 outcomes set out in Every Child Matters – Change for Children. Health, Safety, Achievement, Economic Security and Positive

Contribution are best delivered by a planning process that takes account of Home Office decisions and understands and appreciates what the outcomes of these decisions may be for UASC - 'immigration smart'. Social workers and personal advisers will also need to consider the implication of the recent Green paper – Youth Matters in their planning.

5. This transitions guidance argues that pathway plans need to consider contingencies to reflect that while some UASC will be allowed to remain in the UK indefinitely others will not be allowed to build their futures here. Preparation for alternate futures that meet different challenges at key stages in the asylum process and answers the changes and restrictions that arise as part of the process of seeking asylum will be a necessary aspect of pathway planning for this group of young people. The plans will need to be flexible and it is essential that contingencies be developed. The guidance raises the issue of how the pathway plan might be projected beyond the point of leaving the UK when British agencies lose legal responsibility and power to provide assistance.
6. Planning that takes account of the likelihood that many UASC will have their asylum application refused and will need to return to their country of origin is a better starting point than a prevalent and uncritical assumption of permanency in the UK. Although a decision to return a UASC to their country of origin is most likely to be a disappointing outcome for them and they may well struggle to come to terms with its implications, the decision should never come as a complete shock to the youngster.
7. The guidance outlines the importance of personal education plans for all UASC, which address the range of needs and choices of young people and is flexible so that long-term goals can be achieved either in the UK or in the child's country of origin. The document also considers realistic and safe alternatives to prevent UASC working unlawfully and/or in dangerous conditions in the unregulated economy.
8. The context within which placements and accommodation are provided for UASC is briefly examined and once again the need for flexible pathway plans is stressed. A consideration of the needs profile of UASC is presented that distinguishes their particular needs from the mainstream looked after children population whilst reaffirming their status as children first and foremost. Refugee children's identity needs also require that the links with family, culture and community are kept alive, even where they have indefinite leave to remain in the UK. The task of rebuilding links between UASC and their families and communities is likely to be fraught with difficulties often arising from partial disclosure of necessary information. This is particularly important pending the establishment of certainty about their future.
9. Joint working with IND and in particular the Immigration Service in its removal function is addressed. Social workers and personal advisers should not turn away from young people during this crucial phase.

1. FOREWORD BY JOHN LEAVER.

This guidance was developed by a group of practitioners and policy writers and I believe that it is both an important and timely document. It addresses a difficult period in any young person's life and for UASC these difficulties are exacerbated by the possibility that they may have to leave the country in which they hoped to receive asylum. We should not forget that how we work with these young people when they first arrive and come to our attention is an important factor that impacts on how we can assist them in dealing with the transitions that they face. The social work task is, when all is said and done, to help UASC, to assist them through a difficult process and where possible to enable them to achieve their aims. We must remember that much of our work with UASC takes place long before they enter this transitions phase.

There are many other professionals who work with UASC and the time of transition can be difficult for them too. But the guidance is primarily for social workers. It is written at a time when the numbers of UASC entering the country has declined and this has raised a new challenge around the ability of local authorities to train and retain specialist workers. There is a danger that the hard won knowledge in this area will be diluted. The relevance of existing training in working with UASC needs to be emphasised but in order to work effectively with this group's particular needs local authorities will also need to consider specialist training for staff as appropriate.

We all know that this is an area of policy and practice subject to constant change with new initiatives, guidelines and directives emerging all the time. It will doubtless continue to remain so and this document will need to be subject to periodic review if it is to remain relevant. IND practice sometimes appears to fall short of the theory. For example, UASC often arrive at the 'end of the line' yet removal directions are not set, or UASC whose leave to remain has expired continue to attend their college placements. This 'reality gap' can add further confusion to the planning process.

As this work has progressed it has become increasingly clear that professionals need to adapt in order to help UASC meet the considerable challenges in their lives. Not least is the need to develop an international perspective in planning with these children. In addition to achieving active inclusion during their stay, the young people, if they are allowed to remain here, must be helped to go on to full integration in the UK. However if they must leave the UK, they will need support to help with reintegration in another country, adjusting their own, and their families, hopes and plans along the way.

I hope that social workers find this guidance helps them in their task.

John Leaver
Chair, ADSS Transitions Task Group

2. INTRODUCTION

For the purposes of this guidance children and young people under 18, who arrived in the UK and applied for asylum without having parents or guardians to turn to, will be referred to as ‘unaccompanied asylum-seeking children’ or ‘UASC’. All other technical terms and acronyms used in this document are explained in the Glossary at the end of this paper.

- 2.1 The transition to adulthood can be difficult for all young people, and especially for children growing up in public care. The institutions they depend on and rules governing their transitions can lead to uncertainty and confusion, increasing the stress surrounding the adoption of a new role in society, and the start of a new phase in life. These pressures are even greater for former UASC, who for the most part are aged 18, when they must face crucial transitions, often including the end of their right to remain in the UK. Many social workers report that they do not find it easy to raise the issue of leaving care with UASC. Young people are often understandably reluctant to confront this prospect as it entails the probability of having to leave the UK. Great understanding is called for from the social worker or personal adviser. Many social workers experience a tension between care and immigration legislation.
- 2.2 The effective decision that will return young people who are unsuccessful in their asylum applications to their country of origin is often made when they are 16 or 17. The commonest but not the only care-planning framework, assumes permanency and integration in the UK. The reality is that the immigration legislation establishes that some can stay permanently but that many cannot. It is crucial therefore that some clear thinking which confronts this issue for the over 18's is developed and the lessons learned are used to reduce the uncertainty experienced by their older peer group. In the near future, as reception arrangements are developed, UASC may well be returned to their country of origin before they are 18.
- 2.3 Decisions bearing on return and affecting rights in the UK can have a far-reaching impact on young people when they are distant from homes and families. They are often unfamiliar with regulations and rights, and uncertain about immigration status and their stay in the UK. This can be exacerbated by the difficulties that many UASC have in accessing quality legal representation as they navigate through a testing and complex procedure that is difficult for them and the professionals supporting them to manage. Hence the need for specialist guidance based on best available practice and informed by the latest available versions of evolving policies.

- 2.4 In practical terms the social worker or personal adviser must be highly conscious of the changing immigration status of the young person. As well as the indication of possible final outcome, the associated changes along the way can affect entitlement to various benefits and to leaving care support. The funding streams of the pathway plan therefore need to be kept under review and an understanding of its statutory limits developed. Contingency plans will be needed to ensure pathway plans stay on course at each of the change points.
- 2.5 As this guidance developed the issue of 'end of the line' cases arose. The Nationality and Immigration Act 2002 Section 54 and Schedule 3 set potential limits on the 'Leaving Care' powers and duties of Local Authorities. The legislation has to be read in the context of statutory guidance¹ published by IND (December 2002). The Home Office legal opinion indicates that for a majority of former UASC support should end once the outcome of the final appeal is known. However this interpretation is not a matter of consensus. Many Local Authorities have read the guidance as authorising support to continue until the young person actually leaves the UK, though they often face difficulties in deciding what advice and support they should offer to former UASC who are making plans that go beyond the end of their period of leave. The group responded to this problem by recommending that IND review the current statutory guidance in the light of the reported problems and differences of opinion. The recommendation has been accepted and a working party that includes National and Local Government and Non Governmental Organisations is due to address this issue.
- 2.6 This guidance sets out parameters for social services staff, at whatever level of seniority, who have the task of supporting UASC. It is not statutory guidance in the way that the Integrated Children System is and therefore it works with and supplements the processes, exemplar forms etc. for working with looked after children and other children in need. It represents the current best advice available from the Association of Directors of Social Services, which is the senior professional body in social work in England and Wales. It should prove useful to other statutory agencies in partnerships and professional networks. It will also inform voluntary sector workers in their vital role working with UASC.
- 2.7 This guidance seeks to establish some consistency in professional approach given the high levels of uncertainty and the rapid changes in policy and circumstance. It is based on the following principles,
- The best interests of the child/young person are the central concern of Local Authorities. However, for Home Office staff the best interest requirements need to be balanced with immigration decisions.²

¹Local Authorities are legally bound to act in accordance with statutory guidance issued on Schedule 3, as opposed to Best Practice Guidance such as the Transitions Document.

²The UK Government has entered a reservation on the UN Convention on the Rights of the Child in relation to immigration policy. Furthermore concessions made to UASC do not apply to former UASC aged 18 or more, whose immigration issues are dealt with in the same way that any other adult in the asylum process would be.

- The role of the social worker is to support and prepare all these young people for transitions to adult status in whichever country they establish permanent residency.
- Decisions about a young person's future will be as transparent and speedy as possible.
- In working with UASC, all professionals should make every effort to reduce delay in establishing permanent placements and enabling integration in a country where they have permanent rights of residence.
- Where there are options, these will be laid out clearly so that the young person may be enabled to make an informed choice.
- UASC should be involved in decisions about their care like any other children/young people.
- UASC will be helped to identify key points in the asylum process and understand the outcomes and implication of IND decisions.
- Effective communication between social work and immigration staff will ensure accurate and timely decision-making, and wherever possible reduce stress and maximize benefits for young people.
- Agencies and individuals will acknowledge and respect each other's distinct roles while maintaining co-operation through professional standards.
- Information will be shared only in accordance with the principles established in Every Child Matters (TSO 2003, Ch.4) and the guidelines laid down in Department of Health (DH) guidance:
www.doh.gov.uk/safeguardingchildren/index.htm

2.8 How are social workers to integrate these new emphases into their practice, at the same time as providing the consistent, continuous support, which all unaccompanied young people need? The social work task is, after all, to help and assist this group of youngsters. The purpose of this document is to set out the options confronting the young people, and outline best practice in working with them. The basis for effective social work suggested here is a combination of:

- **Clarity** – making their real choices as clear to the young people as possible, as early as possible, and with an understanding of the limits of what services can provide.
- **Handling uncertainty through contingency planning** – the outcomes of the asylum and immigration processes cannot be pre-

empted but ways need to be found to ensure that the young person can continue to develop their pathway to adulthood.

- **Timely decisions** – above all by and with the young people themselves as their decisions crucially affect the options available to them both immediately and in the future.
- **Avoiding Value Judgments** about the outcomes of the immigration process so that these are more easily worked with.
- **Partnership** – there will be a range of different perspectives some of them conflicting but the social work task remains that of ensuring that all views are represented within the planning process. As well as immigration colleagues, partnership should include planning together with education, housing, Connexions, Jobcentre Plus, the voluntary sector and the young people themselves, to ensure that the time UASC spend in the UK is of real value to the futures they realistically face.

- 2.9 For guidance relating to the arrival of UASC and the assessment of their needs, see - *INTAKE: framework and practice guidance for the safe and fair reception and assessment of children and young people seeking asylum in the UK without parents or guardians* (ADSS 2003). This guidance and the accompanying formats (based on the Integrated Children System) include materials for assessing age at any stage when the young person's stated date of birth comes under question.
- 2.10 The guidance will assume the use of the DfES (DH) Integrated Children System planning guidance to ensure that the needs of asylum seeker children be considered in the context of the particular needs of all looked after and former relevant children. There is no intention to suggest that the fundamental needs of asylum seeker children are different from any other 'child in need' of similar age and ability. However the experience of the asylum process predicts the additional need for skilled, specialist, social work input to deal with the challenges and changes it may entail.
- 2.11 The group included representatives from the following sectors. Though this guidance is a joint document it does not necessarily reflect all the views of the contributing agencies.
- Local authority social service departments.
 - The Connexions Service.
 - The Refugee Council.
 - Save the Children (UK).
 - The Office of the Deputy Prime Minister.
 - The International Organisation of Migration (voluntary returns).

- Department of Health.
- Department for Education and Skills.
- IND Asylum Policy and the National Refugee Integration Sub-group on Unaccompanied Children.
- IND Asylum Casework.
- IND Immigration Service Border Control.
- National Asylum Support Service (NASS).

2.12 The work group set out a work programme and met on a number of occasions. New material was developed through sub groups. Participants drew on their own good practice experiences for much of the work but soon found that they were in areas of great uncertainty where new materials had to be developed specifically for this guidance. Indeed in some instances the development work and its roll out are still not complete. In particular the guidance should facilitate the development of better communication between social workers and IND in all its different functions, at all the stages of the asylum process.

3 PLANNING

CHILDREN ACT, 1989.

The terminology used in the guidance is as follows,

- Looked After Child - Aged 15 or less and accommodated by a Local Authority.
- Eligible Child – Aged 16 or 17 and looked after by a Local Authority.
- Relevant Child - Aged 16 or 17, but no longer looked after by the local authority having completed at least 13 weeks as a looked after child since their 14th birthday.
- Section 17/child in need - Aged 16 or 17 and receiving some Section 17 support.
- Qualifying Person – Aged 18 or more was looked after for less than 13 weeks – (see Section 24 of the 1989 Children Act – advise, assist and befriend)
- Leaving Care Service – social work service for eligible, relevant,

The interaction between Care Planning and the Asylum Process

- 3.1 Major changes in approach in both the care and immigration legislation and policies have combined to challenge the previous status quo for UASC. Previously UASC would simply be treated the same as any other young person in the UK in similar circumstances. Immigration policy has developed a series of checks on immigration status designed to encourage asylum seekers with failing cases to opt for early return. The net effect is that Local Authorities need to plan more thoroughly for most UASC to cope with the speed and volume of decisions in order to support them to achieve the outcomes that are necessary for all children and young people

Background to Changing Care Practice

3.2 Summary Table – Care Status

1989 Children Act Status at 18 th birthday	Comments on the impact of the 1989 Children Act status on duties post 18.
‘Eligible child’	Are 16 or 17, has been looked after for more than 13 weeks since 14 th birthday, and has remained in care. Will become a former relevant child at 18 and will be entitled to a personal adviser, and a pathway plan. The Local Authority can fund the plan from a variety of sources in combination (see table at 3.40 below).
‘Relevant child’	Are 16 or 17, but no longer looked after by the Local Authority having completed at least 13 weeks under section 20 since their 14 th birthday. May have left care

	after their 16 th birthday if, following an assessment of their needs and a statutory review of their care plan, there is agreement between the professionals with responsibility for their care and the young person that it will be more appropriate for them to have a more independent lifestyle. UASC would not be entitled to benefits, even where leave has been granted, until they reach 18. The Local Authority must provide funding for accommodation and maintenance. They must have a personal adviser and a pathway plan. They will be former relevant children from the age of 18.
Looked after child but does not complete 13 weeks care before their 18th birthday.	The former UASC will be a qualifying child under section 24 and a level of advice assistance and befriending needs to be considered. They will not qualify as former relevant children. They may qualify for NASS support, as Home Office policy is not to make decisions where young people are within 2 months of their 18 th birthday. They are thus still asylum seekers having had no decision or leave and would otherwise be destitute.
Supported under Section 17	Social workers will have to consider, the circumstances in which the decision to support under section 17 was made. A key question will be if the young person gave informed consent to this course of action. Another vital issue is the level of assistance over and above housing that was provided to the young person. However practitioners may wish to seek policy and legal advice from their managers (see 3.4 below).

3.3 The processes involved in deciding on the 1989 Children Act status of a particular UASC fall outside the scope of this guidance. In the majority of cases, such decisions will have been made before transition at 18 is considered. However in the wake of Department of Health Guidance LAC (2003) 13 in June 2003 and the 'Hillingdon judgment' in August 2003, practitioners will need to understand the various situations in which these young people find themselves and the range of legal duties that a local authority has. While the guidance is directly relevant to England and Wales, which share this legislation, it will have implications for the treatment of UASC and former UASC in Scotland and Northern Ireland.

3.4 In light of the Children (Leaving Care) Act 2000 and the 'Hillingdon judgment' it is expected that following an appropriate assessment most UASC will initially be looked after and provided with services and support under section 20 of the 1989 Children Act. Where a young person is 16 or 17 and has been looked after for more than 13 weeks the Local Authority providing care will incur leaving care responsibilities for them. An exception to this general rule is where a young person has expressed a wish not to become looked after, and is assessed as competent to

care for themselves. In such instances a section 17 response may be appropriate and the Local Authority may support the young person under this section, '*including help with accommodation*'. In the context of this Guidance the term 'accommodation' refers to the provision of housing. The power to offer this service without incurring leaving care duties is set out in an amendment to section 17 of the 1989 Children Act (see the Adoption and Children Act 2002 section 116).

- 3.5 In deciding whether young people qualify as former relevant children consideration needs to be given to both the level of support and the type of accommodation that they received. Many Local Authorities have concluded that it is likely that leaving care duties exist for virtually all UASC whether or not they formally change their Children Act status before they reach 18.
- 3.6 It should be borne in mind that a small number of young people will arrive within 13 weeks of their 18th birthday. They will not qualify as former relevant children even if they are cared for under section 20 of the 1989 Children Act. However such young people may be 'qualifying children' under section 24 of the 1989 Children Act and as such will be entitled to 'advice, assistance and befriending'. It is also likely, given Home Office policies that they will not have had a decision on their asylum claim. If they can satisfy the conditions of section 55 of the Nationality Immigration and Asylum Act 2002 by applying for asylum as soon as possible they may be entitled to NASS support and if so are likely to be dispersed (see Draft NASS Policy Bulletin 29).
- 3.7 However even in cases where the Local Authority is content that it has complied with guidance and does not have a leaving care duty it is recommended that the local authority should set in place a transitions plan based on the core assessment for a 'child in need' covering the areas set out in this guidance. A child in need review when the young person is aged 17 years and 6 months should develop this.

Immigration Status

Indefinite Leave to Remain/Refugee Status.

- 3.8 If a UASC claim is settled with a grant of Indefinite Leave to Remain, then planning which moves them towards full integration in the UK can take place. However in these cases it is important to assist in acquiring appropriate documents to prove their status. It is also important for their future identity to enable contact to be established with their family if possible.
- 3.9 The young person is entitled to access the same services as any other child, and if they qualify as looked after or former relevant children for the appropriate associated support. However social workers should ensure that the UASC with whom they work fully appreciate the importance of original copies of their IND documents. It is recommended that these documents are treated as carefully as a passport and indeed

they often act as a passport to benefits or Education Maintenance Allowance in the case of Indefinite Leave to Remain etc. In most cases duplicates will not be accepted. Social workers should also consider applying for a National Insurance Number as soon as the grant of any form of leave is received (see 4.32 and 4.33 below). This will help avoid delays later in the process.

Humanitarian Protection

3.10 Humanitarian Protection is granted for a limited period and recognises that the young person needs protection from a specific circumstance (e.g. in theory the government of the child's country of origin should be able to offer protection but in practice can not deliver this). However the nature of the need is not considered to meet the 1951 Geneva Convention criteria set out for refugee status. It may arise from a particular circumstance for that child or family and is often of a temporary nature. In that sense, the end of a period of Humanitarian Protection will result in a review of the current circumstances facing an UASC if returned to their country of origin, and if these have changed for the better, then an extension of leave may not be granted.

Discretionary Leave

3.11 Discretionary Leave is only granted when the application has been refused on both refugee and humanitarian grounds. Leave in this category only recognises problems of a practical nature that prevent the former asylum seeker from leaving the UK. In the case of UASC this is usually entirely to do with their youth and vulnerability and the unknown and potentially unsuitable arrangements they are returning to. The aim of the grant of discretionary leave is to demonstrate clearly that there is no right or entitlement to a permanent stay in the UK.

3.12 UASC should not assume that they would be allowed to remain in the UK beyond the limits of the leave. For this reason the length of leave, if granted, is likely to be of short duration, i.e. for one year or up to their 18th birthday, so that the problems of overcoming the practical barriers to return are considered and are given proper focus. There is recognition currently among professionals that if a young person must return, it should happen earlier rather than later. Delaying returns therefore should only be sought by a Local Authority where there are very good reasons.

The Need to plan for Different Outcomes

3.13 It is by no means certain that the young people will spend their adult lives in the UK. Therefore a way needs to be found to 'contingency plan' outcomes based on either a successful or unsuccessful outcome of a young person's asylum claim (see 3.16 below). Education, training and employment plans for young people need to be at least potentially capable of achievement in a variety of ways and in different countries (see Section 4 below). The possibility of return also needs to be

addressed (see Section 6 below).

Working with short periods of leave

3.14 Contingency planning for UASC poses additional challenges for professionals. The shorter the time period within which the social worker or personal adviser is working the more difficult it is to access resources. For example most education services in the UK are based on the 'academic' year and plan for important qualifications over a period of several academic years. There is a considerable responsibility resting on professionals to develop plans for UASC that have a reasonable chance of coming to fruition within the timescale in which it is likely that the young person will be allowed to remain in the UK.

Setting about planning

3.15 It is important that professionals learn to support UASC within the frameworks imposed by immigration law without either isolating or damaging the aspirations of the young person. Misunderstandings and difficulties can arise from setting out plans assuming permanent rights that may not be granted. Careful and realistic planning can help to minimise the instances where 'pathways' are set out, which cannot be delivered. At the same time the clearest possible milestones should be developed to ensure that the young person is able to make progress in reaching their potential.

3.16 In common with other good education and career planning, it is recommended that a clear distinction be drawn between the aims of the plan and the pathways to get there (for example, aiming to attain a qualification in a particular subject rather than to attend a particular college). Assisting a young person to understand this distinction will help them to develop flexibility in their approach and maximise the opportunity that they will achieve their goals. It can also help avoid defining their success as their ability to remain in the UK, as this lies outside of the control of the UASC and the professional network for providing their care leaving support

The Pathway Plan

3.17 The pathway plan must address the possibility of the UASC returning to their country of origin in parallel with a plan that is built upon the UASC remaining in the UK. In either instance it is important to recognise that factors that inform the original plans may change and in consequence` planning should be flexible and must develop contingencies. The aim of the contingency plan is to allow identified goals to be pursued in the new circumstances.

Dealing with uncertainty

3.18 One of the social worker or personal adviser's goals in working with

UASC will be to support them in managing the uncertainty of their situation. The single most important factor for these young people during the transitional period is likely to be the constant presence of a reliable adult, and this role will often fall to the key professional.

Getting good information for the young person and the care network

- 3.19 Good mutual communication links between the social worker or personal adviser, UASC and IND should be established. Local Authorities should ensure that they acquire copies of all original documents issued by IND. On a regular basis they should also refer to the National Register of Unaccompanied Children (NRUC) to check immigration status and other queries made through the Central Point of Contact. NRUC will also help the finance, commissioning and tracking processes and all Local Authorities are expected to participate in contributing and maintaining the data necessary for it to run effectively. An outline of IND functions is given in appendix 3. The different functions and the speed of transfer of cases are both reasons why it is best to use the Central Point of Contact and NRUC for queries.
- 3.20 Asylum applications are always based on individual circumstances. However social workers and personal advisers should keep up-to-date with information about current policy and practice in relation to decisions on immigration status for young people from the specific countries involved. They should suggest to UASC that they also access this information and discuss it with their legal representative. As well as the statistics and 'In Country' information that can be found on the Home Office web site www.homeoffice.gov.uk the Refugee Council www.refugeecouncil.org.uk among others, offer detailed web based briefings on countries and IND policies.
- 3.21 Foster carers may often be required to prepare themselves for supporting UASC who are facing an involuntary return to their country of origin. At the same time they need to support UASC deal with the uncertainties around the asylum application and the anxieties that reference to statistics may trigger (e.g. where a child comes from a country with a high rate of refused applications). This can arouse strong feelings and can leave foster carers in a predicament. Social workers need to be aware of this at the outset and they bear an important role in helping foster carers understand the meaning of asylum and the context within which it is set. Local Authorities should consider providing foster carers with specialist training in working with this uncertainty.

The Asylum Process

- 3.22 A chart setting out the key points in the asylum process is included in appendix 2. The number of checks and balances and the individual circumstances of UASC mean that any such chart can only offer a schematic representation of the overall asylum process.

Decisions

3.23 The initial IND decision is one (early) stage in a complicated process. It is not usually the same as a final outcome, which may not occur for months or even years. Special IND caseworker teams based in Croydon or Liverpool make decisions in the case of child applicants. A description of the different functions and Directorates in IND is given at Appendix 3. They will consider evidence usually in writing from the UASC as well as all other available evidence to see if a case has been made under either the Refugee Convention or Human Rights legislation.

3.24 The decisions available are,

- Refugee Status/Indefinite Leave to Remain (see 3.8 and 3.9 above).
- Humanitarian Protection (see 3.10 above).
- Discretionary Leave (see 3.11 and 3.12 above).
- Refusal, in which case they may be removed and/or may not be supported following their 18th birthday.

Active Review decisions

3.25 The other kinds of decisions now being made by caseworkers are in the IND Active Review process. In most current cases these decisions involve consideration of whether a period of leave should be extended or whether a return is possible or in the case of a former relevant child whether removal is appropriate. Active review caseworkers will consider whatever grounds a young person puts forward at the time. For example an application to extend leave may involve a fresh asylum application based on a change in the country of origin. In the past active review decisions have taken place post 18 though with shorter periods of leave pathway plans for looked after children will have to take account of the decisions.

3.26 It is usual for the active review process to include an invitation for the young person to attend a face-to-face interview with a caseworker. This is an important opportunity and unless the legal advice is against attendance (see 3.27 below) the young person should be helped to plan and prepare for this. Social workers should accompany UASC to these interviews. If this is not possible the social worker should ensure that an informed independent adult who can promote the welfare of the young person attends with them.

Interviews for asylum decisions

3.27 These interviews are currently rare but may become more frequent as interviews will allow UASC the opportunity to state their case in person. The merits and demerits of attending an interview are not a matter of consensus among legal advisers and it remains to be seen how this policy will develop. It is important that, prior to an interview, UASC are

prepared for, and understand the purpose and process of the interview.

If Leave is granted

- 3.28 If a UASC is granted leave to remain, regardless of the type, they may be entitled to access state benefits, provided they are not excluded by their care status (eligible or relevant children). If they are applying to extend their leave and have put in a timely application, or have lodged a timely appeal against the refusal to extend, their access to benefits should continue. It is important that original documentary proof from the Home Office is retained to establish this entitlement (see 3.9 above).
- 3.29 Another entitlement that arises from a grant of leave is that a UASC can apply for a National Insurance Number regardless of their care status. It is advisable to apply for this early, as there can be delay and problems with requirements concerning proof of identity (see 4.32 and 4.33 below).

Appeals and the ending of support

- 3.30 Most UASC appeal against the negative decisions that they receive at the differing stages of their asylum application. The outcomes of appeals can be very significant and UASC may need additional support to help them where appeals are not upheld.
- 3.31 Not all UASC will be entitled to remain in the UK pending an appeal following receipt of a negative decision. The decision on the right to a UK based appeal depends on the Government's view of the safety of their country of origin. Those granted a period of leave of one year or less will not have a right of appeal at the initial stage. Currently many UASC do not appeal negative decisions because they have a substantial period of Discretionary Leave. However as Discretionary Leave becomes restricted UASC are more likely to appeal soon after an initial negative decision.
- 3.32 Where young people have been granted a period of leave they may wish to apply to extend it. Refusal of this application can be the subject of a UK based appeal.
- 3.33 The appeal decision can have a dramatic effect on the status of the young person if they are 18 or older. In light of 3.30 (above) missing the deadline for appeals can have serious consequences. It is thus important that social workers ensure that young people have adequate legal representation throughout the entire appeals process.
- 3.34 If the outcome of the appeal is negative the only notice that young people will receive is the letter giving them the final outcome of the appeal, including the requirement that they leave the UK. The Home Office may define some young people in this situation as 'persons unlawfully in the UK'. If this is so the young person's responsible authority will be prevented from providing them continuing leaving care

support and services, unless the Local Authority believes that withholding the services would be an unjustifiable breach of their human rights. At the point where appeals have been exhausted, and the responsible Local Authority will be required to withdraw leaving care support, the young person concerned will need practical help and support in making their own arrangements to leave the UK as soon as possible.

- 3.35 While advice about the nature and content of any appeal is the concern of the young person and their legal adviser, the social worker or personal adviser should be aware of the potential pitfalls.
- 3.36 Social workers and personal advisers should be aware that UASC are entitled to publicly funded legal assistance at both their screening and substantive interviews. This also applies where the age of the applicant is in doubt and in such instances legal representatives may apply for public funding to obtain medical evidence to clarify the client's age. At the appeal stage a solicitor or experienced adviser must consider whether the case has a reasonable prospect of success. If the prospects of success and merits of the case are borderline or unclear funding can still be granted if the case has wider public interest, involves significant human rights issues or is of overwhelming importance to the client. Further funding may be available for cases that proceed to statutory review, judicial review or the higher courts.
- 3.37 UASC have the right of review against a decision to refuse funding for an appeal where the decision has been made on the merits of the case. Social workers and personal advisers should note that representatives should advise clients of this 'right of review' and that representatives should also provide the relevant forms for review which are available from the Legal Services Commission website. The representative should also assist the UASC to complete the form. For further advice and information see, www.legalservices.gov.uk
- 3.38 In some cases the ending of leaving care support does not take place until removal directions have been served and a given date to leave the UK has passed (see 2.5 above). It is important to request information from IND in order to appreciate the young person's current situation. New IND guidance on this subject is expected and will be attached to subsequent revisions of this guidance when available.

Funding the pathway plan

- 3.39 A core task confronting social workers and personal advisers in developing the pathway plan is to identify the financial resources needed to meet the needs and aims identified therein. In this area as in many others there are additional levels of complexity in working with UASC and former UASC.

- 3.40 Summary Table – Pathway Plan Funding

Source of Funding	Comments
Home Office UASC Grant	<p>The Local Authority can reclaim money spent on providing direct services to UASC. But the grant will, without exception, stop at the young person's 18th birthday. It is therefore important that the review immediately preceding that date should identify other funding that will be available to support the young person.</p>
Leaving Care Funding	<p>Leaving care services are funded by Local Authorities from money they receive from Central Government. The duty to fund services for former relevant children can imply greater expense for the Local Authority with UASC. For other former relevant children there is an assumption that benefits or earnings will be available and the Local Authority contribution will be to provide the personal adviser and top up other funding in order to best meet the young person's specific assessed needs. Decisions will need to be made regarding the level of support that the Local Authority can provide. Local Authority duties are more clearly spelled out for the expenses of education, training and employment. In practice this means funding rent and allowances as well as travel, books etc for those aged 18 and in education.</p> <p>In the case of former UASC there may be times when the 'Leaving Care' money may have to fill gaps in funding in default of other sources.</p> <p>The DfES introduced the UASC Leaving Care Grant in 2004 to help towards the costs of supporting UASC care leavers (see 3.41 below). Funding is targeted at those Local Authorities that support large numbers of UASC care leavers (see Draft NASS Policy Bulletin 29). Details of any arrangements for subsequent years are not currently available.</p> <p>The leaving care powers and duties under Section 23c and Section 24 of the 1989 Children Act to support a young person are affected by immigration legislation. (See Section 54 and Schedule 3 of the Nationality Immigration and Asylum Act 2002 - Guidance to Local Authorities and 2.5 above.)</p>
Benefits	<p>Eligible and Relevant children between 16 and 18 years old cannot access benefits and Local</p>

	<p>Authorities must supply funding for all the elements identified in the pathway plan, unless they are earning a living wage, where they may be expected to make a financial contribution.</p> <p>Young people supported under Section 17 of the 1989 Children Act who have leave to remain in the UK, of any sort, would be able to claim benefits before they are 18. It may help to refer to the Department of Health LAC (2003) 13 guidance, which outlines the circumstances when support under Section 17 of the 1989 Children Act may be appropriate. Section 17 of the 1989 Children Act has been amended by Section 114 of the Adoption and Children Act 2002 to ensure that support provided in this way does not mean that a child is looked after.</p> <p>However in some circumstances on turning 18 a UASC who is leaving care will become entitled to benefits. A social worker or personal adviser should plan to utilise the access to benefit fully if the young person is entitled. This is in keeping with maximising their independence.</p> <p>A UASC who is leaving care will qualify for benefits if they have received leave to enter/leave to remain in the UK, which continues beyond their 18th birthday. The forms of leave are Indefinite Leave, Exceptional Leave, Humanitarian Protection and Discretionary Leave. Discretionary Leave is by far the most common. It should also be noted that where leave was limited but the UASC applies to extend it before it expires, then access to benefit will continue until the application and any appeal is dealt with finally.</p> <p>It is important to bear in mind that young people in education may lose their entitlement to benefits at 19 if the course they are attending is described as full time.</p> <p>For those who can claim benefits, many Local Authorities will use additional allowances based on an individual assessment of need to 'top up' care leavers who are in education or training to ensure that they are always better off than they would be if unemployed.</p>
Earnings	Young people with leave to remain in the UK will be entitled to work. However it is necessary to obtain a

	<p>National Insurance Number (NINO). Although the NINO is not required for benefit purposes for eligible or relevant children it is useful to apply for a NINO for work purposes as soon as leave is granted (see 4.32 and 4.33 below).</p> <p>Local Authorities should have policies about how far young people in work might be expected to contribute financially to the costs of their upkeep within their pathway plan. Conversely, if care leavers are on a low income and risk being worse off than they would be on benefits, the Local Authority may subsidise their costs from the Leaving Care Grant to provide an incentive to work.</p>
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Leaving care monies

- 3.41 Money for leaving care services, for the most part is included in the arrangements for funding mainstream children's services. However the DfES set up the UASC Leaving Care Grant in 2004, to help towards the costs of supporting UASC care leavers. The grant is aimed at those Local Authorities in England supporting the highest numbers of UASC care leavers.
- 3.42 Grant arrangements for leaving care should not influence or determine any individual's pathway plan. This is dictated by the 'needs assessment' and the pathway plan must be designed specifically for that person. However the young person and their social worker or personal adviser need to understand constraints on a local authority's funding in order to make realistic plans for young people's financial support
- 3.43 In pathway planning for former relevant children the Local Authority will have extensive duties to provide a range of on-going support and assistance to this group of young people. In particular there are duties to provide a personal adviser; to provide a pathway plan and to stay in touch with the youngster up to the age of 21 or longer if the young person remains in an approved programme of education or training. Former relevant children in full time education or training also have a specific entitlement to Local Authority support with their living costs during vacations from education or training.
- 3.44 Former relevant children are entitled to the same services as other young adults. For example, former relevant children will be able to claim mainstream benefits if necessary or if they still have an ongoing asylum case, the Local Authority will be able to claim a weekly amount payable by NASS (see Draft NASS Policy Bulletin 29).
- 3.45 Children Act 1989, and Children (Leaving Care) Act 2000, duties are ended when a young person leaves the UK to take up residence in

another country. Depending on the young person's immigration status, the Nationality Immigration and Asylum Act 2002, Section 54 and schedule 3 can end a Local Authority's duty and power to provide leaving care services if the young person is no longer lawfully allowed to remain in the UK. (See Section 54 and Schedule 3 of the Nationality Immigration and Asylum Act 2002 - Guidance to Local Authorities and 2.5 above.)

3.46 There are three reasons why there may be misunderstandings about the relationship between continuing entitlement to care leaving support and a young person's immigration status (see 2.5 above).

- The first is in ensuring the point where the young person becomes 'appeal rights exhausted' (ARE) is recognised by the Local Authority. This will depend on good communication between IND and the Local Authority.
- The second is in deciding the point at which entitlement to leaving care support ends. This may be at the point when removals directions have been served and not complied with. It may also be when someone is found to be in the UK unlawfully, which may be when they become 'ARE'. It is expected that IND plan to issue further guidance to assist Local Authorities making these decisions.
- Finally the Local Authority needs to consider Human Rights legislation (ECHR) to see if ending support would breach the young person's rights. Some breaches can be justified in particular circumstances. IND has to consider this question in relation to other adult asylum seekers. Decisions under ECHR must always be made on the individual circumstances. This makes guidance difficult to develop, but as case law becomes established the factors will be easier to identify.

3.47 It is strongly recommended that the social worker or personal adviser develop contingency plans to deal with changing sources of funding. They will need to consider when it is best to help the young person plan for a switch from support provided by UK based track to preparing for return to their country of origin, so as to avoid the prospect of a young person remaining in the UK with no legitimate source of support.

Promoting and maintaining family Contact

3.48 It is essential that social workers and personal advisers help UASC to keep or develop contacts with their families and communities. Advice is available from Refugee Community Organisations, the Red Cross, the Refugee Council and other voluntary sector agencies. Contact is important because,

- Understanding a young person's heritage is a key factor in the transition to adulthood.

- Carers valuing the background of UASC is vital in building the self confidence necessary for a successful transition to adulthood.
- Understanding the background behind displacement from the country of origin is important in the pathway planning process and if necessary may help support a young person deal with trauma and associated mental health issues.
- Contact with family or community can strengthen the support available in dealing with discrimination and racism and help UASC prepare for return to their country of origin.

3.49 Social workers and personal advisers should consider,

- Discussing with UASC whether they would want to use the services of the Red Cross International Tracing and Message service to attempt to trace family members.
- Providing books and other cultural materials in the young person's first language.
- Providing opportunities for participation in cultural activities.
- Assisting the child to write or telephone to established contacts either in the UK or overseas.

4 EDUCATION, TRAINING, CAREERS AND BENEFITS

Introduction

- 4.1 In planning for education, training or careers for UASC, professionals need to keep both care and immigration issues in mind. It is essential that any young person receiving support from a local authority will be helped to plan their self-development through education, training and/or employment. It is also an assumption that all social workers and personal advisers will attempt to develop plans that can help the young person to thrive in the event that they return to their country of origin.

Personal Education Plan (PEP)

- 4.2 Increasingly UASC in England and Wales are 'accommodated' under section 20 of the 1989 Children Act and are thus being treated as eligible children, and once they have turned 18 as former relevant children. Whilst they remain in school or college, like other looked after children, they should have a specific Personal Education Plan (PEP). This Plan sets education goals and indicates which professionals will be responsible for helping the young person achieve these. The PEP should be developed alongside the young person's care or pathway plan. It is the statutory duty of the local authority looked after children's services or leaving care service to ensure that one is produced in partnership with the designated teacher for looked after children (or equivalent college post). The PEP provided by a social worker or personal adviser can of course include training in combination with education if that is in line with the young person's needs and wishes.
- 4.3 In other rare cases, the assessment of the young person's needs will lead to support being offered under section 17 of the 1989 Children Act. In these cases the young person will have been assessed as being more capable of independence, and they will have agreed with this assessment. It will still be necessary as part of the core assessment and service planning for a child in need to identify development needs and the resources that can help to achieve them. Some young people who are supported in this way may wish to work (if they have Indefinite Leave to Remain), or to claim benefits as part of their independence. The Connexions service, Children's Service Authority or relevant services within the Children's Trust can be particularly helpful and can provide a personal adviser service to anyone who is under 19 and in this situation.
- 4.4 Planning for any UASC will therefore take place within a statutory framework and will have to consider the special circumstances imposed by the immigration status of the young person. Contingency planning refers to setting out pathways to the same goals that may have to operate in fundamentally different contexts (see 3.13 above).

Developing the PEP

- 4.5 While it may seem obvious to state that the PEP belongs to the young person it is worth special consideration in work with UASC. They will be required to make and understand far-reaching decisions in ways that many other young people in the UK do not have to at an equivalent age. Furthermore the decisions in one important sphere of their lives, the immigration process, have complex consequences in other spheres. In assessing wishes and feelings, social workers and personal advisers need to be clear about the interaction between pathway planning and immigration and asylum processes so that they are able to offer effective help to young people. Great care will be needed to manage the levels of uncertainty involved, without causing the young person to abandon their education or career goals. It would, however, be a professional failing to simply proceed as if there are no barriers for UASC in making long-term education and career plans based on continuing residence in the UK.

Assessment Processes

- 4.6 The education needs of UASC will be identified through a core assessment and the completion of an Assessment Progress Record within the Integrated Children System (ICS) if the child is looked after. Personal Education Plans must be drawn up at the earliest possible opportunity and it is important to involve the relevant Local Authority department and school as soon as possible.

Education and statutory rights

- 4.7 It is important for UASC to be given clear information about their educational rights and entitlements as well as any restrictions that are relevant to them in this key area so that young people may recognise the opportunities that education can give them, depending on the various outcomes of their asylum application.
- 4.8 Education, at least up to the age of 16, is a right and a requirement for all children in the UK. However, it will not necessarily be possible to guarantee a place in a particular school. A young person who will be reaching the age of 16 at the point they enter the education system may find that further education has more relevant opportunities than the school sector.
- 4.9 Further Education is not a statutory right in the same sense as schooling for 5 to 16 year olds. However Government is keen to ensure that young people are engaged in purposeful activity while not at school or at work. Most colleges have a wide range of available courses. The Learning and Skills Council encourages colleges to be flexible and to take initiatives to meet local demand for places and their admissions policies are generally open. UASC supported by a local authority and UASC who are care leavers supported either by a local authority or NASS are eligible to access further education as a 'home student'. Colleges may take failed

asylum seekers on courses but they cannot fund these places from public sources, see www.education-action.org

- 4.10 There are extensive barriers that limit access to Higher Education. Universities are able to set their own entrance criteria. Young people will have to meet the academic admission requirements, but additionally the question of fees and student loans will also need to be considered. For example UASC who are care leavers may be considered to be overseas students and if so their fees will be higher and they will not be able to access student loans. Local authorities should have policies about access to higher education funding for care leavers. It would be unusual for these to permit access to funding for UASC who are care leavers at overseas student rates.
- 4.11 The limitation on UASC's permanent right of residence in the UK needs to be discussed frankly with their school as well as with local further or higher education providers. It would be useful to develop agreements and strategies to maximise the educational achievement given the other limitations placed on UASC who are care leavers.

The Immigration Process

4.12 The following immigration considerations may affect PEP:

- The final outcome and its timing will dictate in which country the long term aims of the plan will be realised. The length of leave to remain should be taken into account when deciding on the type and length of courses that can be undertaken.
- The immigration status varies over time and categories such as 'asylum seeker', 'granted leave to remain' or 'no legal right to remain' directly affect rights to benefits, education allowances, legal employment and leaving care support (see 2.5 above).
- The duration and nature of stay in the UK can affect levels of course fees or access to student loans.

Education and Returns

- 4.13 Contingency planning needs to go beyond the simply setting out of two plans, one assuming permanency in the UK and another preparing for return (see 3.13 above and 4.27 below). In addition to this,
- Careful thought should be given to the length of any course of study in the UK, particularly those leading to qualifications.
 - Courses based on modules that can be independently validated are preferable.
 - Assumptions cannot be made about the levels of fees payable i.e. the

home or overseas rate.

- Access to student loans is likely to be restricted.
- The long term aims need to be considered separately from the current services provided, as the path may have to be delivered by routes lying outside the UK.

The need for contingency in pathway planning

4.14 As outlined in the planning section the need for contingency planning is particularly necessary when planning for education and careers; this will have to be focused on long-term aims and the paths to achieve these.

4.15 Any looked after child, with as yet undecided immigration status must have these the options relating to both the possibility of their remaining in the UK or returning to their country of origin set out in their pathway plan. A failure to confront this question and to find ways to overcome a reluctance to discuss it might well deny a young person access to realistic support at a point where it will be in the best interests to plan for an educational pathway in their country of origin.

4.16 Where their status is still not settled at 18, part of the assessment of their educational needs should include a strong focus on how long they are likely to be able to remain in the UK, and what courses and skills would be of most use to them in the event that they are returned in the near future.

4.17 The most difficult cases to resolve may fall into the second category described above (4.16). Here the social worker should work with schools, colleges, the Connexions service, Children's Service Authority or relevant service within the Children's Trust and the young people themselves to come up with a range of realistic but high quality education and training options.

Financing courses of study

UASC with entitlement to welfare benefits

4.18 Most UASC are given some form of leave at the point when a decision has been made about their asylum application. In the event that they have such leave or that applications to extend leave are not fully settled they may be entitled to state benefits. The other criteria they must satisfy relates to their care status, with eligible children denied benefit as their maintenance will be the responsibility of the local authority caring for them.

4.19 In the event that they are entitled to benefits and are in full time education, it should be possible to ensure that benefits play a major part in financing their study. This can continue until they are 19 or unless

and until they receive a final decision on their application to extend their leave.

UASC without entitlement to welfare benefits

- 4.20 Some UASC who are care leavers turning 18 will not be eligible for welfare benefits. This can happen because they are still awaiting a decision on their application to remain, or they have not been granted a form of leave to remain. More seriously it can also happen because they have had an outright refusal i.e. no grant of leave and for whatever reason have not lodged an appeal in time.
- 4.21 In the case of UASC who are care leavers aged 18 years and above waiting for asylum decisions or appeal outcomes, they may be entitled to NASS support and this should have been applied for and confirmed before their 18th birthday. NASS will make a contribution, up to £140 per week, to funding the services set out in the pathway plan for UASC who become 'former relevant children'.
- 4.22 If UASC are not care leavers, they may face dispersal. Although this is increasing unlikely since the 'Hillingdon judgment' it needs to be reflected in the 'child in need' plan.

The Learning Skills Council (LSC)

- 4.23 LSC guidance makes it clear that asylum seekers are not automatically eligible for LSC funding, though the LSC will consider 'home fee' status for those asylum seekers in receipt of income based benefits, or those being assisted under the 1999 Immigration and Asylum Act or the 1989 Children Act, Community Care legislation, or receiving financial assistance from NASS. English for speakers of other languages (ESOL) and basic skills provision is already free to all learners legally present in the UK.
- 4.24 LSC will also consider any UASC aged 16 - 18 who are receiving support from social services as eligible for funding.

Leaving Care Support

- 4.25 Leaving Care Teams may provide assistance to those UASC who have some form of leave to be in the UK, with education costs in agreed circumstances and in lieu of other sources of funding. UASC who are former relevant children will be eligible for this support.
- 4.26 Education Maintenance Allowances (EMAs) of around £30 pw available to looked after children can only be accessed by UASC who have Indefinite Leave to Remain. Those with other forms of leave are specifically excluded.

Higher Education Support

4.27 Local Authorities, generally speaking only support asylum seekers who are hoping to go to University if they have resolved immigration status. This is because those without a positive decision from the Home Office will be required to pay university fees at the overseas student rate as well as being ineligible for a student loan. UASC who have been granted either Humanitarian Protection or Discretionary Leave may qualify as a 'home student' if they have been 'ordinarily resident' in the UK since the leave was granted but will not be entitled to student support unless the length of their 'ordinary residence' is 3 years or more. UASC who have been granted Indefinite Leave to Remain are likely to be eligible for both 'home student' fees and student support if they have been 'ordinarily resident' in the UK since the granting of the leave. Local Authorities should think very carefully about the inclusion of university places as part of a pathway plan, as there is a danger that courses may not be finished at the point where they will be required to leave the UK (see 4.13 above).

Changes in immigration status and benefit entitlement

4.28 The ways in which the status of the young person changes throughout the asylum process is referred to throughout this guidance. A brief summary is included here to help social workers and personal advisers consider the changes in the context of education, training and employment.

- Children who are in the care system are not entitled to state benefits. In addition any 16 or 17 year old would be denied access to the benefits system until they have some form of leave to remain. However, even with leave to remain, they may be denied benefit between the ages of 16 and 18 if they are eligible care leavers.
- On turning 18 there are a number of sources of funding for the services set out in the pathway plan whilst the young person remains legally in the UK (see table at 3.40).
- If leave has been granted or an extension of leave is under consideration then benefits can be accessed unless there has been a final negative outcome. After 19, full time study can limit rights to benefit where they exist.
- On turning 18 if there are outstanding applications or appeals about asylum (rather than extension of leave) and there is no current leave to remain, a weekly amount may be claimed by the Local Authority from NASS. In the case of UASC supported under section 17 of the 1989 Children Act a transfer to NASS and subsequent dispersal may occur unless there are special circumstances.
- In the event that neither of the above applies and the young person

is a former relevant care leaver, funding may be provided through the Local Authority leaving care budget. Local Authority duties and powers are however limited by section 54 and schedule 3 of the Nationality, Immigration and Asylum Act 2002. Eligibility for the DfES UASC Leaving Care Grant is based on a UASC care leaver being a former relevant child. It is not affected, nor does it affect entitlement to any other funding. Rights to access education may also be affected. Further education may be arranged with a local college and it may be possible to cover fees from LSC or other education budgets.

- Similarly careers training may be organised through Job Centre Plus.
- The right to work is dependent on whether a UASC or a UASC who is a care leaver is still considered to be an asylum seeker. Whilst UASC asylum claims remain undetermined they have no right to work.
- Work should not be arranged in the event that a young person does not have a National Insurance Number (NINO). They are likely to be eligible for this on being granted some form of leave to remain in UK (see 4.32 and 4.33 below).
- Access to higher education is by its nature more difficult for young people whose immigration status is undecided post 18. Unless the young person has ILR or their grant of temporary leave extends beyond the end of the course there is no guarantee that they will be able to finish a course of study.
- Fees and student loans depend on immigration status. For example someone who is in the UK unlawfully should not access them.
- Eligibility to be considered a 'home student' rather than an 'overseas student' depends on the duration of stay in the UK (3 years minimum) and its purpose. It should not have been mainly for the purpose of obtaining an education. Again the status of 'home student' may be affected by a final negative outcome in the asylum process.

Employment, National Insurance Numbers (NINO) and registration

4.29 UASC have no automatic right to work in the UK, even where this is part of their pathway plan. However professionals need to bear in mind that at the point where the young person has a grant of leave to remain in the UK, the restrictions on asylum seekers do not apply while the leave continues.

- 4.30 Professionals also need to be aware that some young people need to work to accrue money for themselves and their families. In some cases young people work unlawfully often in dangerous and unregulated employment. Ensuring that young people who choose to work do so legally and safely is important, even though it is difficult to monitor in practice. Other issues associated with working include a Local Authority expectation that they will contribute to their living costs.
- 4.31 Leave to remain only confers a temporary right to work or, if appropriate, to claim benefits. The right may be extended if further leave is granted. It continues to exist during any period when an application for an extension of leave is being decided, including any appeal associated with a refusal to extend.
- 4.32 Although UASC are entitled to a NINO at the age of 16 (subject to 4.23 above) this will not be issued automatically and it is recommended that personal advisers and social workers develop strategies to help young people apply for and get their NINO as soon as they can. Applications can be made up to 3 months before the child's 16th birthday.
- 4.33 It may be useful to register the presence of a UASC in the UK immediately by opening correspondence with Job Centre Plus. It should be considered as an action from the initial or core assessment. However it will only be when they receive the decision and a grant of leave that they are entitled to have a NINO issued. In this matter as in all other contacts with Job Centre Plus original documents will be required. The Agency usually asks for original documents for this purpose. Particular care needs to be taken of the letter setting out the grant of leave and the duplicate sent to their responsible authority.

5 PLACEMENTS AND ACCOMMODATION

- 5.1 The terms 'placement' and 'accommodation' are sometimes interchangeable. In this section 'placement' will refer to foster care and residential homes for children. Accommodation will be used when UASC are living semi-independently.

Individual placements and overall service plans.

- 5.2 UASC should be perceived as children first, though within their pathway plan the need to take full account of their immigration status is of Key importance. The framework for supporting UASC is mainstream childcare legislation. The task in working with UASC is how best to deliver the 5 identified outcomes set out in *Every Child Matters*. All young people should,
- Be healthy and well
 - Be safe and able to look after themselves
 - Have the skills needed to manage adult life
 - Be active and fulfilled citizens
 - Have the hope of economic success and the ability to fulfill their potential

In many ways the needs of UASC are similar to non-asylum seeking children and they are likely to need the same opportunities to develop their potential as any other child. However the uncertainty surrounding any outstanding application to remain in this country may influence the context within which social workers seek to provide these opportunities.

- 5.3 The assessed needs of any looked after or former relevant child should be central to their placement or accommodation. In order to reflect any changes in identified levels of support these identified needs should be adjusted as necessary during care plan and pathway plan reviews as appropriate. The pathway plan review therefore needs clear information on the asylum and immigration status of the young person as an important factor in all the other aspects of planning. The role of the independent reviewing officer has great significance here and appropriate training should be made available to them.
- 5.4 There has been considerable debate about the types of placements and accommodation that should be provided or made available for UASC following guidance that suggests that UASC will invariably need to be provided with accommodation under section 20 of the 1989 Children Act, rather than being provided with section 17 support (LAC (2003) 13). It is important to remember that the essential principle regarding the placement and accommodation of provision for children must be based on an assessment of their individual needs. Section 20 of the 1989 Children Act does not prescribe any particular type or duration of placement although placement of a child under the age of 16 in unregulated accommodation could represent a breach of the Care Standards Act 2000. The pathway plan will need to be balanced

between a young person's need for a stable base for the period that they are likely to be permitted to remain in the UK and the development of the independence skills they will need if they cannot remain. Although all plans will need to be specific the timescale for achieving some outcomes may be quite short. Immigration status should not restrict a young person's moves toward independence if that is the best way of meeting their needs.

5.5 The varying availability of resources may call for a flexible approach to placements and accommodation from time to time. Departures from policy and accepted practice must be based on the assessment of need, consistent with the interests of the young person and be subject to on-going review. In addition to the needs of UASC, factors that must always be considered when making placements and provision for accommodation are,

- The quality of the placement
- The accessibility of local services
- The availability of quality legal representation
- Community cohesion

5.6 Assessment is on going and while it is obviously preferable that high level need be detected early in the process, such need can in fact emerge at any point throughout the process. There are various ways of delivering extra support, e.g. a switch to a specialist placement, or to increased outreach support. It is recommended that social workers and personal advisers should make themselves aware of organisations and resources that can step up support for young people if following a placement in accommodation where they are expected to be self-managing a greater need for protection and support is discovered.

The Pattern of Need in the UASC Population

5.7 This guidance is based on the assumption that the majority of UASC do not present in ways that are typical of the general UK care population. As explained above this does not mean that they have different long term needs regarding health, development and education, but it does mean that care plans and pathway plans should engage with these young people based on an individual assessment of their own specific needs and circumstances. Some UASC will have experienced extremely traumatic and violent events either directly or as witnesses, whereas others will have taken on board responsibilities, and in consequence developed self-reliance, beyond the experience of UK born children in the looked after system. In assessing the needs of these young people and planning to meet them it will be important to take account of these differing factors. It remains essential that each assessment be based on individual needs.

5.8 It is also clear that all UASC are undergoing a process of seeking permission to stay in the UK. They will need help to recognise and

respond to the different 'immigration milestones' that they will encounter and this needs to be considered in the planning and review processes. The pathway plan review should consider if the placement is still best placed to meet the young person's future needs. Time frames for what can be achieved in the UK are important.

The need for Flexibility in Planning

- 5.9 The ADSS recommends a greater flexibility of approach towards placements and accommodation that takes account of the young person's changing circumstances and the informed choices that they make. Consideration needs to be given to the short time frame imposed by asylum decisions, particularly regarding planning as the young person approaches their 18th birthday. The critical point, which will impact on UASC, is not their age but its association with the end of leave and, where relevant, the switch within IND from specialist consideration for children to adult immigration processes.
- 5.10 Throughout the young person's placement or provision of accommodation particular attention should be given to identifying any existing or emerging needs and risks that might imply the need for a change of provision. At any stage of the process consideration could be given to a more structured placement if appropriate, though it would be good practice to involve the young person in assessing the implications of any change of placement on the development of their independence. The decisions made about an asylum application and leave granted have no automatic implications for changing the placement of any UASC. However as the outcome of the asylum process becomes clearer the pathway plan should take account of it.
- 5.11 The implicit goal of the contingency planning recommended in this guidance is to prepare UASC either for integration in the UK or to give them the best chance to thrive in their country of origin. The advantages and disadvantages of any placement or accommodation need to be considered in this light. For example the opportunity to remain with a foster family may need to be balanced against the need to speedily achieve independence. All planning must take account of the requirement to protect and safeguard a group of children and young people who are particularly vulnerable.

Types of Accommodation and Placements.

- 5.12 Assessment is the key to placements. Good practice is to ensure that lone children are not placed in isolation and that all UASC can access support from their own communities. Clearly a balance will be needed to secure needs led placements where young people have special needs.

Residential Care

- 5.13 Subject to assessment residential care units may be an appropriate

placement for some UASC. Residential units can provide a stable environment from which young people can orientate into UK society. In practice residential units are currently more likely to be used to deliver particular specialist services. They may be an appropriate setting for those young people who are particularly vulnerable and require specialist services or protection.

Semi-independent living arrangements.

- 5.14 It is recommended that where Hostels and Foyers are used, thought should be given to their primary purpose. In general they should have clear programmes to develop their residents' independence skills and clear arrangements to move them on appropriately. Such provision should be kept under constant review and services monitored to ensure that they are delivering the planned outcomes for the young person, as specified in their pathway plan.
- 5.15 In practice the most common type of accommodation for the over 16 year old UASC is shared housing, single flats or supported lodgings with support from outreach staff. If planned within the context of community cohesion this form of accommodation usually facilitates integration into the wider community and builds on existing levels of independence. Even where the young person has on-going support needs, shared housing may be the best option and again a flexible approach to the type of accommodation may be appropriate. However this may not be an appropriate form of provision for some UASC.

Foster Placements.

- 5.16 Placement within a family setting is likely to be the most appropriate setting for many UASC and would be required for UASC under 16 years old unless there were exceptional circumstances, usually where an appropriate adult carer is available. In those instances where an adult offers to provide care to a UASC the same procedures that would apply to children who are not UASC should be followed and the Local Authority should always assess the suitability of the prospective carer using the same processes that would be followed for any child placed with family or friends.
- 5.17 Where possible best practice would place children in foster families from within their own communities. Care needs to be exercised in considering whether the placement inadvertently mirrors any divisions between different groups in the country of origin and how it sits with the wishes and feelings of a young person who may wish to live in a predominantly English speaking family. Foster carers need to understand that placements may be short term, as the UASC may not be allowed to remain in the UK. In these instances they may need to help the UASC prepare for return to their country of origin. They may also need support, guidance and supervision to help them deal with their own feelings concerning the return of a UASC that they have cared for. Some older

UASC may have no need to bond with another family even though they are separated from their own family and in some instances their level of self-reliance would indicate that another type of placement is more appropriate. As with all other looked after children, the placement of UASC turning 16 in foster care turning 16 are governed by the statutory review process and changes should be made through this process.

Housing Needs as Young Adults.

- 5.18 In common with other young care leavers UASC will become former relevant children on turning 18. Co-ordinating the provision of suitable accommodation will be an important part of their pathway plan. However unlike other former relevant children it should not be assumed that UASC who are care leavers will gain a permanent right of residence in the UK.
- 5.19 Some UASC will have a permanent right to remain through Indefinite Leave to Remain or from more than 4 years Exceptional Leave to Remain, (though ELR is no longer granted). In these cases young people should be treated in the same way as other young care leavers and helped to find settled accommodation as soon as they are able to sustain it. In many cases local authorities will seek to help young people into social housing.
- 5.20 In the case of other forms of leave, Humanitarian Protection or Discretionary Leave, the right to remain is temporary and eligibility for social housing will only be short term in line with the period of leave. In the event that the leave ends eligibility for social housing will also end.
- 5.21 There are distinct groups of young people with different levels of eligibility for support. If the young person is under 18 it may be possible to obtain additional funding towards the cost of their care from the Home Office. If they have turned 18 securing funding will be significantly harder. Former relevant children, where eligible for support, may be able to receive services whilst they remain in a programme of education or training. *At the time of preparing this document there is a lack of clarity as to whether Local Authorities are legally able to support former relevant children who have exhausted all avenues of appeal but have not reached the point where they have failed to comply with removal directions (see 2.5 above).* The groups are,
- Former relevant children awaiting the outcome of an asylum application or appeal will be assisted by the social services department of the Local Authority with financial support from NASS provided that they are eligible for support under section 55 of the Nationality, Immigration and Asylum Act 2000 and a funding application was made 8 weeks before the young persons 18th birthday.
 - UASC who are care leavers and awaiting the outcome of an asylum

application or appeal but who are not former relevant children will be supported by NASS and will not be eligible for social housing or benefits.

- Those given Indefinite Leave to remain or Humanitarian Protection will receive assistance from the Local Authority and possibly Job Centre Plus or relevant education establishments.
- Those given Discretionary Leave of limited duration and have applied within the permitted timescale to have it extended will receive assistance from the Local Authority and possibly Job Centre Plus or relevant education establishments, bearing in mind the time limits.
- Those who have received a negative decision but are not able to be returned, check with IND about the possibility of assistance under Section 4 of the 1999 Immigration and Asylum Act. They will not be eligible for social housing.
- Those who have received a final negative decision and have yet to receive Removal Directions. Under leaving Care legislation are eligible for support, though no eligibility for social housing. There will be a funding gap as this is not grant reclaimable (see reference *in italics* immediately above).
- Those whose Leave to Remain has lapsed and no extension or those otherwise in the UK unlawfully will not be eligible for support from social services.

Local Authority response to former relevant UASC

5.22 In practice there has been a wide range of approaches to meeting the accommodation needs of former relevant young people who entered the UK as UASC. In some local authorities social housing has been offered through the housing waiting list in line with leaving care policies. In others housing authorities are unwilling to engage with former UASC at all.

5.23 The 'Hillingdon Judgment' (see 3.3 above) has raised the possibility of young people, formerly cared for under section 17 of the 1989 Children Act, returning to their Local Authority and claiming leaving care services if the support they received, or should have received, as UASC was under section 20 of the 1989 Children Act. The court confirmed that this category of young people would fall within the priority need groups in the homelessness legislation. However, in practice this would have no real effect in an individual case unless the young person was also unintentionally homeless (and eligible for assistance). The Office of the Deputy Prime Minister is clear in the expectation that homelessness should not be an outcome for young people leaving the care system. The homelessness legislation is a safety net for people who find themselves in a housing crisis through no fault of their own and should

not be used by local authorities as a mechanism for meeting the planned housing needs of people who are being assisted under a managed programme of support.

5.24 There are several legal bases for the accommodation provided to older UASC and young adults. The social worker or personal adviser needs to consider their eligibility and entitlements as well as the degree of security of tenure that a particular form of tenancy or licence may offer.

- **Secure Tenancy (local housing authorities):** Local authority housing, allocated through its housing register, will generally be let on a secure tenancy. This offers long-term security of tenure for as long as the tenant keeps to the terms of the tenancy agreement.
- **Assured Tenancy (housing associations and private landlords):** Offers similar long-term security of tenure to a secure tenancy provided by a local authority (see above) in that as long as the tenant does not break the terms of the Tenancy Agreement s/he can continue to live in the property. Housing allocated through the local authority's housing register may include nominations to housing association property, usually let on assured tenancies. However, some housing association tenancies may initially be assured shorthold tenancies (see below) known as starter tenancies
- **Assured Shorthold Tenancy (housing associations and private landlords):** An assured shorthold tenancy may be for a fixed period of time, and, as a minimum offers security of tenure for at least 6 months. It may not provide long-term security of tenure because the landlord can seek repossession by giving 2 months notice after 6 months or the end of the agreed fixed term. Some housing association tenancies may initially be assured shorthold tenancies where they are granted on a probationary basis (started tenancies) or on a temporary basis (as supported housing).
- **Non Secure Tenancy (local housing authorities):** Local housing authority accommodation is let under non-secure tenancies in specified circumstances, including when an authority sub lets accommodation they are leasing from another landlord, e.g. under schemes known as 'Private Sector Leasing'. Under these schemes, the local authority is the immediate landlord of the tenant. Non-secure tenancies cannot offer long-term security of tenure (and are usually used to provide temporary accommodation). The local authority can bring such a non-secure tenancy to an end by giving reasonable notice (usually 4 weeks) and of course, such 'PSL' tenancies must end when the head lease between the authority and the landlord expires.
- **Licence:** (only applies where the conditions for a tenancy do not exist e.g. in a hostel or hotel that offers non-self contained accommodation): Right of use but no tenancy rights. This is the

least secure option and provides very little security. Licences can generally be withdrawn with reasonable notice (which may be as little as a few days). However, it is possible to draw up conditions to the Licence but this does not extend as far as the rights provided for in the alternative options.

Funding

5.25 The social worker or personal adviser will need to be clear about how the accommodation will be paid for and how long the funding will last. A list of options is given below:

Welfare Benefits

- Indefinite Leave to Remain or Exceptional Leave to Remain for 4 years or more should bring entitlement to housing benefit as part of general benefits entitlement.
- Discretionary Leave or Humanitarian Protection brings entitlement to housing benefit for a time but rules out other forms of support such as NASS (see below). Having the appropriate original documents to provide proof of leave and clarity about the legal entitlement will prove important.
- If a young person applies in time to extend a period of temporary leave then benefit entitlement continues pending a decision and the outcome of any appeal. Again documentary proof is important. Job Centre Plus offices are unlikely to accept a solicitor's letter claiming that an application has been lodged on time.
- It will be a matter of local policy whether the needs of UASC and former relevant UASC are included in 'Supporting People' arrangements. In any event, those under 16 are not eligible for support under the Supporting People programme nor can the programme be used to pay for a service provided as a statutory entitlement.

National Asylum Support Service

5.26 UASC who are care leavers will only be entitled to NASS support if they have an outstanding asylum claim or appeal and no access to benefits. The Local Authority can currently claim up to £140 per week from NASS provided that the entitlement is properly established.

5.27 The social worker or personal adviser will also need to clarify the local position in respect of funding accommodation for this group from local authority funds. Given the limited funding available, where a Supporting People Team takes responsibility for housing one of these young people it would normally expect reimbursement for their service from the Leaving Care Team.

5.28 In these circumstances the ADSS recommends that the pathway plan

should not include accessing settled long-term accommodation unless a more permanent right to remain has been granted. It follows that a suitable form of temporary accommodation should be commissioned for most UASC who are care leavers. It would be good practice to develop a joint protocol with relevant housing authorities and the local housing benefit office to deal with these cases.

The Nationality Immigration and Asylum Act (NIAA) 2002

- 5.29 Depending on the immigration status of the young person Section 54 and Schedule 3 of the NIAA 2002 impacts on eligibility for leaving care support as well as a range of other benefits and rights. Home Office legal advice is that most former UASC will lose their automatic right to leaving care support as soon as they become 'appeal rights exhausted'. In practice for most former UASC this occurs when their application to extend their discretionary leave has had a negative decision and any appeal against that decision has upheld the decision.
- 5.30 The reasoning behind the Home Office legal advice is that asylum claims by minors do not meet the definition of 'asylum seeker' set out in the Immigration and Asylum Act 1999. In the second place because most UASC apply in country the fact that they have thus 'entered the UK unlawfully' will also impact on their right to leaving care support. However those UASC who apply at ports and who do not receive a decision until after they are 18 would continue to be supported according to this advice.
- 5.31 Local authority legal advice may differ from the Home Office opinion and before ending support for Schedule 3 reasons a Local Authority would have to consider if by doing so they would breach a young person's human rights. The Home Office is currently considering whether to issue statutory guidance that could help clarify matters both by setting out the issues and by strongly advising Local Authorities on what they are expected to do. The question is being addressed in a working party that includes local authorities and NGOs.

Understanding the Commissioning Strategy.

- 5.32 Given that numbers of new applications are falling, there is a tendency for specialist commissioning strategies to become less frequent and in consequence UASC are therefore made to fit placements and accommodation provision really intended for the rest of the UK care population. This practice should be challenged as placements and accommodation should be based on the individuals assessed need. Increasingly the ADSS and the Home Office have been recommending that individual Local Authorities should look for regional partnerships with each other that will allow the specialist knowledge of UASC needs to be used. If numbers of UASC continue to fall at current rates then the numbers of authorities in any partnership will have to increase to allow sufficient volume and duration of placements and accommodation.

Failure to do this will make the contracts less efficient.

5.33 The manager's task in developing a commissioning strategy for placements and accommodation is,

- To identify the different levels of support and need that must be provided for. This should also cover those with special needs and young women with children.
- To understand how the amount of accommodation in each level will change over time.
- Identify best practice in service provision at each level.
- To deploy identified resources to procure sufficient amounts of the right type of support at the right price.

This should provide a sound basis for the social workers and personal advisers to identify appropriate placements or accommodation for the young people they work with. It is not the same as matching an individual to a particular placement or accommodation, ensuring the best fit through selection and adjustment of support services, which remains the responsibility of the young person's social worker or personal adviser.

5.34 For UASC the Commissioning Strategy must take account of the increasing frequency with which UASC are likely to return to their country of origin. Currently most UASC are given leave until their 18th birthday, and usually apply to extend their leave. Whereas in the past there could be delay in settling such an application, IND now has an Active Review Policy and Process, significantly shortening the wait for a decision. Also in development is a policy that may return UASC before their 18th birthday. Those who only qualify for Discretionary Leave on the sole basis of age will be given a short period of leave e.g. 1 year or until their 18th birthday whichever is shorter. The expiry of leave will trigger an active review and as part of this the UASC will be considered for return to suitable arrangements in their country of origin.

5.35 In all cases the Local Authorities commissioning strategy needs to predict the general effects on volume and occupancy levels of accommodation appropriate for former relevant UASC, without pre-judging individual cases. The nature of additional support needs to be reviewed for these children who are facing major change and likely disappointment. The skills package of support workers needs to be suitable to engage in a transfer process. In some cases links with the reception arrangements in the country of origin may be indicated.

Sources of Placements

5.36 Appropriate accommodation could be provided by the public sector,

voluntary sector, Registered Social Landlords (RSLs) and the private sector. A commissioning strategy could make use of the strengths of each of those sectors in a cost-effective way that does not detract from service quality e.g. Landlord Accreditation Schemes. Such a strategy should provide for a range of units providing differing levels of support to reflect differing needs and the growing independence of young people. Joint commissioning on a regional basis – for example, through Asylum Seeker Services Consortia – would encourage stability and flexibility while supporting cost effectiveness. It should be possible to develop and retain the necessary specialist skills set.

- 5.37 While the statutory responsibility for individual children and their accommodation remains a duty of the individual Local Authority it may be necessary to place young people out of the area. The Local Authority must develop strategies for determining appropriate areas where there is access to statutory service provision, for example schools. It also needs to take account of the objectives of the broader regional housing strategies e.g. regeneration areas. In July 2005 the North West Consortium (East) launched a pilot strategy called the Safe Case Transfer project. This pilot is due to end in March 2006. As well as best value the project has secured an assurance with the ADSS that ensures that no UASC will be placed in their region without prior consent of the host authority. This approach to cross boundary placements is an example of best practice based on voluntary inter-authority agreements.

6 RETURNS

In this section the terms 'return' and 'removal' are used in the following way.

- 'Return' signifies a process whereby the asylum seeker has abandoned their claim or appeal in order to leave the UK.
- In the case of a voluntary return a negotiation will have take place with International Organisation of Migration to provide some assistance for the returnee in the other country.
- The term 'removal' applies to someone who remains in the UK until the Immigration Service takes removal action to send them back to their country of origin.

6.1 Each young person will experience return in their own way, though it is likely to be a frightening and uncertain time for any UASC or former UASC who is leaving the UK. It is equally likely that social workers will be unable to make return a satisfactory outcome in the eyes of a young person who has no choice other than to leave the UK.

The key IND decisions that affect a young person's future

6.2 This is a complex area. Difficulties faced by UASC in accessing sound legal advice and asylum determination processes that are not child centred can compound these complexities. The processes are not simple; however the key decisions are:

- The asylum decision, and although some young people do receive Indefinite Leave to Remain the decision to refuse asylum is usually accompanied with a fixed (short) period of leave to remain in the UK. The latter is subject to review by IND. The outcomes set as part of the pathway planning process will need to be reviewed in the light of this time frame.
- The IND active review decision will determine the duration of further leave if any is granted to the young person. It will also deal with any other outstanding applications or appeals.
- The lodging of appeals against a refusal in either decision also imposes a time frame, which can affect the support plans for young people, particularly for UASC who are care leavers aged 18 or over.
- Appeals are usually heard while the unsuccessful applicant remains in the UK – 'suspensive' appeals. Some will be heard after the person has been removed – 'non-suspensive appeals'. The criteria include the country of origin of the applicant and the duration of leave they have received if any (one year or less). At the time of writing the list of 'non-suspensive appeal' countries is as follows, Albania, Bangladesh, Bulgaria, Jamaica, Macedonia, Moldova, Romania, Serbia and

Montenegro and Sri Lanka.

The Contingency Planning tasks at the returns/removals stage

- 6.3 The aim of contingency planning is to best equip the young person for various outcomes of decisions, which are outside the control of the professional network. This planning process continues to be managed through the young person's pathway plan. Frequently by the later stages of the case there is an indication as to the most likely outcome. In continuing to help the young person the task of the professional network becomes one of planning how their needs will best be met given that outcome.
- 6.4 In planning for these young people social workers may experience a tension between permanency planning and the potential for return. However as part of the contingency planning process social workers will need to introduce and keep alive the possibility of return.
- 6.5 The decision about which asylum appeals and applications that a young person will make rests ultimately with the individual and their legal representative. Many UASC find it difficult to secure sound legal advice. Social workers cannot give legal advice but they should encourage and enable young people to maintain contact with their legal representative and ensure that their claim is progressing and any appeals are made within the legally prescribed time limits. The Refugee Council or Community Legal Services may be able to offer advice to social workers seeking legal representation for UASC and the Refugee Legal Centre and the Immigration Advisory Service provide free legal advice.
- 6.6 As well as being aware of the processes and the timetable for decisions, professionals may find it helpful to be familiar with decisions in a statistical sense. IND decisions are published at www.homeoffice.gov.uk Trends and statistics may provide a useful guide, but it is important to bear in mind that they change and become outdated. Although decisions on asylum applications are always made on the individual circumstances of the applicant, patterns sometimes emerge in relation to particular countries; see www.biduk.org and www.aviddetention.org.uk for relevant information. Social workers may suggest that the young person discusses the likelihood of receiving leave to remain with their legal representative.
- 6.7 Some young people will not have been granted leave and will not have appealed this refusal of their asylum application. They are in fact in the UK unlawfully. If you encounter such a young person it is strongly recommended that they should be encouraged to contact IND via their legal representative. Failure to do so can also have serious implications for them as they turn 18.

The Asylum and Immigration Processes

6.8 The most common types of applications are the asylum application and subsequent appeal, or appeals where an application to extend a period of leave has been refused. However there are also other types of application and it is important to understand something about them. These types of application are known in the Home Office as 'general applications' and with UASC take the form of an application to extend a period of discretionary leave.

The Asylum Application

6.9 IND aims to give a decision on an asylum application within 2 months. As well as determining whether the claim meets the threshold for asylum status, the process will also consider whether humanitarian protection should be offered on human rights grounds.

6.10 UASC who apply very close to their 18th birthday may not follow the above process within the 2 months timetable. In these cases decisions and appeals will be deferred until the young person achieves adult status. It is worth noting that in these cases the UASC turning 18 may not qualify as a "former relevant child", due to the 13-week rule. Depending on their care status they may be 'qualifying children', and eligible for advice, assistance and befriending under S24 of the Children Act.

6.11 Negative decisions on UASC applications are usually accompanied by a grant of discretionary leave. The duration varies according to the age and/or nationality of the applicant. Some UASC granted leave have not appealed against the rejection of their claim for asylum. They have waited instead to make a fresh application to extend their leave later in the process. Where young people do have a right of appeal social workers should encourage them to discuss this with their legal representative.

6.12 The question of whether or not the young person can appeal is dependent on other important factors.

- An appeal must be made within 10 days of the decision notice.
- The length of leave granted affects the right of appeal. One year or less confers no automatic right of appeal.

6.13 If a UASC does make an appeal against the rejection of the asylum claim, immigration judges from the Lord Chancellors Department (Asylum and Immigration Tribunal) will hear it. The target for appeal outcomes is 4 months. In some cases there is a right to have this reviewed by the Tribunal and possibly by a judge in chambers.

General Applications

- 6.14 If a UASC has been granted a period of Discretionary Leave (or Humanitarian Protection) they may make an application to extend it. In practice the application may review the grounds for asylum or humanitarian protection and add additional factors not covered in the original (rejected) application. In considering the grounds for extending leave IND may decide that they amount to a fresh asylum application. This has implications for how the application will be dealt with.
- 6.15 The Active Review Unit will consider general applications from UASC and former UASC.
- 6.16 Rejections of applications to extend leave can be made the subject of an appeal, in the same way as the rejection of an asylum application.
- 6.17 Young people who have leave, or are applying to extend leave or are appealing a decision not to extend are entitled to state benefit pending the decision or appeal outcome that will end their leave. Social workers should encourage young people to take up these benefits. It is important to keep all original letters from IND particularly those which inform the young person that they have been granted Discretionary Leave or confirm receipt of applications for extension of leave.

Returns and Under 18's

- 6.18 The UK Government has begun to consider the return of UASC who are under 18 years old. This raises a whole set of welfare issues and should this practice evolve, separate and detailed guidance, compiled by a multi-agency forum, will be required.
- 6.19 It is likely in future that periods of leave granted to UASC will end before their 18th birthday. It is strongly recommended that the statutory review of their care or pathway plan should be timed to precede the ending of their leave. The plan can then take account of the informed choices that a young person makes in the context of Government policy.

Voluntary return

- 6.20 If a young person has to leave the UK the preferred option would be to do so voluntarily. It is likely that voluntary return will be a durable solution and it enables the young person to remain within the law, thus keeping open the possibility of return to the UK in the future. It also enables young people to be actively involved in the planning and preparation for return and there would be no risk that they would abscond or disappear into a setting where they could be exposed to danger and exploitation. However social workers need to be assured that there are no concerns in relation to child protection should a UASC choose to return voluntarily to their country. For example, it would be inappropriate for a child who has been trafficked into the UK to return home, whether voluntarily or

forcibly without adequate safeguards being in place to prevent re-trafficking.

6.21 Returning voluntarily to the country of origin under the International Organisation of Migration's (IOM) Voluntary Assisted Return and Reintegration Programme (VARRP) is possible at any stage in the asylum process even if the young person is held in detention. When the VARRP application is submitted to IOM the asylum application with the Home Office will be temporarily suspended for up to three months. The Home Office decides whether a VARRP applicant is suitable for return under the programme. The Home Office may use the information provided on the VARRP application form now or in the future in the normal course of their duties. The applicant could cancel their application to return under the programme at any time prior to departure. In this case the asylum application will become active again. Assistance is given to applicants to obtain travel documentation, organise flights, and IOM will assist at departure and provide transit and arrival assistance. IOM can also support the returnee in the home country in activities aimed at reintegration: education, training or establishing a small business. If a UASC has any other reintegration needs, appropriate assistance can be discussed with IOM. More detailed information is available on www.iomlondon.org

6.22 IOM works in close partnership with a number of agencies, the 'Choices' project operated by Refugee Action, 'Options' operated by YMCA in Glasgow, North of England Refugee Service, Safe Haven Yorkshire and Wolverhampton Asylum Seeker and Refugee Services (contact details for these organisations can be found on IOM's website). These agencies can provide independent and impartial information and advice to enable individuals to make an informed decision on whether to return to their country of origin or remain in the UK. In cooperation with the responsible social worker, partner agency, UNHCR and local NGO's in the country of origin IOM will ensure that the return of the UASC is in their best interest and they will be placed safely with their family or an appropriate institution. Social workers should be aware of the range of services available from the partners and IOM, so that they can refer UASC who wish to discuss the option of voluntary return. If a person claims to be under 18 but has been age assessed by Social Services or the Home Office and has been classified as an adult, they will still be treated as an UASC unless they are stating a different age to IOM.

Returns, removals and young adults

6.23 The removal of UASC who have turned 18 is beginning to occur and the number of young people being returned is likely to go up. Many UASC in this situation are also "former relevant children" and as such personal advisers need to be aware of the immigration status of the young people they are working with and give this consideration in the pathway plan.

6.24 As well as understanding the asylum and immigration processes set out

above, the restriction of rights for failed asylum seekers and others also needs to be considered. It is worth remembering that in terms of the legislation the responsibility for ensuring that support can legitimately be given to a former UASC rests with the Local Authority. Furthermore the Local Authority must inform IND if they are supporting someone who may be disqualified from Children Act support (Nationality, Immigration and Asylum Act 2002 – Schedule 3 Section 14 (1)).

Planning for former relevant children during returns and removals

6.25 In some cases the former relevant child continues to explore legal avenues to review their asylum or human rights claims. During this process the social worker needs to ensure that the young person doesn't lose sight of the possibility of return to their country of origin. In practice there are a few scenarios surrounding a young person leaving the UK, depending on whether they return home on a voluntary basis or leave the UK through a forced removal.

- The young person opts for a voluntary return through the services provided by IOM.
- If the young person has not opted for a voluntary return they may be the subject of an enforced removal. Social workers should support young people to co-operate with the removal process, as this is likely to be less traumatic and will enable the young person to contribute to the planning.
- It is likely that if a former UASC is to be forcibly removed they will be held in detention prior to removal. In such instances the social worker may have time to contact the detention establishment and arrange a final visit in which to say goodbye and hand over their possessions. If they feel a mistake may have been made or the young person is particularly vulnerable the social worker should assist the young person to contact their legal representative, a voluntary agency, an independent advocacy service if possible, or somebody within their community who may be able to initiate contact with somebody who can intervene in the process, e.g. an M.P.
- Should the young person choose to avoid return and disappear the social worker should notify the National Register of Unaccompanied Children and follow their local authority's established missing person's protocol. The local authority will need to assess the feasibility of storing the young person's belongings.

6.26 The maps attached at Appendix 2 show the immigration status options facing UASC (and the authorities which care for them) as they approach their 18th birthdays.

Removal

6.27 Removal Directions will be set for young people, aged 18 or more whose leave has expired, and other outstanding applications have been dealt with. Legally Local Authorities will no longer be able to support them unless they have made an assessment that by withdrawing support they would be in breach of the young person's human rights (though see 2.5 above). A young person who has reached 18, and has exhausted his/her options for claiming leave will be unable to:

- Work.
- Claim benefit of any kind.
- Participate in further or higher education.
- Stay in public housing.
- Receive NASS support.

In practice, it is sometimes the case that young people are notified that they have no rights to stay but removal directions are not issued immediately.

6.28 Where young people do not comply with Removal Directions, it is government policy to enforce the notice. At present these provisions only apply to 18-year-olds and over, but the possibility of their application to younger UASC whose leave has expired is being explored.

6.29 The implications of all this for contingency have been discussed above. Leaving Care services also need to be clear about their Local Authorities policy towards UASC left destitute after their 18th birthday.

The Protocol-IND Processes and liaison with Local Authorities

6.30 As with other complex processes co-operation between statutory agencies is crucial. Some of the most important aspects of the process have been set out here in a specimen protocol. There are three important phases to note, IND Casework, Border Controls and Local Enforcement Offices. The Protocol is designed to ensure the local authority is able to track the progress of any application to extend expired leave or any other matter. It will cover both applications and appeals. The Protocol also outlines how IND deals with cases at the end of the process.

This process moves between IND casework units and the Immigration Service (see Appendix 3) on the structure and function of IND.

- The decision on all outstanding matters at the end of a period of leave is dealt with by the specialist children's casework units (see 6.31 – 6.34 below).
- If the decision is negative they will pass the case to the presenting

officers who prepare the IND case for the appeal adjudicators.

- If the appeal is allowed or a further grant of leave is recommended the case returns to the specialist team.
- If the appeal is not allowed the case will pass to a central unit in the Immigration Service (see 6.35 below).
- In the event that all necessary processes have been followed the case is passed to a local enforcement office for removal action (see 6.36 – 6.38 below).

IND Casework

6.31 The young person will be offered a chance to present their case to the decision maker in the form of an interview. If they are under 18 it is possible for them to be accompanied by someone who will support them in addition to their legal representative. However there is a strong expectation that any such support person will focus on the immediate welfare of the young person throughout the interview. The interviewing officer is responsible for setting out how the interview will be conducted and the ground rules for those involved are defined in an Interview Protocol and the Role of the Responsible Adult leaflet.

6.32 It is always important and is especially so at this time that UASC preserve any letters submitted to or received from IND. As well as helping the young person the documents will help clarify the powers, duties and funding sources for the local authority.

6.33 IND letters giving negative decisions do not assume that a timely appeal has or will have been made. They will thus include a statement to the effect that the person is required to leave the UK. If a timely appeal is lodged or a fresh application made this requirement is in abeyance pending the outcomes unless the application is certified and the appeal is non-suspensive (see 6.2 above).

6.34 Once an appeal outcome is known it may affect the rights of the young person. If it is negative both right to benefits and to leaving care support may be ended if they are considered to be in the country unlawfully (see 2.5 above). The Home Office is preparing further guidance on this point.

Border Controls

6.35 Once all outstanding matters have been dealt with the case and file will be transferred from IND Casework to the Immigration Service Border Control section. A central unit will check all details before passing the case to a Local Enforcement Office. Negotiations are underway with the central unit to verify their records with any local authority involved as well as with the central IND computer. This will assist the local authority by informing them of the transfer of the case to its final phase.

Local Enforcement Offices

- 6.36 The job of the Local Enforcement Office (LEO) is to enforce Immigration legislation and policy in local areas. Sometimes Local Authorities encounter these offices as asylum seekers enter the UK and are discovered by one of the statutory agencies before they have applied for asylum.
- 6.37 Towards the end of the process the LEO's main tasks are to maintain contact with the unsuccessful asylum seeker through reporting requirements. If they believe that a person is in the country unlawfully they are likely to be detained forthwith pending removal (see 6.25 above). If this is not the case they will issue Removals Directions at the appropriate time giving a date for the person to leave the UK. From the given date the local authority's power and duty to support the young person is ended. They are known as a 'failed asylum seeker'.
- 6.38 Local Authorities who routinely support UASC, and LEO's should develop systems to enable communication between each other. In this way both agencies can ensure that young people are correctly identified thus minimising removals based on incorrect information. Where young people are nearing the end of the process it will enable them to prepare better, and where their agreement can be won to forestall detention by co-operating in the process of leaving the UK. Social workers and personal advisers would be placed in an uncomfortable and hence inappropriate position, if they were informed in advance of the removal date of UASC. However a good relationship between agencies should allow for some negotiation in the period pending removal, for example arranging that the young person has all their personal possessions with them.

GLOSSARY

A

Accommodated

The status of a child whose housing and other daily needs are provided by the Local Authority under the 1989 Children Act provisions. An accommodated child is also known as a looked after child (LAC) and there are a range of duties and standards of care set out under regulation. Some duties continue after the child turns 18.

Accommodation

This is both a common sense term for housing, or housing plus services, and a special term defined by duties to children set out in Section 20. Accommodation is a more generic term than 'in care'. Children are the subjects of Care Orders under Section 31 of the 1989 Children Act where there has been evidence that they face a likelihood of significant harm. In such instances the Local Authority has applied for a care order to share full parental responsibility regarding the child and to determine where the child should live. Whereas an 'accommodated' child under Section 20 of the 1989 Children Act is a young person looked after by the Local Authority with the agreement of their parents. Young people aged over 16 can consent to being accommodated by the Local Authority, and, also, the Local Authority would have a duty to provide accommodation to children who appear to be lost or abandoned.

The Hillingdon Judgment ruled that as UASC enter the country without adults to take responsibility for their care their circumstances are such that usually a Local Authority's assessment would presume that they would need to be accommodated. After 13 weeks these young people would gain entitlement to leaving care services as 'eligible' care leavers

The provision of 'accommodation' does not imply that a Local Authority has assumed parental responsibility for a young person. Both children subject to 'care orders' or 'accommodated' children are commonly referred to as being 'in public care'.

Active Review

A policy adopted by IND, which takes a proactive approach to reviewing UASC cases for extended leave to remain.

Administrative non-compliance

A category of refusal for an asylum application. This can be a major reason for UASC refusals, for example, if they do not return required forms in time.

Age Determination

IND's power to look into and determine the age of an asylum-seeker for

the purposes of determining his/her entitlement to welfare support under the Immigration and Asylum Act 1999, Section 94 Subsection 7. This process requires decisions to be made quickly. It is open to challenge either by submitting further proof direct to IND or in the case of children the professional assessment of a local authority.

Age Disputed

A category of asylum-seeker recorded on the IND database. It implies that someone has claimed to be a child but is being treated as an adult by IND.

Application

The declaration made by an asylum-seeker to IND that they wish to be protected by the UK Government and remain in the UK. It is a process and at the early stages may only involve disclosure of basic details, whereas later it may include details of alleged persecution etc.

Application Registration Card (ARC)

A new system of 'smart cards' issued to asylum applicants. They contain a photo and a 'chip' on which there are further identifying details, which can only be read with special equipment. They are increasingly the main form of proof of identity for asylum-seekers.

Asylum Screening Unit (ASU)

Asylum-seekers who have not declared at port of entry are likely to have their initial contact with a Screening Unit. The best known is Croydon but there are others, for example Liverpool. They are generally part of the Immigration Service (see below).

Asylum

A general term for the protection offered by the UK to people who are found to be at risk for a 1951 UN Convention reason and who cannot find the protection they need from their own state authorities.

Asylum Casework Directorate (ACD)

ACD is made up of teams of caseworkers who will make asylum decisions on applications and ensure the communication of the decisions to those entitled to know. There are specially trained teams who deal with applications from children. ACD has agreed to communicate with relevant local authorities about UASC decisions and to deal with their queries through the Central Point of Contact.

B

'Belonging'

Is the term used to define which Local Authority has responsibility. See also 'Local Connection' and 'Ordinary Residence'.

C

Caseworker (or Senior Caseworker).

A member of the ACD (see above), trained and skilled in decisions about refugee status, humanitarian protection etc. They will gather the information relevant to an application and make the initial decision.

Central Point of Contact

A special IND unit in Croydon which has been set up to assist local authorities who need information on individual cases. There is a telephone number dedicated to enquiries about UASCs. As confidential information is being shared, users need to be registered as *bona fide* representatives of a local authority with a need to know.

Certified

In some cases an application may be dealt with via a shortened procedure. In some cases where an application has a negative decision IND may consider that there is so little risk of persecution in the country of origin that it would be safe to return the person to that country and allow them to pursue any appeal from outside the UK. This is also known as a non suspensive appeal i.e. other appeals suspend the removal process but this appeal does not.

Convention (on Refugees)

The UN Convention, which describes the particular circumstances, which qualify someone for refugee status as opposed to other protection, needs which an asylum-seeker may have (United Nations 1951). *Not to be confused with the UN Convention on the Rights of the Child 1989.*

Courier

An adult, who accompanies the child/young person to the UK, but takes no further responsibility for them. They may or may not be paid, and/or involved in smuggling or trafficking (*q.v.*).

D

Discretionary Leave (DL)

A time-limited permission for asylum-seekers to remain in the UK despite the fact that they have not established that they are refugees nor that they require humanitarian protection. UASC may be given DL since they cannot be returned as children. In the case of adults the leave is subject to thorough review at 3 years. For most UASC the review is at 3 years or 18th birthday whichever is the sooner.

E

Eligible Child

A child aged 16-17 and who has been looked after for at least 13 weeks

(which do not have to be consecutive) since the age of 14, who has been looked after following their 16th birthday and remains in care.

Exceptional Leave to Enter and/or Remain. (ELR)

The legal permission which may in the past have been granted to an asylum-seeker who has not established that s/he should be considered to be a refugee but nevertheless needs to remain in the UK. Some UASC may be granted ELR because of serious humanitarian needs; but others, who would be returned if they were adults, may have received ELR up to their 18th birthday. The ELR policy has been replaced by the Humanitarian and Discretionary Leave policy.

F

Framework for Assessment

Guidance produced by the DoH, DfES and the Home Office under Section 7 of the Local Authority Social Services Act 1970, which provides a systematic way of analysing, understanding and recording information about children in need and their families and carers. Use of the framework is not laid down in statute, and it does not have the force of law, but unless there are exceptional reasons, Local Authorities are required to follow this framework.

Former relevant child

A young person aged 18+ with a continuing entitlement to support as a care leaver from their responsible local authority. Former relevant children will have previously been eligible or relevant.

G

Grant

Local authorities assisting UASC can claim a grant payment from IND for any UASC they are supporting under their 1989 Children Act duties. The grant is paid for specific expenses only and applies to under 18's. Local Authorities service developments, which help ensure IND processes are completed efficiently, or which are more efficient in cost terms, may be put to IND as bids for special grant funding.

H

Hillingdon Judgment

The result of a judicial review in respect of Hillingdon's treatment of UASC previously cared for by them under Section 17 of the 1989 Children Act. The judge found that the complainants (and by implication, many other children in the same situation) had been *de facto* 'Looked after', and were therefore 'former relevant children' for the purposes of Section 23c of the

Children (Leaving Care) Act 2000. This meant that they were entitled to a range of care leavers' services specified under this Act.

Humanitarian Protection

Asylum-seekers who do not qualify as refugees, (e.g. because their persecution is not due to religious or political affiliation), may nevertheless need protection from life threatening situations, or inhuman or degrading treatment. If their own government is unable or unwilling to protect them, the UK government may accept a duty to. This is new policy development.

Human Rights Act

The Human Rights Act sets out the different grounds on which someone may be entitled to take action against a government agency for the treatment they have received:

- Article 2 is the right to life.
- Article 3 concerns the rights to have one's life protected free from torture (see, Humanitarian Protection).
- Article 8 gives rights to personal and family life.

I

Immigration and Nationality Department (IND) of the Home Office

IND contains all the Home Office services, which relate to immigrants to the UK. The main directorates concerned with decisions in asylum cases are the Immigration Service, the Asylum Casework Directorate and the National Asylum Support Service.

Immigration Service

This directorate of IND deals with people entering the UK or with those who should leave on the expiry of their leave to remain. Its officials screen applicants at ports or in screening units and issue necessary documents pending decisions on the application. Asylum cases are usually transferred quickly to the Asylum Casework Directorate (see above).

Indefinite Leave to Remain (ILR)

This leave entitles the individual to settle in the UK and is granted to those recognised as refugees.

Information Note

A general summary of the arrangements for dealing with UASC published by IND in August 2002 now under revision.

Integrated Children's System

A new system based on the Framework for Assessment of Children in Need and their Families. It provides a common framework for recording assessment, planning intervention, and review of children in need and their families, including looked after children and care leavers. It will be introduced in all Local Authorities from January 2006.

Interview (also known as substantive interview)

In the past UASC were not interviewed by asylum caseworkers, but a new policy is being developed which will require UASC to attend for interview. This is in response to the principle that the voice of the child must be heard, and also helps to meet the requirements for due legal process. Failure to attend may lead to a negative decision for administrative non-compliance (*q.v.*).

IOM

International Organisation of Migration, which makes arrangements for the voluntary return of minors, in collaboration with the Home Office.

J

Judicial Review.

A legal mechanism by which statutory agencies (among others) may be challenged on how they have applied their processes or interpreted or applied the law relating to their legal duties. In some cases, a Judicial Review may apply only in very special circumstances; in others it may have a more general application.

L

Local connection

The principles against which local authorities determine which authority has a duty to assess an applicant's housing needs.

Looked After Children (LAC)

Children for whom their Local Authority has day-to-day responsibility for their care (see 'Accommodation' above). All children looked after will have a care plan based on a detailed assessment of their needs, which will include arrangements as to where they should live, how their education and health needs will be met and short, medium and long term plans for their futures. The care planning process must take account of the wishes and feelings of children and young people and of their parents. The care plan replaces the pathway plan when looked after children reach the age of 16, at which point they may be referred to as 'eligible' care leavers.

N

National Asylum Support Service (NASS)

A Home Office Agency set up to find and manage accommodation and other support for destitute asylum-seekers. NASS does not offer support to UASC, but there are a number of points where the Service's work

interfaces with Local Authorities working with UASC: the design and management of the UASC grant, transfer arrangements at 18 and UASC who may subsequently be discovered to have friends or relatives willing to care for them and who are receiving support from NASS.

NGOs

Non-Governmental Organizations.

O

Ordinary Residence

Ordinary Residence is the term used in the Children Act 1989 Section 30 to ascribe responsibility to a particular area's children's services. The assumption is that there will be no doubt in the vast majority of cases. Another principle of the Act not stated in the Section, is that the Local Authority where a child happens to be will respond to urgent needs in default of anyone else. The section invites local authorities to prevent or resolve disputes by voluntary agreement.

P

Protection of Children Act 1999 (PoCA)

This Act amended and extended the law regulating the employment of people working with children. It requires childcare organizations to check applications with the Criminal Records Bureau.

R

Refugee

See Convention.

Relevant child

A child who is aged 16-17 who has been looked after for at least 13 weeks since the age of 14, has been looked after following their 16th birthday and has then left care is referred to in the Children (Leaving Care) Act 2000 as a relevant child. Relevant children therefore will have been eligible. Children leave care where (a) a Court discharges a Care Order; (b) where they are accommodated the parents discharge them from care; or (c) where they are accommodated, a statutory review of their care/pathway plan recommends that they no longer require to remain accommodated in order to meet their needs (as assessed and recorded in the pathway plan). The recommendations of statutory reviews must take account of the wishes of young people and their families.

Removal Directions

The determination by IND that the young person has no further valid claim preventing their compulsory return to their country of origin. A date will be set for his/her removal.

S

Section 20 (1989) Children Act

See 'Accommodation' above.

Safe Case Transfer

A voluntary arrangement between local authorities to transfer the responsibility for a particular child who is likely to live for a significant period in the host authority area and needs to be included in their local partnership plans for local children.

Self-Evaluation Form (SEF)

A form issued to children applying for asylum and who to date would not have received a 'substantive' interview. Forms need to be completed and returned to IND within 28days.

Smuggling

Smuggling is the transport of a person (with their consent) to another country through illegal means. The vast majority of people entering the UK unlawfully are smuggled rather than trafficked (see Trafficking below). People smuggling is the facilitation of illegal entry, in breach of immigration law, either clandestinely or through deception or the use of false documentation. In this sense 'smuggling' refers to the illegal transport of a person or persons across state borders, which results in a benefit for the smuggler. It follows that the person smuggled will be complicit, often paying large amounts of money to be transported, and once in the country they wish to enter will be left to their own devices.

Supporting People

A programme that funds the provision of housing-related support services for vulnerable people, to enable them to maintain or improve their ability to live independently. The programme is administered at the local level, with top-tier local authorities commissioning appropriate services to reflect local needs and priorities.

T

Trafficking

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime (2000) to which the UK is a signatory, includes a comprehensive and widely accepted definition of trafficking, which involves three core elements:

- Movement of a person.
- With deception or coercion.
- Into a situation of exploitation.

In practice, it may be quite difficult to make an initial distinction between smuggling (See Smuggling above) and trafficking. In some cases, young people may think that they are being smuggled, but are in fact, unknown to them, being trafficked. Equally, trafficking often does include an element of smuggling, namely the illicit crossing of a border. However, there are also elements of trafficking *within* a country as the traffickers move victims between locations and sometimes sell them to another organisation.

U

Unaccompanied Asylum-Seeking Child (UASC)

A child who is or appears to be under the legal age of majority (18 in the UK), and on arrival in the UK is not accompanied by a parent, guardian, or other adult who by law or custom is responsible for him/her and who claims asylum. Children in this situation are also known as separated children, unaccompanied minors or 'UAM'.

UNCRC

United Nations Convention on the Rights of the Child.

UNHCR

United Nations High Commissioner for Refugees.

V

Voluntary Assisted Return and Reintegration Programme.

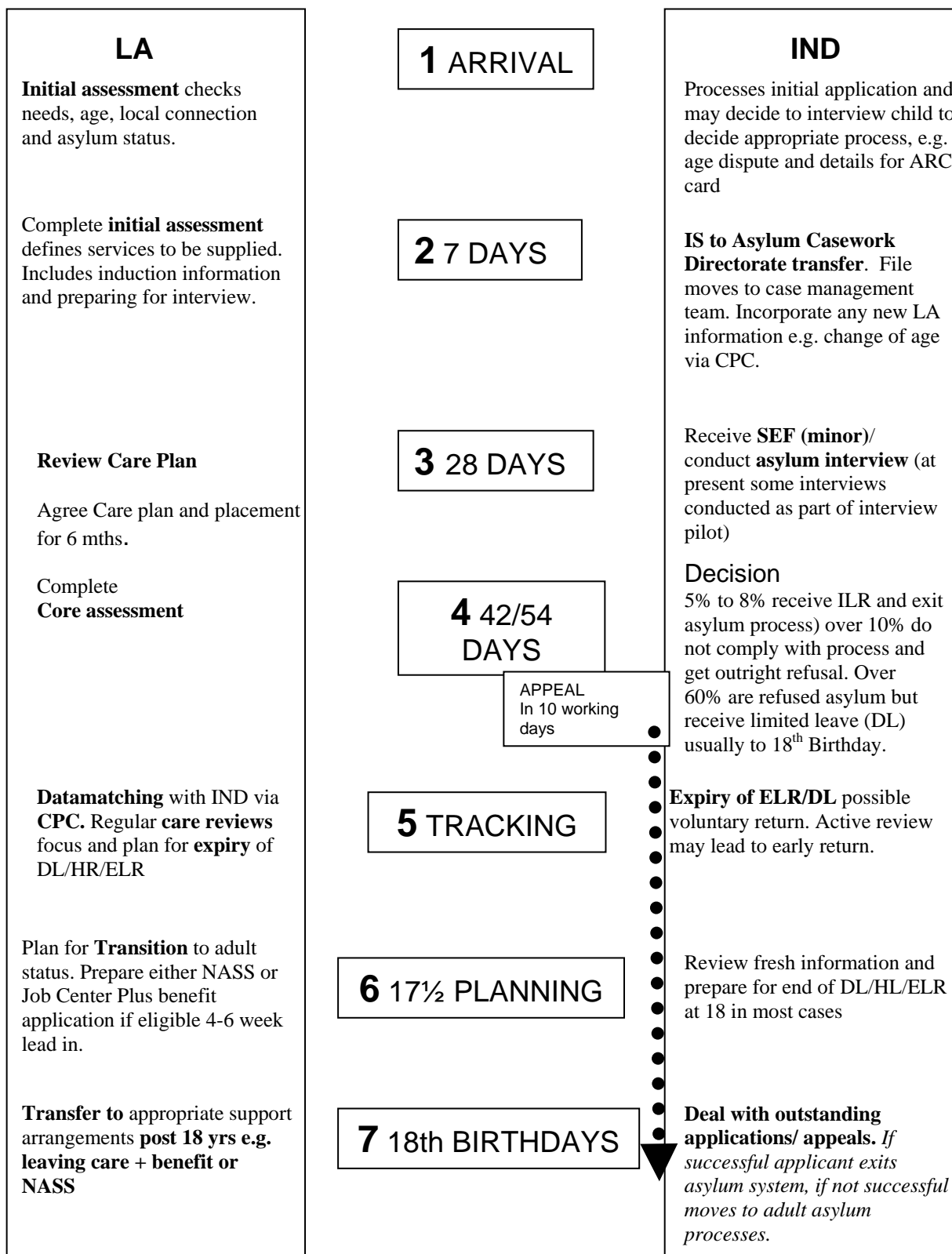
A programme run by IOM (*q.v.*), which is available at any stage in the asylum process, unless removal directions have been set or the person has been detained.

Voluntary Departure

The assistance to prepare and leave the country given to unsuccessful asylum seekers who have run out of options to remain, are required to leave the UK and actively comply with the requirement to leave.

STAGES 1

NB. This is a highly schematic representation. It is not to be taken as a comprehensive account of all the possible IND process paths.



NB Page 2 deals with returns and removals as if they tend to occur post 18. However this will not continue to be the case as more under 18's opt for voluntary assisted returns and may be returned if suitable arrangements are made in the country of origin.

STAGES 2

POST 18 Processes for Former UASC

LA		IND
<p>Continued Support S20/leaving care (LC) OR S17/Connexions NASS/Benefit/LC only Check continuing legality of LA Support.</p>	<p>8 Dealing with further or outstanding applications/appeals</p>	<p>Actively review applications (target not yet formally decided) Identify “end of process” cases. Information passed to IS. Decide on applications for NASS funding including S55 decision.</p>
<p>Pathway Plan</p> <p>(LA or Connexions) manages integration if successful or preparation for voluntary or managed return if not.</p>	<p>9 Returns/removals A) Decisions “Is unsuccessful at all stages or hasn’t complied with requirements”</p>	<p>Removals Directions If appropriate prepare and serve on former UASC (copy to LA) giving date to quit UK. RD’s reduce options for assisted return</p>
<p>LA Continue only if Assisted return OR Voluntary return by due date. NB Must be agreed with IS. OR Due date passes without compliance End of LA power and duty IS take steps to bring about removal</p>	<p>10 Returns/Removals B) Process</p>	<p>Removals Directions monitored and continue to apply i.e. no further valid claim preventing removal. File passed for action ASAP after due date.</p>

IND FUNCTIONS

There are separate directorates within IND with different functions. Communication for external agencies can be difficult through lack of understanding of these differences, for this reason Local Authorities have been provided with a special helpline known as the Central Point of Contact or Local Authority coms.

THE IMMIGRATION SERVICE (IS)

The main functions of this service are border control, detention, enforcement and immigration crime investigations. In practice with UASC social workers and NGO staff will encounter IS most often as young people enter or leave the UK. The volume of work at points of entry or application means that cases are moved on within a few days. Queries made directly to the port or screening unit can meet with delays while they catch up with the case file.

PORTS

People without rights of residence in the UK must gain permission to enter and this decision rests with an Immigration Officer at the port of entry. If someone declares themselves to be an asylum seeker at the port then the initial parts of the process will be carried out there. However in complex matters an applicant may be required to return or to attend an Asylum Screening Unit for a screening interview.

SCREENING UNIT

These are large offices where people who have already entered the UK without contacting the immigration service may apply for asylum. There are two main units at Croydon and Liverpool. There is a smaller unit in Solihull. The staff in these units will have received special training in screening UASC. In some UASC cases the screening can be a formality but it can also include interviews where necessary.

SCREENING INTERVIEW

In the past UASC were not screened by interview in any depth. This was because immigration staff had not been trained in working with children. Unfortunately important information about the child's background was being lost as a result and this resulted in delays later in the process. IS staff have now received this training and set up a child friendly process. A young person undergoing such an interview is enabled to give a fuller account of how and why they came to the UK. Better asylum decisions should result allowing faster integration or return.

STATEMENT OF EVIDENCE FORM

As part of the entry process the Immigration Service will issue a young person with a statement of evidence form (SEF). It must be completed and returned

within 28 days or the application may be considered invalid. In the past this was the only way in which a UASC asylum application was evaluated. Compliance with the procedure was poor and the rate of successful applications for UASC was low as a result.

LOCAL ENFORCEMENT OFFICE

Each area in the UK has a LEO. Staff in these offices may encounter people who have entered the UK unlawfully and come to the attention of the authorities before they have claimed asylum. However these offices have other functions. Asylum seekers, though not UASC, may be required to report regularly to a LEO. These offices will also be charged with arranging the returns of those who volunteer to leave or the removals of those who do not.

ASYLUM CASEWORK DIRECTORATE

The next stage in the process is managed by IND caseworkers. They will take over responsibility within a few days of screening. Their duties include collecting and evaluating information relevant to asylum applications. In the case of UASC this will include the self-assessment form and information about the country of origin and the political, religious, racial and cultural considerations that have led to the claim.

Special teams deal with UASC cases because there are various concessions given to lone children, e.g. exemption from detention and restricted removals, which need to be considered. The special teams will track the UASC case to final outcome.

ASYLUM INTERVIEW (SUBSTANTIVE INTERVIEW)

As compliance with the SEF requirement is generally poor, special arrangements have been made to set up a child friendly interviewing system. An initial pilot study was carried out in 2003 and a further pilot is planned for 2005.

ASYLUM DECISION

Decisions are now delivered much more quickly than in the past, generally within 2 months. In the case of an application by someone under 18 the decision may be accompanied by a grant of leave (described elsewhere). UASC are generally not given an outright refusal unless they have turned 18 or have been reunited with adult relatives with whom they might be removed. In the case of 18 year olds they need to appeal within a very short period of the outright refusal or they may lose any right to ongoing 'leaving care' services.

APPEALS

The IND case is handled by presenting officers, though independent legally trained adjudicators hear the appeal. Some appeals are heard with the applicant in the UK. They are known as suspensive appeals (i.e. the removal

is suspended). If leave is for 1 year or less and the applicant is from a non-suspensive appeal (NSA) country the appeal may be heard after their removal.

In the past many UASC have not appealed but preferred to wait out their period of leave and apply to extend it. Refusal to extend also carries appeal rights. While this extended their stay in the UK it carried risks if a changing situation in their country of origin or their adult's status made them more removable.

A Tribunal may review appeal outcomes and if appropriate a judge may review the papers. These processes are relatively quick.

APPLICATIONS TO EXTEND LEAVE

Delays in deciding on applications to extend leave are a thing of the past with the setting up of an Active Review Team. At the end of a period of leave this team, which includes specialists in children's casework, will deal with any outstanding applications very quickly. Where appeal rights exist they are also being dealt with quickly.

Once there is a final decision the case will pass on quickly to full integration if ILR has been granted, back to the Immigration Service if the appeal has not been allowed. In the rare event that a further period of restricted leave has been given the case remains with the active review team.

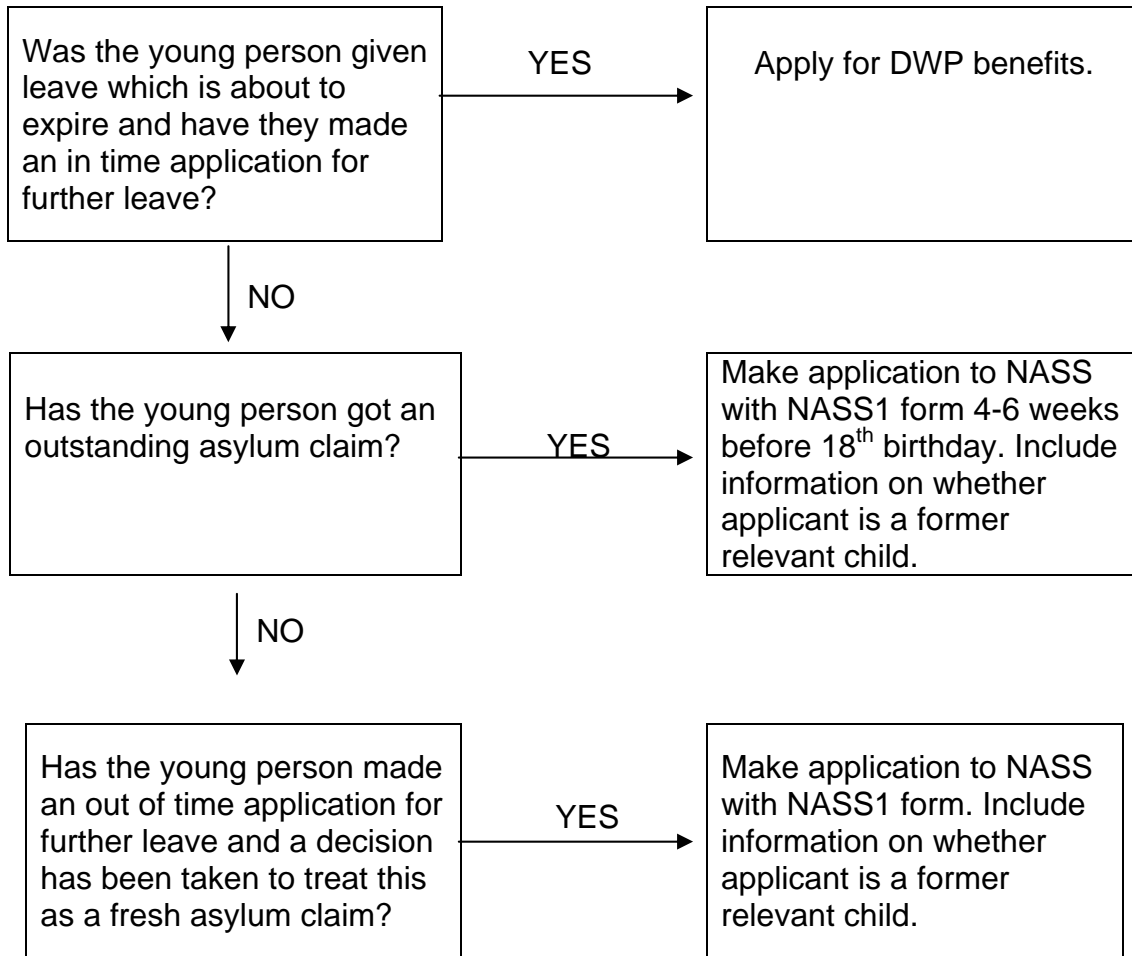
NATIONAL ASYLUM SUPPORT SERVICE (NASS)

NASS has a statutory duty to provide support to asylum seekers who are aged 18 or more. This can include family units containing children. NASS also manage a special grant for local authorities providing UASC services. It does not manage the services or dictate how they should be run. In practice contact with NASS concerning UASC involves queries about grant eligibility, change of status to adult or dependant child, or queries about restrictions placed on access to services by immigration legislation.

ASYLUM POLICY CHILDREN AND FAMILIES UNIT

This unit develops policies about how all aspects of a child's asylum case should be handled. It also considers the interface between IND and other statutory services charged with safeguarding and promoting the welfare of children. The unit produced an Information Note giving much more detail of the functions and policies set out above. It is currently being reviewed.

FLOW CHART SHOWING SUPPORT OPTIONS WHEN UASC REACH 18



Please always refer to the detailed information about these scenarios as set out in previous sections of this policy bulletin.

TRAINING AND WORKFORCE DEVELOPMENT

This list is not exhaustive and is merely a starting point; however training should cover as many of the following components as is possible:

- Understanding equalities, diversity and anti-discriminatory practice
- Child protection procedures
- How to involve children/young people in making informed choices, in the context of their country of origin and their experience of exile
- How to work effectively with interpreters
- The importance of observational and non-verbal communication skills
- The context and complexities of attempting to assess age
- How to assess independent living skills
- How to recognise and work with child victims of trafficking, prostitution and other forms of commercial exploitation
- Understanding and resolving the challenges in building trusting relationships with children/young people from different cultures
- Understanding of dynamics of mixed groups of children/young people
- Understanding of the impact on UASC of separation, loss, pain, bereavement (and cultural variations)
- Awareness raising about the importance of attachments for displaced children
- Awareness raising of symptoms of mental distress – depression, post-traumatic stress, etc.
- Developing knowledge of particular medical conditions which they may need to recognize (these will change from area to area, and over time)
- Developing knowledge of cultural and physical differences in relation to personal care
- Developing knowledge of home countries: religions and religious needs and customs, languages, politics etc.

In addition staff should have the opportunity to familiarise themselves with all current and emerging guidelines and protocols relevant to their work with UASC.

FURTHER READING

Chief Secretary to the Treasury (2003): *Every Child Matters*, TSO

DH, DfES, HO (2000): *Framework for the Assessment of Children in Need and their Families*, DH

The Connexions Service National Unit (2003): *Working Together/Emerging Practice – Connexions supporting young asylum seekers and refugees*. The document is available to download from the Connexions website: www.connexions.gov.uk

Save the Children (2005): *Young Refugees: A guide to the rights and entitlements of separated refugee children (Second Edition)*.

Children's Society, Save the Children, Refugee Council (2002): *A Case for Change: How refugee children in England are missing out*.

Selam Kidane (2001): *Food, Shelter and Half a Chance*, British Agencies for Adoption and Fostering.

ADSS (2003): *INTAKE: framework and practice guidance for the safe and fair reception and assessment of children and young people seeking asylum in the UK without parents or guardians*.

