

Refugee Children's Consortium

Immigration Bill – February 2016: Higher Education for care-leavers Schedule 9: Availability of local authority support

1. Summary

Many young people who arrive in the UK as children and claim asylum are not granted refugee status. Instead a significant number are granted limited leave to remain as an unaccompanied children (this was previously known as discretionary leave to remain) on the basis of there being no adequate reception facilities in their country of origin. This leave is normally granted for 30 months or until the child turns 17.5 years old, at which point they can apply to extend ('vary') that leave. In 2014, for example, of the children who received a decision on their asylum claim while aged 17 or young, 41% were granted a temporary form of leave. In 2013 that figure was 54%. These children end up in the care of a local authority and are entitled to leaving care support when they turn 18.

	Total decisions on asylum claims of unaccompanied children aged 17 or under	Grants of refugee status	Grants of 'UASC leave'	Grants of discretionary leave
2014	988	418 (42%)	380 (39%)	23 (2%)
2013	936	237 (25%)	119 (13%)	380 (41%)

Since 2012, when the regulations were changed by the Department of Business, Innovation and Skills,¹ young people with limited leave to remain have not been eligible for home fees or student finance. Eligibility is limited to those with refugee status, humanitarian protection or indefinite leave to remain.² This has meant that those who wish to, and are able to, go to university are effectively cut off from higher education because they cannot afford to pay the fees and support themselves through the course.

However, the 2013 case of *Kebede v Newcastle*³ held that there is a duty on a local authority to make a grant in relation to educational expenses as part of its leaving care support, to the extent that a former relevant child's educational needs require it. The court found that a 'principal expense associated with education is the cost of tuition' and so it followed that it was the local authority's duty to give assistance by making a grant to enable care leavers to meet this expense.⁴ So, in short, local authorities have had to bear the cost of supporting young care-leavers to go to university because they are prevented from access student loans in order to

¹ Changes via the Education (Student Fees, Awards and Support) (Amendment) Regulations 2011.

² For more information, see Coram Children's Legal Centre's fact sheet on access to higher education at http://www.childrenslegalcentre.com/userfiles/access%20to%20higher%20education_Jan2016.pdf

³ *R (on the application of Kebede) v Newcastle City Council* [2013] EWHC 355 (Admin)

⁴ See Coram Children's Legal Centre's case note:

<http://www.childrenslegalcentre.com/userfiles/Kebede%20v%20Newcastle%202013%20EWHC.pdf>

support themselves in higher education. While an essential life-line for those young people wanting to study at university, this has been a cause for concern for those authorities with high numbers of former unaccompanied asylum seeking children.

Schedule 9 of the Immigration Bill now prohibits local authorities from providing funding to facilitate access to higher education to any care leaver aged over 18 who has limited leave to remain. The Refugee Children's Consortium strongly opposes this provision as it would cut off promising young care-leavers from university entirely because they can't currently access student loans in order to support themselves.

If this provision is to remain, we believe it is essential that the Department of Business, Innovation and Skills amends the relevant regulations so that care-leavers who have leave to remain can access student finance AND be charged home fees.

2. Filling a gap – the need for local authority support OR access to student loans

Most unaccompanied children will be looked after by children's services as they are in the UK without parents or carers. They will have arrived alone and without any means of financial support. If the Bill goes ahead as is, unlike other care leavers, those that are permitted to stay beyond the age of 18 by the UK government will now be completely excluded from the higher education system at a crucial point in their lives. Unless regulations are changed, they will have to wait until they are granted 'indefinite leave to remain' (which may not be until they have been in the UK for over ten years in total). The Supreme Court has recognised the importance of young people of maintaining momentum with their studies and accessing university at the same time as their peers,⁵ but these changes will effectively cut off access to higher education as an option for a significant proportion of young people, many of whom will be on a route to settlement in the UK and will be building their lives here.

The young people we support sometimes secure fee waivers and/or scholarships from private donors including trusts and foundations. Local authorities often support them to take up these scholarships by providing their accommodation and maintenance costs. Schedule 9 would prevent local authorities from providing the necessary support for these young people to take up private scholarships, further preventing their access to university, even when a local authority is not paying the fees.

Case study (provided by Refugee Support Network)

Hamid came to the UK from Afghanistan when he was 16 years old having lost both his parents in the conflict in Afghanistan. He learnt English and did well at school but found out, while he was in the process of applying to university, that he was not eligible for student finance because he had limited leave to remain. He writes:

"First I had to face the pain of losing my parents, then the lonely journey which had no direction...only to run for the safety of my life. And now I had to lose education which was the only hope that kept me going to succeed, the desire to become a useful independent educated person in society."

⁵ *R (on the application of Tigere) (Appellant) v Secretary of State for Business, Innovation and Skills (Respondent)*, [2015] UKSC 57

Over the course of two years, he liaised with his university and local authority and finally managed to secure a complex combination of support: home fee status and a 50% fee waiver from the university, and a local authority loan for the outstanding amount of his fees. He finally managed to begin his course at university, in spite of the disappointment of a constantly deferred start as a result of having to secure alternative funding.

Eventually he was granted ILR and managed to secure student finance for the remainder of his course. He is studying engineering.

In the House of Lords debate on the 3rd February 2016, Lord Bates summarised amendment 239B as 'allowing local authorities to pay [home student tuition] fees while the [young person's] immigration application was determined'. This is not what Amendment 239B proposed, and not what is being called for. We are calling for the Government to widen access to student finance so that young people who have leave to remain in the UK can fund themselves and pay these fees themselves. Given the high cost of fees even for home students, it is vital that this group can access student loans. Until these restrictions on student finance are lifted, funding from local authorities is one of the few options available to these young people and therefore must be protected. Young people who have been in the care of the state must either be able to access student support and home fees (which they would ultimately pay back) or support from their local authority.

3. The likelihood of settlement

The Government has argued that it is reasonable to expect those wishing to access student support to demonstrate a fundamental connection to the UK which would suggest that they are likely to remain here to make a long-term contribution to our economy or society.⁶ This argument has been upheld by the Supreme Court⁷ and we would support this. We would argue that only those young people who have been 'ordinarily resident' in the UK for three years would be included in the eligibility criteria for student finance and home fees. This would ensure that those eligible were already on their second grant of leave to remain and therefore extremely likely to ultimately obtain settled status, but would not require them to wait the ten years currently necessary to be eligible for indefinite leave to remain.

4. Numbers and the impact on resources

The number of care-leavers who arrived as asylum seeking children and go on to access university is extremely low – recent figures showed just 40 former unaccompanied asylum seeking children care-leavers going to university in 2015.⁸ These figures would suggest that any financial impact of allowing access to student finance and home fees to this group would be minimal.

⁶ Lords Bates, Immigration Bill debate, 3 February 2016, col 1859

⁷ R (on the application of Tigere) (Appellant) v Secretary of State for Business, Innovation and Skills (Respondent), [2015] UKSC 57

⁸ Parliamentary question asked by Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East): To ask the Secretary of State for Education, how many care leavers in full or part-time higher education aged between 19 and 21 in (a) 2014 and (b) 2015 were former unaccompanied asylum seeking children looked after by the local authority. Answered by: Edward Timpson on 10 February 2016

Furthermore, it is important to note research commissioned by the Department of Business, Innovation and Skills has highlighted the considerable benefits of accessing higher education, both to the government (of the order of £264,000 from men graduates and £318,000 from women)⁹ as well as to the individuals and also to society.¹⁰ Not only is the exclusion of this group from higher education discriminatory but would prevent many young people from developing their skills and careers and ultimately giving back to society. The Government has also recognised the need to encourage more students from disadvantaged backgrounds into university, especially care-leavers.¹¹ Higher education must be an experience and investment open to all. The government must not frustrate this process by preventing young people in the UK from accessing any means they may have of supporting themselves through their studies.

5. Next steps

The Department for Business, Innovation and Skills recently undertook a consultation on student funding eligibility in light of recent litigation with a view to ‘introducing new eligibility criteria for student support to allow people who have a long residential connection to the UK to enter higher education’.¹² That consultation did not consider the situation of care-leavers nor the impact of the changes proposed in the Immigration Bill, although this was raised by some respondents.¹³ As plans are already underfoot to amend the existing regulations, we would recommend that at the same time an additional new eligible category be added to the regulations for Student Support, Fees & Awards, Qualifying Courses and Persons, NHS Bursaries and all other student support provisions that would provide for any student who:

- entered the UK when aged under 18; and
- has leave to enter or remain; and
- is a person to whom a duty is owed by a local authority under section 20, 21, 22, 23A, 23C, 23CA 24A or 24B of the Children Act 1989; and
- has been lawfully and ordinarily resident in the UK and Islands throughout the three-year period preceding the first day of the first academic year of the course.

The proposed draft would require entry into the UK as a child, eligibility for leaving care support under the Children Act 1989, leave to remain in the UK and three years lawful residence.

For more information: Kamena Dorling, Head of Policy and Programmes, Coram Children’s Legal Centre on 07874605579/ kamena.dorling@coramclc.org.uk or Ilona Pinter, Policy Adviser at The Children’s Society on 07713 878 207 / ilona.pinter@childrenssociety.org.uk

⁹ The Impact of University Degrees on the Life Cycle of Earnings: Some Further Analysis (BIS Research Report No 112, 2013)

¹⁰ The Benefits of Higher Education Participation for Individuals and Society: Key Findings and Reports: “The Quadrants” (BIS Research Paper No 146, October 2013)

¹¹ Care Leaver Strategy (2013) A cross-departmental strategy for young people leaving care https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266484/Care_Leaver_Strategy.pdf

¹² Department of Business, Innovation and Skills consultation ‘Student support for non-UK nationals who have lived in the UK for a long time’, at <https://www.gov.uk/government/consultations/student-support-for-non-UK-nationals-who-have-lived-in-the-UK-for-a-long-time>

¹³ See, for example, Coram Children’s Legal Centre’s response, at http://www.childrenslegalcentre.com/index.php?page=migrant_children_consultation_responses