ADVOCACY CLINIC

The rights and entitlements of unaccompanied children

Thursday 23 January 2025, 11am-1pm on Zoom

For members of the Children and Young People's Advocates Network

“It is the obligation of every person born in a safer room to open the door when someone in danger knocks”

Dina Nayeri (author)

“No one puts their children in a boat unless the water is safer that the land”

Warsan Shire (poet, writer and teacher)

"Unaccompanied migrant children and child victims of modern slavery, including trafficking, can be some of the most vulnerable children in the country. Unaccompanied children are alone, in an unfamiliar country and may be surrounded by people unable to speak their first language …"

"Unaccompanied children are likely to be uncertain or unaware of their rights and whom they should trust. They are at increased risk of going missing, often leaving the care of those who would protect them to return to traffickers who will continue their exploitation. All groups may have experienced emotional trauma in their country of birth, on their journey to the UK or through their treatment by adults in the UK."

"Local authorities have a duty to protect and support these highly vulnerable children. Because of the circumstances they have faced, unaccompanied migrant children and child victims of modern slavery, including trafficking, often have complex needs in addition to those faced by looked after children more generally. The support required to address these needs must begin as soon as the child is referred to the local authority or is found in the local authority area. It will be most effective where this support is provided through a stable, continuous relationship with the child."

Care of unaccompanied migrant children and child victims of modern slavery
Statutory guidance for local authorities (November 2017), paragraphs 1-3

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Sources of law and guidance

Unaccompanied children (under the age of 18) become looked after children and are entitled to all the rights, entitlements and protections set out in law and accompanying statutory guidance.

The rights, entitlements and protections under the Children Act 1989 and connected legislation and guidance are **not** contingent on the child or young person's immigration status –
this includes care leavers (former relevant children and qualifying adults) who are not 'appeal rights exhausted'.

PRIMARY LEGISLATION

- **The Children Act 1989**
- **Human Rights Act 1998 / ECHR**
- Children and Social Work Act 2017 *(corporate parenting principles)*
- Children and Families Act 2014 *(education, health and care plans)*

INTERNATIONAL LAW

- **European Convention on Human Rights**
- United Nations Convention on the Rights of the Child

Click here for all links

SECONDARY LEGISLATION

- **The Care Planning, Placement and Case Review (England) Regulations 2010**
- **The Care Leavers (England) Regulations 2010**
- The Children Act 1989 Representations Procedure (England) Regulations 2006
- The Fostering Services (England) Regulations 2011
- The Children's Homes (England) Regulations 2015
- The Children (Secure Accommodation) Regulations 1991
- The Supported Accommodation (England) Regulations 2023

GOVERNMENT GUIDANCE

- **The Children Act 1989 guidance and regulations, Volumes 2, 3, 4, 5**
- **Working Together to Safeguard Children**
- **IRO Handbook**
- Promoting the education of looked after children and previously looked after children
- Applying corporate parenting principles to looked-after children and care leavers
- Getting the best from complaints
- Fostering Services: National Minimum Standards
- Extending Personal Adviser support to all care leavers to age 25
- Local offer guidance

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Law and guidance specific to unaccompanied children

- Care of unaccompanied migrant children and child victims of modern slavery - Statutory guidance for local authorities (2017)
- Age assessment guidance, Association of Directors of Children's Services (2015)
- National Transfer Scheme Protocol for Unaccompanied Asylum Seeking Children (Version 6)
- Processing children's asylum claims - Version 5.0
- Children's Asylum Claims - Version 5.0
- Assessing age (Version 8.0)
- Section 55 of Nationality, Immigration and Asylum Act 2002: caseworker guidance

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Statistics

- There were 83,630 looked after children (March 2024)
- Unaccompanied asylum-seeking children formed 9% of the ‘looked after’ children population (March 2024) - that’s 7,380 unaccompanied, looked after children

Source: Children looked after in England including adoptions
https://explore-education-statistics.service.gov.uk/find-statistics/children-looked-after-in-england-including-adoptions#releaseHeadlines-summary

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Arrival into the United Kingdom

“Spontaneous Arrivals”

- Most children and young people arrive in the UK by their own means.
- They are met at their port of entry, at the Asylum Intake Unit (Croydon), or come into contact with the police or children’s services.
- The local authority in which the child first presents is normally responsible for their care.

Is the child or young person a victim of modern slavery?

- Modern slavery includes human trafficking, slavery, servitude and forced or compulsory labour for the purpose of exploitation.
- Trafficking is defined within Article 4 of the Council of Europe Convention Against Trafficking in Human Beings

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Unaccompanied children and victims of trafficking

An unaccompanied asylum seeking child is a person who:
a) is under 18 years of age when the asylum application is submitted.
b) is applying for asylum in their own right; and
c) is separated from both parents and is not being cared for by an adult who in law or by custom has responsibility to do so.

Rule 352ZD of the Immigration Rules

Article 4, Council of Europe Convention on Action against Trafficking in Human Beings

***(a) "Trafficking in human beings"** shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. **Exploitation** shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;*

(b) The consent of a victim of "trafficking in human beings" to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means set forth in subparagraph (a) of this article.

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Age assessments

Section 55 of the Borders, Citizenship and Immigration Act 2009 - Duty regarding the welfare of children and statutory guidance "Children's Asylum Claims - Version 5.0"

Statutory duty on the Home Office to ensure that its immigration, asylum, nationality and customs functions are discharged having regard to the need to **safeguard and promote the welfare of children** who are in the UK.

Key principles from the accompanying statutory guidance, Children's Asylum Claims - Version 5.0, include:

- **Every child matters**, even if they are subject to immigration control;
- **The best interests of the child** will be a primary consideration, but not the only consideration, when making decisions affecting children;
- Ethnic identity, language, religion, faith, gender and disability are considered when working with a child and their family;
- **Children must be consulted** and the wishes and feelings of children considered, wherever practicable, when decisions affecting them are made – where parents and carers are present, they will have primary responsibility for representing the child's concerns;
- Children must have their applications dealt with in a way that **minimises the uncertainty** that they may experience.

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Age assessments

Part 4 of the Nationality and Borders Act 2022

- The measures relating to the assessment of age where there is insufficient evidence to be sure of the child's age.
- **Section 50, Nationality and Borders Act 2022** sets out the arrangements for undertaking age assessments by either the local authority or designated officials [the National Age Assessment Board (NAAB)] at the Home Office in relation to "age-disputed" persons.
- An age assessment once completed by a local authority must be provided to the Home Office and will be binding, subject to any appeal to a Tribunal.
- **Section 50(6)** stipulates that the standard of proof for an age assessment is **"on the balance of probabilities".**

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Age assessments

Section 51 of the Modern Slavery Act 2015

When a public authority has **reasonable grounds** to believe that the child or young person may be a victim of human trafficking; **and**

There is uncertainty about the individual's age but there are **reasonable grounds to believe that they may be under 18**, the local authority **must assume that the individual is under 18** until an assessment of age is carried out (by a local authority) or their age is *otherwise determined*.

"*Otherwise determined*" refers to an "*age assessment*" by the NAAB or two Home Office officials who have determined that the *physical appearance* and *demeanour* "very strongly suggests" that the person is significantly over 18 years of age. (Section 51(2) Modern Slavery Act 2015)

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Age assessments

Care of unaccompanied migrant children and child victims of modern slavery (November 2017)

- Government (DfE) statutory guidance that **must** be followed unless there are exceptional reasons not to do so.
- **"W*here the person's age is in doubt, they must be treated as a child* [defined as anyone who has not yet reached their 18th birthday] *unless, and until, a case-law compliant age assessment shows the person to be an adult*".**
- Where an age assessment is required, local authorities must adhere to standards established within case law – often referred to as "*Merton Compliant*".

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Age assessments

- *"That there may be cases where it is very obvious that the person is over or under 18 and, in such cases, there is normally no need for prolonged inquiry. Physical appearance, behaviour and the credibility of the applicant's account were all matters which reflect on each other. The age assessment could be done informally as long as 'safeguards of minimum standards of inquiry and of fairness' were observed. Except in clear cases, a decision could not be made on the basis of appearance alone"*

  R (B) v Merton London Borough Council [2003] EWHC 1689 (Admin)

- Age assessments **should only be carried** out where there is reason to doubt that the individual is the age they claim and **should not be routine** for unaccompanied or trafficked children.

- Detailed guidance for local authorities: **Age Assessment Guidance**, Association of Directors of Children's Services (ADCS), October 2015

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The National Transfer Scheme (NTS)

Sections 69-73, Immigration Act 2016

- The National Transfer Scheme is a mandatory scheme for local authorities when providing homes for unaccompanied asylum-seeking children across the country.
- A child arriving in a local authority area can be transferred to another area where there is evidence that the local authority is above an agreed threshold; and the child is seeking asylum and is not older than 17 years and 9 months old.
- A local authority should assess the child's needs including applying "best interests" as a primary consideration alongside other considerations before it makes a referral (Annex C, National Transfer Protocol).
- A national rota exists to which local authorities will make referrals to find a home for child or young person.
- The National Transfer Scheme Protocol sets out the process to be followed.

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The National Transfer Scheme (NTS)

- It is in the best interests of the child or young person that the transfer process takes place without delay to avoid distress as they become settled.
- The “entry local authority” will decide when to request the transfer takes place.
- If a transfer does not take place within this timeframe, then the entry authority must review the continued suitability of transferring the child.
- The child must be given the decision and an explanation for the reasons to ensure that they understand what is happening and that they are prepared for the transfer.

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CHILDREN ACT 1989

The rights, entitlements and protections under the Children Act 1989 are not contingent on the child's immigration status.

The Children Act 1989 (cont'd)

Section 17 of the Children Act 1989

A child is a child in need if at least one of three criteria is met (see s17(10)):

(a) they are **unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision of services by a local authority**;

(b) their **health or development is likely to be significantly impaired, or further impaired, without the provision of local authority such services**;

(c) they are disabled.

Schedule 2, paragraph 1(1) of the Children Act 1989

Every local authority shall take reasonable steps to identify the extent to which there are children in need within their area.

Domestic case law

Local authorities must undertake a needs assessment of the child or young person:
Regina v. London Borough of Barnet (Respondents) ex parte G (FC) (Appellant) Regina v. London Borough of Lambeth (Respondents) ex parte W (FC) (Appellant) [2003] UKHL 57)

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The Children Act 1989

Section 20 of the of the Children Act 1989

20(1) Every local authority **shall provide accommodation** for any child in need within their area who appears to them to require accommodation as a result of—
(a) there being no person who has parental responsibility for them;
(b) them being lost or having been abandoned; or
(c) the person who has been caring for them being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.

20(3) Every local authority **shall provide accommodation** for any child in need within their area who has reached the age of sixteen and whose welfare the authority consider is likely to be seriously prejudiced if they do not provide them with accommodation.

20(6) The **wishes and feelings** of children regarding the provision of accommodation and care must be ascertained (so far as is reasonably practicable and consistent with the child's welfare) and given due consideration (having regard to the child's age and understanding).

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The Children Act 1989

Section 22 of the of the Children Act 1989

(1) Any reference to a child who is looked after by a local authority is a reference to a child who is—

…

(b) provided with accommodation by the authority in the exercise of any functions (in particular those under this Act) which are social services functions …

(2) In subsection (1) "accommodation" means accommodation which is provided for a continuous period of more than 24 hours.

(3) It shall be the **duty of a local authority looking after any child**—

(a) **to safeguard and promote their welfare**; and

…

(3A) The duty of a local authority under subsection (3)(a) to safeguard and promote the welfare of a child looked after by them **includes in particular a duty to promote the child's educational achievement.**

…

(4) Before making any decision with respect to a child whom they are looking after …, a local authority **shall**, so far as is reasonably practicable, **ascertain the wishes and feelings of the child**…

(5) In making any such decision a local authority **shall give due consideration,** having regard to his age and understanding, **to such wishes and feelings** of the child as they have been able to ascertain;

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The Children Act 1989

Section 22B - **Duty to maintain looked after children**

Section 22C - **Ways in which looked after children are to be accommodated and maintained**

- If the local authority is unable to make arrangements for the child to live with a parent (person with parental responsibility) them it must place the child in the placement which is, in their opinion, the most appropriate placement available.
- 'Hierarchy of placements' - placement with a relative, friend or other connected person who is also a local authority foster parent → placement with a local authority foster parent → placement in a children's home → other arrangements which comply with regulations.

Section 22D - **Review of child's case before making alternative arrangements for accommodation.**

Section 25A - Appointment of **independent reviewing officer** (IRO) and 25B - IRO functions

Section 26(3) and 26A - the right to make **representations, including complaints**, and the duty on local authorities to make **arrangements for the provision of independent advocacy**.

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Supported accommodation & age disputed children

Regulation 27B of The Care Planning, Placement and Case Review (England) Regulations 2010

Exception to the prohibition on placing a child under 16 in other arrangements

27B.— (1) Subject to paragraph (2), a responsible authority placing an unaccompanied asylum seeking child whose age is uncertain and who claims to be 16 or 17 may place that child in accommodation in accordance with other arrangements under section 22C(6)(d) [of the Children Act 1989].

(2) **Where that child is later assessed as being under 16, a responsible authority may not leave the child in such accommodation where that accommodation is not specified in regulation 27A for longer than 10 working days beginning with the day on which the child's age has been assessed as being under 16**.

(3) In this regulation, an unaccompanied asylum seeking child has the same meaning as in regulation 5(1)(f)(ii).]

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The Children Act 1989

Section 47 of the Children Act 1989

- A duty on local authorities to investigate concerns in order to decide if action is necessary to safeguard or promote a child's welfare where there is reasonable cause to suspect that a child is suffering or is likely to suffer significant harm.

- **This duty applies to all children**, whatever their age and wherever they are living and whether or not they are looked after.

- Before deciding what (if any) action to take to safeguard or promote the child's welfare, local authorities must ascertain and give due consideration to the child's wishes and feelings (section 47(5A)).

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Preparation and content of the care plan

Regulation 5 of The Care Planning, Placement and Case Review (England) Regulations 2010

(a) the long term plan for C's upbringing ("the plan for permanence"),
(b) the arrangements made by the responsible authority to meet C's needs in relation to —
- (i) health…,
- (ii) education and training …,
- (iii) emotional and behavioural development,
- (iv) **identity, with particular regard to C's religious persuasion, racial origin and cultural and linguistic background,**
- (v) family and social relationships,
- (vi) social presentation, and
- (vii) self-care skills,

(c) … the placement plan,
(d) the name of the IRO,
…
(f) Information that the child/young person is—
- (i) **a victim, or there is reason to believe [the child/young person] may be a victim, of trafficking** …,
- (ii) **an unaccompanied asylum seeking child** …

+ **Schedule 1:** Information to be included in the health plan, personal education plan (PEP) and in relation to family and social relationships.

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Statutory reviews of care and welfare

Schedule 7 of The Care Planning, Placement and Case Review (England) Regulations 2010:

Considerations to which the responsible authority must have regard when reviewing C's case

1. The effect of any change in the child's circumstances since the last review, in particular of any change made to the child's care plan, whether decisions taken at the last review have been successfully implemented, and if not, the reasons for that.

…

4. The arrangements for contact and whether there is any need for changes to the arrangements.
5. Whether the placement continues to be the most appropriate available, and whether any change to the placement plan or any other aspects of the accommodation arrangements is, or is likely to become, necessary or desirable before the next review.
6. Educational needs.
7. Leisure interests.
8. The report of the most recent assessment of the child's state of health.
9. Whether the child's **needs related to their identity** are being met and whether any particular change is required, **having regard to their religious persuasion, racial origin and cultural background**.
10. Whether the arrangements for visits by a social worker continue to be appropriate and understood by the child.
11. Whether any arrangements need to be made in preparation for leaving care.
12. The child's wishes and feelings, and the views of the IRO, about any aspect of the case and in particular about any changes the responsible authority has made since the last review or proposes to make to the their care plan.

…

14. Where the falls within regulation 5(1)(f) – ie , the child is a victim, or potential victim, of trafficking or an **unaccompanied asylum seeking child, whether their needs as a result of that status are being met.**

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Independent reviewing officer

Section 25A of the Children Act 1989

- A duty on local authorities to appoint an IRO for every looked after child before the first statutory review of the child's welfare and treatment.
- The entitlement to have an IRO applies regardless of the legal status of the looked after child or where they are living.
- The statutory functions of the IRO are set out in **section 25B**:
  - ✓ **Monitor the performance** by the local authority of their functions in relation to the child;
  - ✓ **Participate in all reviews** of the child's welfare and treatment (following the requirements within the 2010 Care Planning Regulations);
  - ✓ Ensure that **the child's wishes and feelings** are given due consideration by the local authority; and
  - ✓ Perform any other functions prescribed in secondary legislation (this will be primarily the 2010 Care Planning Regulations).

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Independent reviewing officer

The Care Planning, Placement and Case Review (England) Regulations 2010

Regulation 36 - The role of the IRO

- Attend and chair the child's review meetings;
- Speak to the child in private about the issues which will be considered at the review;
- Regulation 36(2) – power to adjourn the review meeting if insufficient information has been provided by the local authority "to enable proper consideration of any of the matters in Schedule 7".
- Ensure that the review is conducted in accordance with the law which includes identifying the people responsible for implementing agreed decisions and taking action if the law is not being followed (e.g., by escalating concerns across local authority structures).

Regulation 45 - Additional functions of independent reviewing officers, including duty to consider referral to Cafcass if in the opinion of the IRO, the responsible authority have failed in any significant respect to prepare a care plan in accordance with the 2010 Regulations, review the child's case in accordance with these Regulations, or effectively implement any decision taken in consequence of a review, or are otherwise in breach of their duties to the child in any material respect.

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Care leavers, previously unaccompanied children

FORMER RELEVANT CHILD

Was looked after for a cumulative period of 13+ weeks since age 14 which ended after their 16th birthday.

Must be (duty) provided with:
personal adviser;
pathway assessment of needs;
pathway plan.

QUALIFYING CARE LEAVER

Was looked after for less than a cumulative period of 13+ weeks since age 14 which ended after their 16th birthday.

May be (power) provided with:
personal adviser;
pathway assessment of needs;
pathway plan.

- A young person seeking asylum is **entitled to leaving care support until the age of 25, unless they become "appeal rights exhausted"**.
- A local authority is **required to undertake a human rights assessment** to assess whether the ending of services could lead to a breach of the young person's rights under the European Convention of Human Rights (ECHR) - **Schedule 3, paragraph 3, Nationality, Immigration and Asylum Act 2002**

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The Care Leavers (England) Regulations 2010

Regulation 5(4)(c) - Assessment of needs

In carrying out an assessment of the needs of a relevant child who does not already have a pathway plan, the responsible authority must—
where the relevant child is—
(i) **a victim, or there is reason to believe they may be a victim, of trafficking in human beings …**
(ii) **an unaccompanied asylum seeking child … and has applied, or has indicated to the responsible authority an intention to apply, for asylum and has not been granted indefinite leave to remain**
take into account the relevant child's needs as a result of that status.

[Please note this change is not reflected in the original version of the 2010 Regulations available online -> please refer to the amendment set out here: https://www.legislation.gov.uk/uksi/2014/1917/regulation/7/made#regulation-7-a]

Schedule 1 - Matters to be dealt with in the **pathway plan** and review

Para 11: **Where the child falls within regulation 5(4)(c), whether the child's needs as a result of that status are being met.**

[Please note this change is not reflected in the original version of the 2010 Regulations available online -> please refer to the amendments set out here: https://www.legislation.gov.uk/uksi/2014/1917/regulation/8/made and here: https://www.legislation.gov.uk/uksi/2015/495/regulation/15/made]

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Care leavers – statutory guidance

The Children Act 1989 guidance and regulations Volume 3: planning transition to adulthood for care leavers

Para 6.20: *Unaccompanied asylum seeking children (UASC) making the transition from care to adulthood have* ***both a leaving care status and an immigration status in addition to their placement and accommodation, education, health, financial, religious and cultural needs. Planning transition*** *to adulthood for UASC* ***is a particularly complex process that needs to address the young people's care needs in the context of wider asylum and immigration legislation and how these needs change over time****.*

6.21. ***Pathway planning*** *to support a UASC's transition to adulthood* ***should cover all areas that would be addressed within all young people's plans as well as any additional needs arising from their specific immigration issues****. Planning may initially have to be based around short term achievable goals whilst entitlement to remain in the UK is being determined.*

6.22. ***Pathway planning*** *for the majority of UASC who do not have permanent immigration status* ***should initially take a dual or triple planning perspective, which, over time should be refined as the young person's immigration status is resolved*** *[…]*

6.23. Claiming asylum can be a complex process and ***social workers/personal advisers should work with the young person's legal representative and the dedicated case owner at the UK Border Agency to ensure that the young person understands the process of claiming asylum, the possible outcomes and to provide them with necessary support.***

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CASE STUDY ANALYSIS

Scenario 1 – Ria

Ria arrived in the UK on 24 December 2024.

Ria told an officer from the UK Border Force that she was 15 years-old and that she cannot go back to her country as her mother and father had gone missing. She had her identity card which the officers accepted as authentic. Ria was taken to the local authority's children's services where she was placed in a bed and breakfast.

She feels lonely, has nothing to do in the day and has few possessions. She's struggling to sleep because of a bad toothache. When Ria called the social worker who accompanied her to the bed and breakfast, she was told there is little the local authority can do because of her immigration status.

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Scenario 2 – Stephan

Stephan arrived in the UK five months ago.

When he arrived, he told the UK Border Force officers that he was 16 ½ years old but he was not in possession of any documents to evidence his age. The officers conducted a brief assessment and concluded that he was an adult. He was then taken to an immigration detention centre for one week, until he was released and placed in local authority supported accommodation.

Stephan was later assessed by a social worker as being 17 years-old but the Home Office disputed this, and he is meant to undergo a further assessment by the National Age Assessment Board.

Stephan thinks he has a solicitor but hasn't heard from them in months and doesn't know what is happening with his case. Stephan continues to dispute that he is an adult and believes that there are documents in his home country that could prove this. He still lives in supported accommodation where he remains with nothing to do. His social worker has said that until his age dispute is settled, the local authority cannot offer him any more support and that he should be grateful that he has got a roof over his head.

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Scenario 3 – Levi

Levi is 18 and came into the UK when he was 17. Levi had his birth certificate with him and his age was accepted. He was placed with a foster carer where he remained until he turned 18.

He is now staying with a family friend where he sleeps on the living room sofa and is expected to be out of the house for most of the day due to overcrowding.

Over the last year he has had four different social workers but received very few visits. When, following advice from a friend, he asked about his pathway plan, he was told that this was optional for independent, capable young adults and that the local authority was short of personal advisers.

Levi recently discovered that his asylum claim had not been filed and a referral to National Referral Mechanism had not been made by his social worker who went on sick leave. He has no legal representation and has been told that no firm of solicitors has capacity to take on his case. He is desperate to continue his education and worries about housing.

Levi was told by someone from the local authority's leaving care service that if he doesn't get asylum then the local authority will no longer support him - and even if he does, support will be stopped when he turns 21.

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