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Representing Children- Practice Issues Arising in Immigration Asylum and Associated Family Proceedings

Liz Barratt and Kathryn Cronin

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The ILPA Guidelines for best practice in the representation of children in immigration and asylum proceedings details the particular skills, sensitivities and practice standards of children's advocates. We strongly recommend this text. The Chief Adjudicator's Guidance Note No 8 (Apr 2004) on Unaccompanied Children gives guidance to immigration judges concerning the conduct of proceedings involving child appellants. This session develops certain themes in both these publications. The aim is to focus on particular difficulties which arise in cases involving children. Notwithstanding the session title, this discussion is directed both to children and young adults. ILPA is anxious to assist and improve the practice of all lawyers working with and representing children and young people.

Child Applicants

Most child applicants are in the UK as part of a family or are coming here to join family members. There is limited data showing the numbers of child applicants – whether immigration or asylum applicants. Certain child applicants come to the attention of the Home Office after living here illegally with families or carers for some years. These cases often involve at-risk children who have become separated or estranged from their families or carers. Some of these children will have been privately fostered in the UK, in arrangements which have exposed them to risk and exploitation, including as domestic or sex workers. Other children arrive here without families or relatives. Many of them are orphans or displaced or at risk from their families or customary carers. An increasing number of children become immigration/ asylum applicants via a social services intervention. In some of these cases the child may be subject to a care or wardship order. From our experience with family practitioners it would appear that there are increasing numbers of children simultaneously involved in family litigation and the immigration appeal system.

The Home Office does provide statistics on the numbers of separated asylum-seeking children. In 2004 the Home Office noted that there were 2990 such claimants, a decrease on the previous year. As the Home Office counts those applicants whom they accept as children, not the numbers who present as children, the figure should be adjusted by reference to the 2345 applicants whom the Home Office disputed as child applicants in that year.

Separated/ unaccompanied children make up a modest percentage of asylum applications and in real terms they are a very small number indeed. The majority of separated children applying for asylum are boys (76%). Those aged 16 and 17 account for more than half the numbers (55%); 14 and 15 year olds account for 33% of applications and the under-14s for 11%. In the first quarter of 2005 the top six applicant nationalities were:

Iran	17%	110 applications
Afghanistan	11%	70 applications
Iraq	10%	65 applications
Somalia	9%	55 applications
Vietnam	7%	45 applications
DR Congo	5%	30 applications

A proportion of these children (and others not identified or counted) will have been trafficked to the UK. Some of them will have been identified on arrival at the airport and referred to social services. Others will have come to social services attention as children-at-risk.

The Jurisdictions – Family and Immigration

Increasingly family and immigration jurisdictions deal with the same families. The two jurisdictions are also linked by their shared association with bilateral, European and international instruments governing the international movement of children, whether in transnational adoptions, abductions or cross-jurisdictional family orders and contacts. States have sought to harmonise both their immigration control arrangements and to make agreements for comity and mutual recognition and enforcement of family orders. Recent examples include the immigration rules for

adopted or prospective adoptive children, which incorporate the Hague Convention protections for transnational adoptions or the Rules provision for parents who are not the main carers to remain in the UK for the purpose of contact and an active role in the child's upbringing. One major potential difference between family and immigration law in the application of a relevant international human rights treaty arises out of the UN Convention on the Rights of the Child. As a result of a UK reservation, the Secretary of State is not bound by this Convention 'as it relates to entry into, stay, departure and the acquisition and possession of citizenship', but the Convention is binding in family law. In both jurisdictions it is apposite to many decisions relevant to children's representation and advocacy within litigation and the appeal system.

Child Applicants – Choosing the Appropriate Applications

Children generally have no say in their own travel and residence arrangements. They are brought with or sent to join parents or carers. They are usually dependent immigration or asylum applicants –subsumed in a parent's protection claim or dependent upon a parent's sponsorship of their settlement/ adoption application. It is a similar situation in family jurisdiction as parents litigate about their children's adoption, abduction, contact, residence and removal from the jurisdiction. The best interests rubric does not give ownership of these proceedings to children. Within these overlapping jurisdictions we are concerned with State and parental rights pertaining to children's residence and removal.

The Refugee and Human Rights Conventions afford a rare opportunity for children to advance their own independent claims to protection. In all other immigration contexts children must have a family sponsor and/or show self-sufficiency (generally provided by a parent.). (Note EEA law exceptions where the parent is afforded rights to remain to protect the child's Community rights. *Baumbast v SSHD* [2003] INLR 1)

Children's dependent status in immigration law has important consequences for them. Too often their circumstances, interests and particular risk are overlooked, as the focus of the claim is on the parent's position. Some of the children of asylum applicant parents should make their own independent asylum or human rights claims.

Such children may have a particular illness or disability, may have suffered serious, disabling trauma or face stigmatisation and discrimination in their home countries on account of their or their parent's mistreatment. [see for example: *CA v Secretary of State for the Home Department* [2004] EWCA Civ 1165 (20 July 2004), *Hoxha & Anor v Secretary of State for the Home Department* [2005] UKHL 19 (10 March 2005)] To take a further example, young, single applicant parents may not themselves be at risk on return but their infant children may be if they are returned in circumstances where there is no assistance for them in caring for their babies. Their babies may be the focus of local authority concern both in the UK, and in the home country if the young person is to be removed without the requisite parenting skills or protective supports.

In the light of the limited jurisdiction conferred on the Tribunal by the human rights ground of appeal (NIAA 2002 section 84(1)(c) – which allows consideration of whether the decision breaches an appellant's Convention rights), it is important to consider whether a child should be an independent or dependent claimant for protection.(see: [*R v IAT and SSHD* [2003] EWHC 389, *SS (ECO-article 8) Malaysia*[2004] UKIAT 00091, *AC v Immigration Appeal Tribunal* [2003] EWHC 389 (Admin) (11 March 2003)]

It is not simply that children's interests and risks may differ from their parents/carers, but that their rights can be entirely eroded if parents refuse to include them in a family settlement claim or if social workers are reluctant to engage with immigration issues on their behalf on the mistaken assumption that such application is outside social services jurisdictional responsibility. We have both had experience of cases where social workers were reluctant to engage with immigration questions for the child, and where children have been deliberately left out of family claims for settlement because the child is challenging the parent's authority. This particular punishment or omission can have life-long consequences for such children. There may be no other basis on which the child can remain in the UK. Their immigration irregularity is a more difficult problem if dealt with only when the child becomes an adult. We have both had experience of parents returning children to the home country against the child's will and without proper investigation of the care arrangements for the child on and after arrival. Again it is extraordinarily difficult to achieve that child's return to the

UK unless the parent cooperates to sponsor them. Although immigration and family law both concern State and parental rights over children's travel it is important that immigration lawyers focus on the children's interests and rights and seek to advance and protect the same.

Social Services approach to children's applications

As stated, many child applicants make their immigration applications as a result of social services intervention. Many of them are accommodated by or in the care of social services. Social services have a role in assessing age, in determining home country conditions and ascertaining the best interests of immigrant children. Immigration lawyers working with children need to be alert to the role and responsibilities of social services. As stated, some social workers are reluctant to engage with or contest decisions by the Home Office. There is also an assumption from social work and other professionals, that all separated children should make an asylum application – this assumption is not always feasible or well founded . Always note the route a child applicant has taken into the asylum or immigration jurisdiction.

Social work evidence is often critical although not always easy to obtain. Where social workers do assist in and support a child's immigration application, they can provide valuable evidence of the child's circumstances in the UK, the trauma or abuse suffered and conditions in the home country. In many of these cases, local authorities will have their own or international social service evidence on the home country circumstances. If there have been care or wardship or even private family proceedings it may be necessary to obtain a Court order allowing disclosure of the case evidence to the Home Office. (see: *L & Anor (Minors)* [1998] EWCA Civ 1502 (8 October 1998, *Re F (Child Case: Disclosure of Documents)* [1995] 1 FCR 589. See also: *Re B (a child) (disclosure)* [2004] EWHC 411(Fam); *In the matter of C (a minor)* [1996] EWCA Civ 560)

Home Office approach to children's applications

As stated, the Rules and Home Office policy give limited attention to children. Apart from children within family applications, the Rules and policy concentrate only on

separated children who are seeking asylum, (Unaccompanied Asylum Seeking Children "UASCS" in the Home Office terminology) or on children born in the UK in respect of whom parental rights and duties are vested in a local authority.[HC 395 para 305(i)(c)] There is limited guidance on overseas-born children who may be subject to care, residence or supervision orders. This is a serious deficit. It can be very difficult to advise on cases involving separated or at-risk children because the Home Office instructions are so qualified.

The IDI on Children (IDI Aug/03 Chapter 8 Sect 3 – Children - Annex M simply states that

- for children here without their parents the aim normally will be to 'swiftly and efficiently' return the child to his parents and/or country of origin.

- welfare considerations may take precedence over the immigration implications of allowing a child to remain here. The welfare considerations carry more weight in relation to younger children. The fact that a child may be "better off" remaining in the United Kingdom is not grounds on its own for allowing that child to stay here. The IDI states:

  > 'If a parent or relative is able to care for him in his own country or the relevant authorities in his own country have agreed to make any necessary welfare arrangements for him and the care would not be substantially below that normally expected in the country concerned, refusal (and eventual removal) should be considered.'

- social services should be informed and if involved, their views should be taken into account. However, it will not always be right to act on their recommendation, particularly if there is independent evidence to justify proceeding with refusal and removal. If the child is in local authority or temporary foster care 'he may not yet have become too settled for it to be disturbing for him to return abroad.'

- When deciding whether or not to pursue a case, immigration officers are required to consider the age of the child (that it will be more difficult to achieve the return of a younger child to family abroad); the length of the child's stay in the United Kingdom (the longer a child has been here, the more settled he is likely to be); the circumstances abroad (whether the care to be provided for the child in the country concerned would be substantially below that normally expected); the child's own feelings (if the child is old enough (normally 7+) to express an opinion, this should be taken into account).

- Decisions about the future of children in the care of the local authority should be left primarily in the hands of their social services department as they will be best placed to act in the child's best interests. If the social services advise that it would be appropriate for the child to remain in the United Kingdom, consideration should be given to granting the child leave to remain.

- Children who are subjects of court orders made under the Children's Act 1989 in the United Kingdom, may still be removed or deported from the United Kingdom. However, the existence of any such order is a factor which should be taken into account.

This guidance gives little certainty concerning probable outcomes for children's cases. It does indicate the sort of evidence that is required in such extra-rules cases.

To the Home Office separated children are a control problem. These children are too often viewed by both the Home Office and social services as entrepreneurs looking for a better life, rather than youngsters in need of protection. It follows that the Home Office has spent considerable time and effort in devising a number of deterrent policies providing for the return of children to their home countries and / or parents as swiftly as possible. Over the recent years the policies aimed specifically at this vulnerable group include:

- The abolition of exceptional leave to remain for children;

- The practice of granting discretionary leave to remain to children up to their 18th birthday and the policy of "active review" thereafter;

- Substantive interview pilot of children;

- Development of a returns policy for children under 18. This has focussed on Albania. The Home Office are planning a pilot of returning under 18s to Albania on the basis that they have reached agreements with non Governmental organisations and the Government of Albania to ensure that those under 18 can be returned to Albania and receive an appropriate support package on return. There have been practical

difficulties implementing the proposed arrangements. The government is also investigating Vietnam.

Representing children against this policy backdrop is increasingly difficult, especially for those turning 18. We are likely to see more changes and policy initiatives aimed at returning children as soon as possible to their home countries.

Although the Home Office focus on UASCs assumes that separated children will claim asylum, in fact Home Office practice is to discount or disregard asylum claims by children and simply grant discretionary leave to remain to their 18th birthday. The discretionary leave police explicitly includes UASCs for whom adequate reception arrangements in their home countries are unavailable. Discretionary leave is appropriate for many cases, but for those with a viable asylum claim, the practice of granting discretionary leave puts particular pressure on a practitioner to decide whether to appeal a refusal of asylum. That decision has to be made by reference to whether there is a good prospect of success for the appeal, whether it is better to run the appeal argument when the person is under 18 rather than an adult at the active review stage, whether the child is mature enough to cope with cross examination or the appeal risks negative credibility findings affecting a future claim. The further, difficult consideration arises from the 2002 certification provisions. If a child is granted discretionary leave to remain and chose not to appeal asylum he/she could be certified and stopped from appealing the refusal of asylum at a later point on the active review point stage if the Secretary of State certifies the applicant has 'no satisfactory reason' not to have brought the earlier appeal (NIAA 2002 s96). Certification is less of a risk for children. However it does illustrate the need to make and document the 'satisfactory reasons' why no asylum appeal was brought. If the appeal provisions in the Immigration, Asylum and Nationality Bill are passed such young people will lose their variation appeal.

We are all aware of the bruising nature of the asylum process and need to bear in mind the particular difficulties children may face in presenting their case within this process:

- their age and understanding of the situation;

- the Home Office's tendency to impose adult motives on to the child – for instance expecting a child to account for the decisions of an adult or expecting an older child to have questioned the decisions of an adult;

- the fact that decision makers are not skilled at deciding children's cases

- that there seems to be an assumption that most children do not have valid asylum / human rights claims and that the discretionary leave policy adequately addresses a child's case and therefore improper attention is given to the asylum claim.

Asylum and discretionary leave are not the only alternatives for children. Other options which may be relevant to an application from a child are:

(i) the Seven Year Policy – which the Home Office characterises as an enforcement policy where enforcement action is to be taken against parents with children with seven years residence in the UK and not one to ground an application for leave to remain. In a recent decision on an application from a separated child the Home Office stated :

"Moreover the Seven Year Child Concession (also known as DP/96) is applied when considering whether enforcement action should proceed or be initiated against parents who have children who have lived in the UK continuously for 7 years or more and not children on their own. Therefore your client is not availed by the Seven Year Child Concession"

(ii) The Home Office one-off exercise for asylum seeking families announced on 24 October 2003 seems to preclude applications from separated children who otherwise qualify by virtue of the date of their application and their age. The application of this policy to separated children is subject to judicial review challenges.

(iii) Is it possible for a child to be considered under any other Immigration Rules such as the rules relating to students if there is a sponsor willing to support them? Could an application under the working holidaymaker scheme be made for an older child. These applications will depend on what previous applications have been made. There are likely to be problems over an in-country application and the switching rules as well as intention to leave the UK;

(iv) The Rules relating to children born in the UK who are not British citizens but are subject to immigration control. Paragraphs 305 to 308 of Immigration Rules. These are premised on the basis that a parent has leave to remain in the UK.

(v) Registration of a British born child as a British citizen: entitlement when a parent becomes settled or after ten years residence in the UK or under the general registration powers – generally applicable where the unmarried father is British. Home Office policy states they will normally register a child when there are no doubts as to paternity; the father is British; there is consent from those with parental responsibility; and there are no character objections.

(vii) Children Act applications – there may be an adult willing to adopt or obtain a residence order in respect of the child securing the child's integration into a new family.

Representing Children in Immigration/Asylum matters

Many of the children with immigration problems will have been mistreated or witnesses to terrible events; many will be severely traumatised and most will have been separated from their families either through the actions of others or their families/ carers. In immigration cases there is no guardian or responsible adult appointed whose role is to ensure the welfare needs of the child. In many cases separated children do not have anyone in the UK who has parental responsibility for them. This can mean the child client has no support or mentor assisting with,

interpreting and shielding them from the litigation process. Uncertainty about the future places children and young people under great stress. They are likely to have limited understanding of or confidence to deal with the process. The short time limits in the immigration/ asylum process also create particular difficulties for children as they are pressured to recall and recite their story to order with no regard to the trauma or stress which such process produces for them. Many of these children have had to repeat their stories to social workers, psychiatrists, immigration officers and then encounter further probing from their lawyers prior to an application being made or a court hearing. The process itself is abusive. This all puts an added burden on immigration lawyers to ensure that in their dealings with child and young adult clients they are alert to the difficulties their young clients are facing on their own.

There are many practical considerations including:

- How to take instructions for the child or young adult client?
- What arrangements are required to make to make it as comfortable as possible – time, length of meeting, frequency of meetings.
- What is the age of child is it disputed or a matter requiring proof? Has an account been given elsewhere that could be useful – pros and cons?
- Are there any professionals involved who can attest to the circumstances of the child – e.g. a doctor, Medical Foundation, Social worker?
- Should the child/ young person be referred to a specialist agency and how to approach this with the client
- How to judge the capacity of a child to give instructions and to understand the process?

- Does the child have a "responsible adult" in the UK? Who, if anyone, has parental responsibility for a child and if no one what should be done about that? Why do Social Services not take this role on?

- Who should be at Court for an appeal hearing?

- Is the child to be called to give evidence? Application of the Adjudicator Guidelines on children's cases.

Problems which can arise in the course of an application from a child.

Notwithstanding the points made above about the nature of the application made, most practitioners will be dealing with unaccompanied children who are making asylum or Human Rights Act claims. The following concerns the particular problems that can arise in representing such children through the asylum/humanitarian protection issue application.

Potential Problems at the Asylum Screening Unit.

If a child has not made an application on arrival a child will need to attend the Asylum Screening Unit to make his/ her application.

There has been anecdotal evidence of the Asylum Screening Unit refusing to take applications from children. Sometimes children are turned away on the basis that they need to contact Social Services. Sometimes, if a family member accompanies a child, the Asylum Screening Unit assumes that the child should be considered as the dependant of the accompanying adult.

The Asylum Screening Unit must accept an application from a child. There is no basis in law for them to insist that a child can only make an asylum claim if she has been in contact with Social Services.

LSC funding is available for representation at the Asylum Screening Unit for unaccompanied children. It is therefore essential that children be accompanied at the

Asylum Screening Unit so that if there are any problems over lodging the application the representative is at hand to deal with that.

No passport/travel document

Section 2 of the Asylum and Immigration (Treatment of Claimants) Act 2004 makes it an offence for a person not to have a travel document at leave or at an asylum interview. The section provides for certain defences [s2(5)]. A child could be prosecuted under this section. Practitioners need to take instructions on this issue prior to attending a substantive asylum interview so that any concerns over possible s2 offences can be ascertained and resolved prior to attendance at an interview. There was some evidence that children were being prosecuted under s2. During the passage of this part of the Bill the Home Office indicated that it was targeting the agents rather than individual asylum applicants.

Home Office interviewing of children

The Home Office now interview older children in respect of their asylum claim. This is a new policy. There is public funding available to represent a child at any Home Office interview including a substantive asylum interview.

Notwithstanding assurances to the contrary the Home Office interviewing process remains adversarial and there is no reason to suppose that the interviewing of children will be any less so. The Home Office have had some officers trained for the purpose of interviewing children. Child interviews at the Asylum Screening Unit show little if any concern for the child applicants. They are all too often part of extended post arrival processes. The texts of such interviews are revealing indicators of stress, anxiety, confusion and fatigue experienced by the child applicants.

The Home Office guidance on the pilot scheme refers to children being accompanied by a responsible adult. The Home Office is unclear as to the identity and roles of responsible adults. In criminal jurisdiction a child is interviewed in the presence of their lawyer and an additional, supportive adult. The protective function undertaken by such adults is not the role of a legal advisor. Although a child's lawyer will be

concerned about the child's welfare and will intervene in the interview if it is conducted in an unfair or oppressive manner, their function is not a welfare function. This distinction should not be blurred. Legal representative may have to make clear that they are not safeguarding the child's welfare.

Most children who apply for further leave to remain after their 18th birthday are now subject to the Home Office policy of active review which does include an interview. It is very difficult to know how to advise a child in advance of the active review interview, as each case will be different. Clearly if a child is re-asserting a protection claim then she needs to be prepared for a full asylum interview like any other adult client. If the application is premised on a private or 'family' life it is still possible that they will be asked questions about their first unsuccessful asylum or human rights application.

Age Disputes

Age disputed cases are increasingly common. The dispute can arise from the decision of the Home Office or social services.

Often disputes arise as to a child's age at the Asylum Screening Unit where the child has no or limited documentary evidence regarding their age. If a child is age disputed the Home Office will proceed to treat the child as an adult. This has adverse consequences for the child in question in relation to the asylum application or human rights application as well as the support and accommodation available to the child during and after that application. If the age dispute is not resolved in the child's favour or is left unresolved, this credibility taint can affect all of the child's evidence. If the child is not being truthful about his or her age – a basic identity issue - it is often assumed that the claim is opportunistic and fraudulent. If the applicant is accepted as a child and is unaccompanied the child is the responsibility of Social Services. Where age is disputed, the applicant is treated as an adult, referred to NASS and will be accommodated with adults.

If a child is age disputed it is important that action is taken as quickly as possible to obtain evidence and seek to resolve the age dispute. The Home Office should correct their records to reflect the correct age of the child.

Medical age assessment is difficult and cannot be undertaken with any certainty for those aged between 15 and 19 years. The Royal College of Paediatricians state that medical age estimations can have an error band of four years (+ or - 2 years from the estimate). That is a significant error band if the child is aged 17 years. Age cannot be determined solely on appearance. Social maturity can be misleading, particularly for children who have been trafficked, displaced or forced to fend for themselves in transit to the UK. They are likely to be more mature than their English age cohort. Some Social Services Departments have in the past insisted on an x-ray of teeth or other invasive treatments. Quite clearly it is inappropriate to require that young applicants have an x-ray that is not for clinical reasons. Demands for such tests ought to be resisted. UNHCR Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum (1997 para 5.11) state that if an assessment of the child's age is necessary:

a) Such an assessment should take into account not only the physical appearance of the child but also his/her psychological maturity.

b) When scientific procedures are used in order to determine the age of the child, margins of error should be allowed. Such methods must be safe and respect human dignity.

c) The child should be given the benefit of the doubt if the exact age is uncertain.

.....The guiding principle is whether an individual demonstrates an "immaturity" and vulnerability that may require more sensitive treatment.

Age assessments are generally undertaken by Social Services. The Home Office has agreed to accept their assessments in cases of dispute. There is now a pro-forma, which can be used by Social Services Departments to inform the Home Office if an

age assessment has been carried out and the outcome of that age assessment. The pro forma assumes that an age assessment is carried out by Social Services. There is great reluctance amongst Social Services to undertake age assessment work that is not related to an assessment of a child's needs. It is time consuming. It is an additional expense for already struggling departments. If a child has been assessed as being unaccompanied and requiring a service from Social Services then it is ludicrous for the Home Office to insist that a further full age assessment is carried out by that Social Services Department. A needs assessment carried out by Social Services will include an assessment of that child's age so that the appropriate support mechanism can be put into place.

Many social workers are unhappy with their age assessment responsibilities. It involves them in immigration control functions. Further social services may not be dispassionate in such process as they will have financial and care responsibilities for those found to be children. Age dispute cases increasingly involve not simply the Home Office but Social Services' officers engaged in assessment. If the Social Services assessment is disputed it may be amenable to challenge by way of judicial review. (see: *The Queen (B) v LB Merton* [2003] EWHC 1689 (Admin)

Social Services Accommodation and Support

Separated children should receive assistance as children in need under section 17 or be accommodated under section 20 of the Children Act. The government gives a modest grant to social services departments to cover the cost of supporting such children. Section 20 notionally affords a wide range of services to recipient children, including allocation in foster or residential homes, assistance from a social worker, and if over 16, the allocation of a personal adviser, the preparation of a care or pathway plan, financial support and entitlement to full leaving care services. Section 17 support generally is limited to financial support and lodging. In *Behre and Others v LB Hillingdon* the High Court confirmed that there was a presumption that separated children without parental support should be accommodated under section 20 of the Children Act, that such children and those assisted under section 17 prior to the 7th November 2002, were 'looked after children' and therefore eligible for leaving care

support. This case has changed the policy and practice concerning separated child support.

General duty to all children living within their area

It is useful to consider the precise obligations owed to children under the Children Act.

Section 17 - Children Act 1989

- General duty to provide a range and level of services [s.17(1)]:

    (a) to safeguard and promote their welfare; and

    (b) so far as is consistent with that duty, to promote their upbringing by their own families

- Child in need defined as those [s.17(10)]:

    (a) who 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 the local authority;

    (b) whose health or development is likely to be significantly impaired, or further impaired, without provision of such services; or

    (c) who are disabled

- Local authority may exercise their duty by providing assistance (including in exceptional circumstances, cash assistance) to the child's family [s.17(6)]. "Family" for these purposes includes anyone with parental responsibility for the child or any other person with whom he or she has been living [s.17(10)].

Specific duty to provide accommodation for children in need

Section 20 - Children Act 1989

- Specific duty to provide accommodation for any child in need who appears to require accommodation [s.20(1)].

    (a) there being no person who has parental responsibility for him;

    (b) his being lost or having been abandoned; or

(c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.

- Note for children who have reached 16 years a local authority shall provide accommodation if child's welfare is likely to be seriously prejudiced if accommodation is not provided [s.20(3)].

- Children looked after by a local authority [s.22(1)]include all children provided with accommodation by the local authority, *whether or not* the child is subject to a Care Order.

Duty to take reasonable steps to identify children in need

Paragraph 1, Schedule II - Children Act 1989

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

Children (Leaving Care Act) 2000

- Amends the CA 1989 to require local authorities to assess the needs of children they have accommodated or taken into care for more than 13 weeks to determine what advice, assistance and support is appropriate, initially in the period up their 18th birthday and subsequently in the period from their 18th birthday until their 21st birthday.

Pathway Plan, personal adviser for each eligible child

Section 24 (as amended by CLCA 2000) - Children Act 1989

Requires local authorities to have continuing responsibility to those young people who are previously accommodated (i.e. "looked after" at any time between the aged of 16 and 18) to assess and meet the needs of 16 and 17 year old care leavers, to maintain contact with care leaders up to the age of 21 and to provide funding and education for care leaders up to the age of 24.

Children accommodated by social services generally are assessed and supported by the Asylum Seeking Children's Team. Many Local Authorities have a two-track system for migrant and settled children. Settled children will have secure immigration status. Asylum seeker or illegal entrant children are 'migrants' as their immigration

status is uncertain. Practitioners need to be alive to the fact that settled children (including those whose families are settled, even if the child's status is irregular) should be receiving a full local authority service from Social Services. They should have a full assessment of their needs, be placed in appropriate accommodation, are entitled to have their views heard by Social Services, and for any care plan to be reviewed.

Some children who are supported by the Local Authority as unaccompanied or abandoned migrant children are extremely young. In these cases the Local Authority should consider taking a full care order for a child. Such interventions are generally reserved for settled children. Such order has immigration significance as the IDIs make clear that where there is a care order it is likely that indefinite leave to remain would be given to a child. The Local Authority may resist such intervention. However in some cases it will be highly relevant especially if the child is young, very vulnerable, is sick and there is no person in the UK with parental responsibility able to consent to medical treatment or interventions.

The Leaving Care Act provisions are not just practical ones for a child turning 18 but can also have important effects in terms of the immigration status of a child. The purpose of the Leaving Care Act provisions was to cushion young people leaving care, to have some degree of support until they are 21 and 24 in fulltime education. The provisions must be seen as a recognition by Parliament of the particular vulnerability of young people accommodated in the care system. Despite reaching their majority they are statutorily deemed to be in need of ongoing guidance and assistance.