

# **IMMIGRATION SUPPORT FOR CHILDREN IN CARE AND CARE LEAVERS**

*POLICY RESOURCE FOR LOCAL AUTHORITIES*



**This policy resource for local authorities has been endorsed by the following organisations**



## **Acknowledgement**

**This report was produced with the support of The Esmée Fairbairn Foundation**



# Table of contents

[1. Introduction; Children subject to immigration control and children's social care](#)

[2. Assessment and planning](#)

[a. Identifying immigration issues for children coming into care](#)

[b. Single assessment](#)

[c. Identifying immigration issues for children already in care / care leavers](#)

[d. Recording 'nationality' and 'immigration status' on case management systems / databases](#)

[e. The Care and Pathway Plan](#)

[f. Immigration routes and British citizenship](#)

[i. British citizenship](#)

[ii. Other Immigration Routes](#)

[3. Carrying out the plan](#)

[a. Connecting looked-after children and care leavers with good quality legal support](#)

[i. Early support](#)

[ii. Referrals](#)

[iii. Legal aid](#)

[iv. Monitoring and identifying any issues with legal representation](#)

[v. Changing advisers](#)

[b. Obtaining identity documents](#)

[c. Acting as a responsible adult](#)

[d. Capacity and competence](#)

[e. Supporting a young person's immigration or citizenship application](#)

[4. Continuing support for Care Leavers](#)

[Annex 1: Obtaining ID documents](#)

[i. UK birth certificate](#)

[ii. British passports](#)

[iii. Foreign identity documents](#)

[• Who will apply for the identity document](#)

# Immigration support for children in care and care leavers

This resource is intended as a guide to support good practice by children's social care teams and practitioners. It was published by SLRA in June 2023 reflecting relevant legal duties and guidance at that time, and updates will be made annually. However, all users of this resource should ensure that they are using the most recent version and that they have sought advice on any further changes to legislation or policy.

## 1. Introduction; Children subject to immigration control and children's social care

Children subject to immigration control (which means anyone who is not a British (or Irish) citizen) can come into contact with children's social care services in a variety of ways. Some children subject to immigration control will be no more or less likely to require support than other children, but there are a significant number of children subject to immigration control who are more likely to come into contact with children's social care. This can either be directly because of their immigration status - for example unaccompanied asylum-seeking children - or because their immigration status makes them more vulnerable and therefore more likely to require support - for example undocumented families with no recourse to public funds.

This policy focuses on the duties a local authority has towards children who are looked after and care leavers who are subject to immigration control. It relates to children who are (or care leavers who were) looked after under Section 20, Section 31 (full care order) and Section 38 (interim care order) of the Children Act 1989 and equivalent provisions in the Children (Scotland) Act 1995 and The Children (Northern Ireland) Order 1995.

In England Section 22 of the Children Act 1989 sets out the general duty of the local authority looking after a child to safeguard and promote the welfare of that child. This duty underpins and should inform all subsequent activity by the local authority in relation to the child. Where a child is 'looked after' by the local authority, it must also act in line with the corporate parenting principles<sup>1</sup>, in particular this means acting in their best interests and securing best outcomes for them. As will it need to create a long term 'permanence plan' for the child's upbringing, with the aim of giving them a sense of security, continuity, identity and belonging<sup>2</sup>. Equivalent legislation and duties exist in Northern Ireland, Scotland and Wales.

**For a local authority to meet all of these duties towards a child, it is essential that they support them to acquire secure and permanent immigration status or British citizenship.**

Where local authorities have failed to resolve a looked-after child's immigration or nationality issues and they have brought a complaint to the Local Government

---

<sup>1</sup> Section 1 of the Children and Social Work Act 2017

<sup>2</sup> The Care Planning, Placement and Case Review (England) Regulations 2010 and Children Act 1989 guidance and regulations volume 2: care planning, placement and case review

Ombudsman (who provides independent oversight of local authorities), these have been upheld and the Ombudsman has confirmed that the local authority failed in its duties.

Early resolution of these issues saves prolonging a sense of uncertainty or fear for the child or young person, and prevents them from facing unnecessary complications as they get older and want to apply for jobs, attend university and obtain scholarships, grants, or loans, obtain a driving licence, rent accommodation, or undertake many other activities that are an important part of normal life. Whereas, having insecure immigration status leaves children vulnerable to a number of risks that can undermine their safety, wellbeing and life opportunities. Therefore, in order to safeguard and promote the welfare of all their children in care, local authorities will need to;

- Identify all looked-after children and care leavers with immigration and nationality issues;
- Connect looked-after children and care leavers with good quality legal support as soon as possible;
- Take a proactive and informed role in supporting looked after children and care leavers through any immigration applications and appeals;
- Enable those who are eligible to apply for permanent status and British citizenship.

This policy details the internal policies, procedures and practical guidance that will enable local authorities to meet these duties within the social care framework. It is relevant to any child in care or care leaver subject to immigration control, which means anyone who is not a British (or Irish) citizen.

Training is available for local authority staff who want support to implement the good practice suggested in this document. Social workers and personal advisers don't need to be legal experts, but having a general understanding of the immigration system can empower them to provide proactive support to young people as they go through any applications, help young people to understand and participate in these processes themselves, and advocate for them if anything goes wrong.

To ensure that social workers, personal advisers, and foster carers receive the necessary knowledge local authorities should schedule regular and mandatory immigration and nationality training sessions. These sessions should be delivered by specialist organisations who are accredited to give legal advice, and should provide attendees with;

- an understanding of their role in supporting looked after children and care leavers with their immigration and nationality needs

- the background knowledge to enable them to identify potential immigration and nationality issues for those they are supporting;
- an understanding of the regulatory framework for immigration advisers;
- the ability to identify when someone needs to seek immigration advice;
  
- an understanding of what to expect from an immigration adviser.

For further information and advice on accessing training, or support implementing this policy template, please contact the [South London Refugee Association](#).

Please note the term social worker is used throughout the document, but the guidance herein is not restricted to use by social workers and in some cases will be carried out by a personal adviser. Likewise, throughout this document, for brevity, we sometimes refer to 'immigration issues' when we mean both immigration and nationality issues.

## 2. Assessment and planning

### a. Identifying immigration issues for children coming into care

The nationality and immigration status of looked after children should be established as early as possible, ideally when the referral is made to the local authority.

Whilst it may be obvious that an unaccompanied asylum-seeking child will need support with their immigration status, it may not be so easy to identify children with other immigration issues. Therefore, it becomes vital that those working in children's social care have an adequate understanding of the issues to ensure that all children with an immigration or nationality need are identified and supported to access legal advice in a timely manner.

Often if a child is born in the UK, they will not have any other identification documents other than a UK birth certificate.

If it is believed the child is British, an application for a British passport should be made directly to HM Passport Office. This should be done for all children coming into care who are believed to be British and do not already have a passport.

**If a child is assessed as being ineligible for a British passport (either on the basis of the information given, or because an application has been refused), this will indicate an immigration or nationality issue. Further information regarding the child's immigration status should then be obtained as detailed below.**

### b. Single assessment

The first step in the care planning process is the Single Assessment (or sometimes known as a Child in Need, Section 17 or Child and Family Assessment). Asking some questions as part of this assessment will assist social workers to identify immigration issues.

Local authorities should add the question **"Does the child have a British passport?"** as part of their existing Single Assessment template. If the answer is no this should then prompt the Social Worker to obtain and record as much of the information in Table 1 as possible.

<b>Table 1 Identifying immigration issues</b>	
Nationality	
Place of birth	
If the child was not born in the UK, date of arrival and type of visa entering the UK (if any)	
Immigration status now	

Mother's place and date of birth and nationality (at time of child's birth and now)	
Mother's immigration status UK at time of child's birth	
Mother's immigration status in UK now	
Father's date and place of birth and nationality (at time of child's birth and now)	
Father's immigration status UK at time of child's birth	
Father's immigration status in UK now	
Copies of any identification documents for child and parents (e.g. birth certificate or hospital records, passport, Biometric Residency Permit (BRP))	
Copies of any Home Office documents for child and parents (e.g. letters granting leave to remain)	

Table 1 can also be found in the ['Assessment and planning - Immigration status questions' resource](#), which can be added as a link or an appendix to Single Assessment templates.

When answering the questions in Table 1 it should not be assumed that a child has the same nationality or immigration status as either parent. Furthermore, if the information is available it may be helpful to include information for grandparents if possible as this may be relevant for some children.

If the child / parents are unable to provide the above information (or the parents are not engaged), the following steps may be taken;

- Ask another family member
- Ask the child's / family's immigration adviser (if they have one) for an update on their immigration status and any applications
- Discuss contacting the Home Office with the child and/or family to obtain further information about a child and / or family. Email the request to this address: [icessvecworkflow@homeoffice.gov.uk](mailto:icessvecworkflow@homeoffice.gov.uk).
- Complete a check via the [NRPf connect system](#) - NRPf Connect is a secure online database that enables a council to obtain immigration status information from the Home Office in compliance with data protection legislation to help identify a person's support options and whether the exclusion to social services' support applies. Local authorities are required to subscribe to the system for a fee.

**However, in order to foster a relationship of trust and to avoid any adverse consequences (such as enforced removal from the UK and long term separation of family members) these checks should only be done only after a discussion with the parents and the child (if old enough to understand), and where it is in the**



**child's best interests. In some cases, e.g. involving domestic violence, it may be appropriate to consult only 1 parent or neither parent.**

Social workers should ensure that copies of identification documents and Home Office documents are uploaded.

This [flowchart](#) may assist in following this process and identifying immigration issues. However, for social workers to be able to do this effectively it will be crucial that they understand the different immigration status categories above and the routes available to obtain these forms of status. For further guidance on this please see the section on [Immigration routes](#).

If the child does not already have an immigration adviser it will be necessary to refer them to good quality legal support at this point. Please see the section on [Connecting looked-after children and care leavers with good quality legal support](#) for further guidance on this.

### **c. Identifying immigration issues for children already in care / care leavers**

In addition to identifying immigration issues for new children coming into care, it is vital to recognise that there may already be children in care who require assistance with their immigration status but have not had the benefit of early intervention or require follow up work to address immigration or nationality issues.

For this reason, a child's immigration status will need to be considered at all of the following 'contact points' within the social care system:

- At the point of referral - ensuring the immigration status is clearly recorded on the case management system
- Within the single / child and family assessment
- During any panel meetings which will change the child's legal status (e.g. from section 20 to 31)
- During care proceedings
- During "looked after child" reviews
- During the transition from a child in care to a care leaver
- During pathway reviews

To ensure this happens systematically, the question "Does the child / young person have a British passport" will need to be added to all relevant existing templates with a link to the '[Assessment and planning - Immigration status questions](#)' resource. Table 1 must be completed if the answer to this question is **no**.

If the child does not already have an immigration adviser it will be necessary to refer them to good quality legal support at this point. Please see the section on [Connecting looked-after children and care leavers with good quality legal support](#) for further guidance on this.

#### **d. Recording 'nationality' and 'immigration status' on case management systems / databases**

To ensure that the above information is systematically recorded and monitored there should be mandatory 'nationality' and 'immigration status' fields on the case management system. Under 'nationality' there will need to be an option for recording dual (or multiple) nationalities.

Possible categories for immigration status could include;

- British citizenship
- Initial asylum claim pending (UASC or former UASC)
- Further submissions pending (protection or human rights)
- Refugee status 5 years
- Humanitarian protection 5 years
- Temporary refugee permission 2.5 years
- Humanitarian protection 2.5 years
- Indefinite leave to remain (permission to stay as a refugee, humanitarian protection)
- EUSS pre-settled 5 years
- EUSS settled status
- Limited leave to remain
- Indefinite leave to remain (other)
- Undocumented/ no evidence of status

A field to record when any limited leave to remain is going to expire should also be added.

All of this information should be reviewed in management meetings to ensure that information is recorded accurately.

This information should also be subject to data protection and information sharing safeguards which prohibit the Home Office from using social care data for immigration enforcement purposes.

If 'nationality' or 'immigration status' is initially unknown, there should be an 'unknown' option (rather than having an 'other' option). Wherever the nationality is not British (including unknown) there should prompt the social worker to obtain legal advice and set a reminder to follow up (once further investigations have been made and / or legal advice has been sought). Please see the section on [Connecting looked-after children and care leavers with good quality legal support](#) for further guidance on this.

#### **e. The Care and Pathway Plan**

All children in care will have a care plan, which will become a pathway plan from the age of 16. The pathway plan focuses on the child transitioning into independent living.

Care and pathway planning are vital tools for taking a proactive and informed role in supporting looked after children and care leavers with their immigration issues. First and foremost, this should mean supporting children and care leavers to be active participants and included in the process as much as possible. As with other support areas, care and pathway plans should identify both short and long term goals in regards to immigration status too. However, as care planning duties require a long term 'permanence plan' for the child's upbringing<sup>3</sup> supporting them to acquire the most secure form of immigration status possible and / or British citizenship where relevant should usually be the ultimate goal. This is because with any form of temporary status the child must live with the anxiety and uncertainty of having to make further immigration applications, there is the prospect of losing it, and they may face difficulties such as accessing benefits, student loans and housing when they turn 18. Therefore, whilst making an application for limited leave to remain might suffice as an appropriate short term goal in some cases (e.g. where this is the only option or the child has indicated they may wish to be reunited with family abroad at some point), the option of securing permanent status should always be considered first and set as a long term goal if not possible at the time. Referring the child to an immigration adviser as soon as an immigration issue is identified, so that they can advise on the options available, will be crucial in identifying these goals.

Discussions about immigration and nationality needs and processes can be fitted within existing care and pathway planning processes by adding an immigration status section to existing planning templates. This gives the opportunity for records to be kept up-to-date, deadlines to be planned for, and important conversations about the implications of these processes to be had. To ensure this happens we recommend that local authorities add the question "Does the child / young person have a British passport" to their care plan template with a link to the ['Assessment and planning - Immigration status questions'](#) resource for social workers to complete wherever the answer is no.

In addition to the questions aimed at identifying an immigration issue, the resource includes a second table with the following questions;

<b>Table 2</b>	
<b>Monitoring immigration issues in care / pathway planning</b>	
What is the child's current immigration status?	
Is there an application to regularise or improve the child's immigration status pending with the Home Office?	
Who assisted the child to make the application? Is there a legal representative?	
When was the application made?	
What are the possible outcomes of the application, and options if granted or refused?	

<sup>3</sup> The Care Planning, Placement and Case Review (England) Regulations 2010 and Children Act 1989 guidance and regulations volume 2: care planning, placement and case review

Has the solicitor been made aware of any health needs and / or specific vulnerabilities which may be relevant? Consent should be sought where necessary.	
Set a review date for the above information (this should be at least at every LAC review, but may need to be earlier depending on the status / progress of the application), ensuring that there are regular updates from the child's legal representative.	

These questions / answers should transition from the child's care plan to his/her **pathway plan**.

Having these questions on a child or young person's care plan / pathway plan will ensure that their immigration matter is reviewed regularly and monitored in relation to other developments. For example if the child's status changes from Section 20 to a care order, and their care plan indicates that the child is likely to remain in the care of the local authority until they reach the age of 18, the local authority should ensure that the child has permanent status in the UK and consider if it is appropriate to apply for British citizenship.

As with any other children, it will be necessary to consider obtaining a care order for unaccompanied migrant children if there is reasonable cause to believe that a child is suffering or is likely to suffer significant harm. A care order may be particularly relevant for younger children, those who have been trafficked or those with learning or capacity issues.

A *looked after* child's immigration status will not affect their rights to be cared for by the local authority, to access compulsory education or free healthcare. However, immigration status will affect the child's access to student finance, mainstream benefits, and their right to work. Therefore, immigration status issues become more relevant and urgent as the child turns into a care leaver aged 18. Therefore double or triple planning will be necessary throughout the care plan – i.e. contingency planning to cover what may happen following particular outcomes. As an example, if a young person's immigration application is pending there may need to be a different plan in place for each of the possible outcomes (e.g. a grant of indefinite leave to remain, limited leave to remain or a refusal) in relation to how they might impact on all of the overlap issues (e.g. benefits or student finance). Therefore, the task for the social worker will be in identifying points of worry or risk with the young person, getting specialist legal advice on the matter, and ensuring there is a plan in place that foresees all of the potential issues.

However, for social workers to be able to do this effectively it will be crucial that they understand the different immigration routes available to looked after children and care leavers. Please see the section on [Immigration routes](#) for further guidance on this.

## **f. Immigration routes and British citizenship**

### **i. British citizenship**

British citizenship is the most secure form of status a person can have in the UK, but it is not always possible or even the best option for every child or young person. If the child or young person is not yet eligible, or doesn't want to become British after an informed discussion about this, other forms of permanent status such as indefinite leave to remain still gives many of the same benefits, such as access to benefits and a sense of security.

Children born in the UK after July 2006 with at least one parent who is British or settled at the time of the child's birth automatically have British citizenship from birth. Likewise, many children born outside the UK to British citizen parents are automatically British citizens from birth, but this depends on how the parent acquired British citizenship.

Prior to July 2006 a child whose father is the British or settled parent would not be British by birth if the parents were not married. In these instances they would be entitled to register as British instead.

Many children in care and some care leavers may be able entitled to register as British, including;

- Anyone born in the UK to a parent who becomes a British citizen or settled when they are under the age of 18
- Anyone born in UK and who lives here continuously for the first ten years of their life
- Children and young people (aged 5-22 years old) who were born in the UK and are stateless

Even if the child would not be entitled to register as a British Citizen they may be able to make a discretionary application on the basis that their future clearly lies in the UK and it would be in their best interests. For example, the Home Office has released new guidance which states that children with at least 10 years' residence in the UK will normally be registered as British Citizens by discretion if they meet the other requirements. Children who have resided in the UK for less than 10 years may also be registered by discretion in some circumstances.

It is very often in a child's best interests to acquire British citizenship as soon as they are able to. This is because a 'good character' requirement applies to some (but not all) routes to citizenship after age 10, and so getting into trouble with the police may cause a barrier to citizenship. Also, whilst children are in care they are automatically exempt from paying citizenship application fees, whereas there are very high fees for most citizenship applications for everyone else (unless they are a child and qualify for a fee waiver).

For this reason legal advice should be sought as early as possible to establish whether or not a child or young person may apply to become British and the route that is most relevant to them. Further information on routes to British Citizenship can be found on the Project for the Registration of Children as British Citizens ([PRCBC website](#)).

It's important to note when considering making an application to register as a British Citizen on behalf of a child legal advice will need to be sought on any potential issues around dual nationality and parental consent<sup>4</sup>.

## ii. Other Immigration Routes

There are many routes to regularise or improve the immigration status of children and young people in the UK, and for children in care there will almost always be at least one option available to them. However, as each child's / young person's immigration history and situation will be different, it will be necessary to obtain legal advice at the earliest opportunity as to what application routes are available to them to achieve permanent status as soon as possible.

Kids In Need of Defence (KIND) UK has a number of [resources](#) explaining the various routes available for children to regularise their status.

These are some examples (but this is not an exhaustive list and so legal advice must be sought) of the options available to children in care and care leavers:

- Protection related applications; Young people who have left their home countries because they fear persecution may apply for asylum which could result in one of the following forms of status;
  - 'Initial asylum claim pending (UASC or former UASC)'
  - 'Further submissions pending (protection or human rights)'
  - 'Refugee status 5 years'
  - 'Humanitarian protection 5 years'
  - 'Temporary refugee permission 2.5 years'
  - 'Humanitarian protection 2.5 years'
  - 'Indefinite leave to remain (permission to stay as a refugee, humanitarian protection)'

---

<sup>4</sup> Parental consent for a British citizenship application must be obtained in writing to ensure that the local authority is complying with their duties and powers under the Children Act 1989. In circumstances where the local authority is considering British Nationality for a child, they also must consider if this has any impact on their nationality of birth. If a child would lose his/her nationality of birth (because the authorities of that country don't permit dual nationality), the local authority may only proceed with parental consent or a Court Order granting permission. If parental consent cannot be obtained, one option may be applying for settlement instead and waiting until the child comes of an age where they can decide and give consent themselves (assuming this wouldn't disadvantage them in any way). In any instance, advice from your in-house legal team must be sought if there is a possibility for the child to lose their nationality of birth. If there is no risk of loss of the child's nationality of birth then the local authority can proceed with consent or permission of the court.

For further guidance on supporting a young person through the asylum system please see our [‘Supporting Unaccompanied Asylum Seeking Children and Care Leavers - Policy Resource for Local Authorities’](#) which can be found on our website on the [Taking Care](#) page.

- Child in care applications; Children who were born in the UK and are in care under a care order may be eligible for ‘Indefinite leave to remain (other)’. Other children in care may be eligible for ‘Limited leave to remain’ for 12 months to four years depending on their specific circumstances.
- Long residence applications; Children born in the UK who have lived continuously for 7 years or more and whom it would not be reasonable to expect to leave the UK can apply for ‘Indefinite leave to remain (other)’. Children who were not born in the UK but who have lived here continuously for 7 years or more and whom it would not be reasonable to expect to leave the UK can apply for Limited Leave to Remain (other) for 60 months on a 5 year route to settlement. Whilst young people aged 18-24 years who arrived in the UK when they were a child and have lived in the UK for more than half their life can apply for ‘Limited leave to remain’ and would be on a 5 year route to settlement.
- Statelessness applications ; A child who is stateless (but not a refugee and not eligible for British citizenship as a stateless child) may apply for ‘Limited leave to remain’ as a stateless person.
- Applications under the EU Settlement Scheme (EUSS); Children of EU nationals who were resident in the UK prior to the end of the transition period (31st December 2020) may be able to apply for ‘EUSS pre-settled 5 years’ or ‘EUSS settled status’, or may even qualify as British depending on their parents resident rights at the time of their birth. For further guidance, the government has provided a [toolkit](#) for local authorities in supporting children and families through the EUSS.

### Further Leave Applications

It’s important to note that every form of immigration status other than British or settled (indefinite leave to remain) is temporary, and only grants the child or young person ‘limited leave to remain’. Wherever this is the case, the date of expiry on the child or young person’s visa will need recording clearly on the case management system and in their care / pathway plan. They will then need to be referred for legal advice to make an extension / further leave application, or if eligible an application for indefinite leave to remain, at least 3 months prior to their visa expiring. If an application is not submitted before the expiry, they will have overstayed their visa and be in the UK unlawfully.

As long as the child or young person makes a valid application to extend their leave (permission) to be in the UK before it expires, their existing leave will be rolled over until a decision has been made on the application, even if this is after the original

expiry date. This is commonly known as “section 3C leave”, because it is in section 3C of the Immigration Act 1971. This means that they retain all of their rights (such as access to benefits, right to work etc) until a decision has been made on their application. However, this is often difficult to prove when the date on their visa has expired and so will often require the social worker or personal adviser’s assistance in explaining. A letter from the legal adviser can also be requested confirming the application was made in time.

There are high fees for many of these applications but looked after children are exempt from paying fees for most applications.



### **3. Carrying out the plan**

Once a child has been identified as having an immigration or citizenship need the local authority has an important part to play. Informed and proactive support from social workers has led, again and again, to early resolution of status for non-British children.

The following sections provide guidance on what proactive support with an immigration issue entails and the considerations that will need addressing to achieve it.

#### **a. Connecting looked-after children and care leavers with good quality legal support**

##### **i. Early support**

To meet a child's best interests, it is crucial that they are supported to receive immigration advice as soon as an immigration issue is identified. Children in care under 18 have many options to regularise their immigration status, some of which they lose or become less likely when they turn 18. But to make these options a reality, children need advice early. This is because citizenship and immigration issues can sometimes take years to resolve. If advice is not sought, this can have devastating consequences for the child and have a severe impact on their mental health, well-being, options for higher education, and development in the future.

If a child is not assisted to obtain legal advice, the local authority will be in breach of its duties toward the child. In the past year, the failure of several local authorities to properly assist looked after children to obtain legal advice in time has led to Ombudsman decisions against those authorities, with compensation paid to the young people affected.

Therefore, once immigration needs are identified, the next step will be to seek urgent immigration advice. Social workers should ensure that any action in respect of obtaining immigration advice is recorded accurately on the care / pathway plan so that it can be easily accessible for other workers supporting the child / young person.

##### **ii. Referrals**

Legal advice and representation for immigration and citizenship matters must be provided by a registered advisor, who is either a regulated solicitor, barrister or is registered with the Office of the Immigration Services Commissioner (OISC). If a Social Worker frequently works with young people subject to immigration control then it is a good idea for them to build up close working relationships with legal representatives who offer high quality services. However, others may not have this experience and making referrals for immigration advice is particularly difficult in certain parts of the country where there are few legal aid providers. Sometimes it can involve a lot of work and many enquiries before finding a firm or organisation which has capacity to take the case on.

Local authorities have responded to these challenges in different ways:

- Some local authorities have arrangements with or make referrals to local or national NGOs which provide free legal advice for children's immigration and citizenship applications, including [KIND\\_UK](#) (immigration and citizenship applications) and the [PRCBC](#) (citizenship applications only). These and other reputable organisations often have waiting lists for their services. Charities that don't work with Legal Aid may ask that local authorities try to find a Legal Aid practitioner before referring a case to them.
- Some local authorities have good relationships with [local law centres](#) or law firms who are known for providing quality representation to looked after children and care leavers. The Law Society has a [directory of all solicitors](#), which can be searched by area of law. This search will also show if the law firm has any accreditations and the names of qualified solicitors at the company.
  - Some local authorities have an immigration lawyer in their in-house legal team or can access specialist advice via a private practice firm or barrister.
  - Social workers in some local authorities have become accredited immigration advisers and may be able to deal with some advice or applications
  - Some local authorities are supported by their Strategic Migration Partnerships (SMPs). SMP's are Local Government led partnerships funded by, but independent of, the Home Office, whose role is to coordinate and support delivery of national programmes in asylum and refugee schemes as well as agreed regional and devolved migration priorities. There are 12 SMP partnerships across England, Wales, Northern Ireland and Scotland. The hosting arrangements for each partnership may differ depending on regional and national structures. For example, in some SMPs the local authorities have pooled funds to contract a legal expert to advise them. Social workers should contact the local SMP for more information, details can be found [here](#).

Some local authorities may use more than one option above based on the type of advice and assistance required. However, most importantly it will be the social worker's overall responsibility to lead on ensuring the young person has access to good quality legal advice / representation (rather than foster carers or key workers for example). Where a child is old enough or a parent is still involved they may want to choose their own immigration adviser. In these circumstances it remains vital that the social worker remains proactively involved so that they can monitor the situation and raise concerns where necessary.

Managers and in-house legal teams should be consulted to ensure that legal advice is accessed in a timely and effective manner, with the following questions addressed and recorded on care /pathway plans:

<b>Table 3 Referrals to immigration advisers</b>	
Is the application covered by legal aid? See the next section on legal aid for further details	
Are there any deadlines, upcoming appeals, or other issues that impact upon the urgency of the advice needed?	
If the application is usually covered by legal aid but there has been a delay in finding a solicitor which may adversely affect the child / young person, can the work be done quicker on a private basis?	
What are the solicitor costs for any application that needs to be done privately?	
Are there any Home Office application fees? Is a fee waiver available for children in care?	
Have the above costs been approved by management?	
Agreed timescales to review if advice has been sought	

### iii. Legal aid

Legal aid is funding provided by the government via the Legal Aid Agency to meet the costs of some types of legal advice for people who would otherwise be unable to afford legal representation.

Legal aid is normally available for asylum and protection cases but is limited for most other immigration applications. However, since 2019 'separated children' can now fortunately access legal aid for immigration and citizenship matters. This change applied to all children under 18, including those whose age has been disputed by children's services, who are not being cared for by a parent or by a person with parental responsibility for them or who are looked after as defined by section 22 of the Children Act 1989. This includes, for example, children who are receiving section 20 support and those on a section 31 (full) or a section 38 (interim) care order.

Children in families, care leavers and other adults who are financially eligible can also potentially get legal aid through applying for Exceptional Case Funding (ECF), which is available where failing to provide legal aid would risk a breach of someone's human rights or a breach of European Union law. The Legal Aid agency has indicated that there is a presumption that care leavers would qualify for ECF if financially eligible.

However, finding a legal adviser to assist with a case funded by ECF can be challenging, and in some cases impossible, due to difficulties built into the legal aid regime. ECF is granted on a case-by-case approach. It would be advisable to seek legal advice to check eligibility for ECF.

If the child or young person is unhappy with their legal representative, there are complaints procedures<sup>5</sup>, and it is possible to change advisors.

The local authority may have to pay for legal advice if legal aid is not available or is not easily accessible, for example if the social worker is unable to find a legal aid immigration adviser or other free legal advice to advise on the matter in a timely manner. It is advisable that local authorities develop criteria establishing when they should consider funding a private immigration adviser, including factors mentioned in Table 3 such as an upcoming deadline or significant delay.

#### iv. Monitoring and identifying any issues with legal representation

Once a child or young person has been referred to an immigration adviser it will remain the social worker's role to remain involved so that they can ensure that the case is progressing appropriately and the immigration adviser is doing everything they should be doing to provide quality representation. The Traffic Light Reference Chart on Legal Representation of UASC which can be found on our Taking Care Page provides detailed guidance on how to know what to expect from immigration advisers who are representing children seeking asylum, and how to recognise poor practice / red flags. Many of the indicators will be relevant for immigration advisers representing children making other types of applications too.

However, the following guidance is a very basic summary of what to expect at various different stages:

#### What to expect from an immigration adviser when you are referring

- Check they are accredited:
  - Regulated with the Solicitors Regulation Authority (SRA), Bar Standards Board or the Office of the Immigration Services Commissioner (OISC)
  - This should be clear on their website and at their offices

---

<sup>5</sup> First consider using the organisation's (or law firm's) internal complaints procedure as a first resort. IF this does not work consider complaining to <https://www.lawsociety.org.uk/public/for-public-visitors/using-a-solicitor/complain-about-a-solicitor> or <https://www.gov.uk/government/publications/oiscs-complaints-scheme-complaints-form-english>

- All data and information must be held confidentially
- If a private provider is being used for a matter not covered by legal aid (e.g a non asylum immigration matter for a care leaver) they must clarify their fees upfront, and make it clear if the case is in scope for legal aid
- They should give detailed advice on the merits of the case in writing

#### What to expect as case progresses

- Have they given an advice letter summarising the issues and giving detailed advice on the merits of the case?
- Have they given a client care letter confirming charges and setting out the complaints procedure?
- Have they advised on evidence that can be obtained and any evidence they might be able to obtain to support the application?
- Have they provided copies of any applications, information or letters that have been sent to the Home Office?
- Are they providing updates and meeting deadlines? Where a decision on an application is pending an update every 3 months should still be provided.

#### What to do if expectations are not met

- The client care letter should provide information on the complaints procedure. Try to follow the internal process initially
- If the matter is not resolved:
  - Contact the adviser's regulator (either the SRA, Bar Standards Board or the OISC)
  - Change to a different legal representative
  - Consider making a complaint to the Legal Ombudsman

### v. Changing advisers

#### Private immigration advisers

If the client is paying privately and instructing an immigration adviser, they are normally able to change immigration advisers at any time and for any reason. A legal adviser may only end the relationship with the client if there is a good reason and after giving reasonable notice. Examples of good reasons include where there is a breakdown in confidence with the client, and where they are unable to obtain proper instructions.

#### Legal aid immigration advisers

Legal aid firms have to follow certain guidelines relating to taking on clients who have instructed another legal aid firm within the last six months. In this instance the case can only usually be transferred where:

- the client has reasonable cause to be dissatisfied with the service they received

- the client has moved a distance away from the first firm and communication is difficult
- the first firm can no longer act for the client because of a breakdown of the relationship or a conflict of interest.

This can be addressed in a statement by the new legal aid adviser based on a consultation with the applicant. However, it can be hard in practice to find a new immigration adviser willing to take the case if another immigration adviser has been instructed within the previous six-months. On top of this, the process of transferring legal aid can be slow, and it is very likely that evidence will be needed to show that the child continues to be looked after and accommodated.

### **b. Obtaining identity documents**

During the process of confirming immigration status, it may become apparent that the child or young person does not have access to a passport. Having a passport is essential for all children and young people, for example, when travelling, taking part in school trips, opening bank accounts, applying for student finance, applying for employment or welfare benefits (where relevant) and generally proof of age. Obtaining a passport is also a vital part of identifying and addressing any immigration issues - **as long as they and their family members are not claiming asylum / seeking protection from their country of origin. In these circumstances obtaining a passport could result in the refusal of the protection claim and may put the child and their family at risk.**

Whilst most care leavers will be able to apply for their own passports, obtaining them for children in care can be complex.

If the parents do not engage or respond to requests, the social worker can consider requesting relevant documents during the pre-proceedings or care proceedings stage when parents are legally represented. It may be possible that parents are more willing to engage with their own immigration adviser or a Family Court Judge. These matters should be discussed with the local authority's legal team as early as possible in the proceedings.

If the parents do not have the child's passport and / or other identity documents, then they should be encouraged to assist with applying for them within the care proceedings. This is because parental consent will need to be given. If the parents disengage, refuse to assist or fail to respond to requests for parental consent then the local authority should consider the child's best interest and obtain legal advice on dispensing of parental consent where necessary and appropriate (see further details below).

It should be recognised that there may be safeguarding considerations when obtaining a passport for a child in care. For example, where a child is at risk of re-trafficking or a child could be removed from the country by a parent. Where there is a safeguarding risk social workers will need to ensure a plan is in place around access to the passport.

## Parental responsibility and consent

Parental Responsibility is defined in the Children Act 1989 as all the rights, duties, powers, responsibilities and authorities which by law a parent of a child has in relation to the child.

When a child is made subject to a care order, in most cases parents do not lose parental responsibility but share this with the local authority. For the purposes of making any immigration application it will be crucial to be clear on who has parental responsibility. Checking the birth certificate will be the first step and then checking any court orders which followed care proceedings. Asking the legal team who had conduct of the care proceedings may be helpful.

The law in the UK relating to parental responsibility is as follows:

- A mother automatically has parental responsibility for her child from birth.
- A father usually has parental responsibility if he's either:
  - married to the child's mother
  - listed on the birth certificate
- An application for parental responsibility can be made if parental responsibility is not automatically granted (for example for unmarried partners).
- Others may be granted parental responsibility by way of Court Order, such as under a Child Arrangements Order or when a child gets taken into care and the local authority is granted shared parental consent

If a child is subject to a care order (full or interim) the local authority will be able to consent to applications being made on behalf of the child to the Home Office and the HM Passport Office in the UK. It is good practice to consult in advance any other party with parental responsibility and consider any potential negative consequences for family unity, but parental consent will not be required if they are not engaging, or they are refusing to provide consent for an application that is in the child's best interests.

Where a local authority's efforts to resolve a child's immigration status may have negative immigration implications for a parent, the parent should be referred to seek independent legal advice as soon as possible, particularly in situations where there is potential for the child to have a positive relationship with that parent if they remain in the UK.

Parental consent may be needed where the local authority needs to apply for a foreign identification document for a child subject to a care order. Some countries require all parties with parental responsibility to provide consent. Where appropriate, the local authority may be able to dispense of parental consent for the purposes of applying for an identification document by seeking a court order from the Family Court.

In such instances, the social worker will be asked to address the following in a statement:

1. Why is the application necessary
  - a. List the reasons why an ID document is essential for the child; this can include travel plans, school trips, making an application to the Home Office to regularise immigration status, the child's wishes and feelings
2. What attempts have been made to contact parents for consent
  - a. List all methods of contact made to address this, such as telephone calls, visiting parents at their last known address, contacting the embassy which may be able to trace parents if they have returned to their country of origin, asking relatives for new contact details. However, embassies generally should NOT be contacted if the parents (or child) have claimed asylum in the UK, as doing so could result in persecution or other harm of the parents or other family members in the country of origin and / or refusal of the asylum claim(s) in the UK.

The application will be made by the local authority's in-house legal department and should be referred to them for further action.

It would be sensible to consider whether any such court orders are required at the same time as completing the final care plan during care proceedings. This will allow the local authority to obtain any specific court orders at the same time as a care order is granted.

Where a child is looked after under section 20, the local authority will not have parental consent and so whilst they should continue to support and assist with any application processes (in most cases) they will not be able to apply for any identity documents, or make any applications to the Home Office, *on behalf* of the child. However, in many of these instances the child will be old enough to consent to the application themselves and / or consent can be sought from the parents.

For more detailed information regarding parental consent please see the specific requirements for each type of immigration application below.

For more detailed information on the process to obtain identity documents please see [Annex 1](#).

### **c. Acting as a responsible adult**

In all cases involving separated children, a responsible adult should be appointed to safeguard the best interests of the child and provide a supportive role and link between all those who may provide services to the child. Based on their duties to safeguard the welfare of separated children, this responsibility will lie with the local authority for looked after children. This means that the social worker will usually have to take on this role, ensuring the best interest of a child or young person is fully taken into account.



However, at times part of the role may be delegated to others where appropriate e.g. a child may wish their foster carer or a support worker to attend a Home Office interview with them, in addition to their legal adviser. Any decision to delegate the responsible adult role to others should be recorded and justified, with relevant updates being sought.

The role of the responsible adult is an active one, and so anyone filling this role should fully understand all of their duties. In their guidance 'Working with children and young people subject to immigration control, guidelines for best practice' ILPA defines these duties as;

- to exercise parental responsibility for the child or young person (if they hold or have acquired parental responsibility)
- to ensure that the welfare of the child or young person is the paramount consideration in all decisions
- to consult with and advise the child or young person as appropriate
- to be sensitive to questions of age, gender, race, sexuality, culture, religion and any mental health problems or learning difficulties in working with the child or young person
- to ensure that a separated child or young person has suitable care, accommodation, education, language support and health care
- to ensure that a child or young person has suitable legal representatives to deal with his or her immigration status or asylum application.
- to ensure that the child or young person's legal representative has the necessary instructions and information to act in his or her best interests and to be aware of the progress of the case
- to attend all asylum or immigration interviews with the child or young person to ensure that he or she is not unduly inhibited or alarmed by the interview process and to fulfil the functions set out by the Home Office
- to provide a link between the child or young person and the various organisations which may provide services to the child
- to advocate where necessary and appropriate on behalf of the child or young person, and
- where appropriate, and taking great care not to increase the risks to the child or young person and/or to his or her family, to explore the possibility of family tracing and reunification.

In addition to these duties, the responsible adult should ensure the following at any Home Office interviews or tribunal hearings:

- raising any welfare issues that the decision maker needs to be aware of, before, during or after any interviews or hearings so that the welfare needs of the child are actively considered throughout that process
- ensure that the child is spoken to in a way that recognises any communication needs and their maturity

- ensuring that the child feels comfortable during the interview process and / or hearing
- ensuring that the child understands the interview process and / or hearing
- providing moral support and reassurance as necessary to the child
- facilitating communication between the child and the interviewing officer / home office representative / judge where necessary
- ensuring that all welfare needs relating to the child are sufficiently provided for during the interview process and / or hearing such as adequate breaks and refreshments
- offering any additional information to the interviewing officer which may have a bearing on the child's emotional wellbeing and fitness for interview (for example, bringing to the officer's attention that the child is fasting or that they have had a long journey and an early morning start to attend the interview)

Even when a young person turns 18 they are likely to require the above support in interviews and the Home Office will normally consent to this when requested in writing by the local authority.

#### **d. Capacity and competence**

A young person should always be participating in discussions around decision making. Those that have capacity to decide for themselves should always be making fully informed decisions and it will be the social worker's role to support this.

The extent to which a responsible adult may make decisions on behalf of a young person depends on their capacity to make these decisions themselves.

Children aged 16 or 17 are presumed in UK law, like adults, to have the capacity to consent to certain decisions. However, unlike adults, their refusal to progress an application to resolve their immigration status, in some circumstances can be overridden by a parent or someone with parental responsibility. This is because of the overriding duty to act in the best interests of a child.

If there are reasons to believe a young person aged 16 or over lacks capacity (including those over 18 where there are significant medical, learning or development needs), an assessment of capacity to consent should be conducted and recorded in their notes.

The right of younger children to provide independent consent should be proportionate to their competence, a child's age alone is clearly an unreliable predictor of his or her competence to make decisions.

The routine assessment of competence in under 16s should be appropriate to the child's age. For example, routine assessments of competence would not be expected in the case of eight and nine-year-olds but would be more usual for children aged 14 and 15.

When instructing a legal representative for a child or young person, social workers should address whether in their professional opinion the child has the capacity to make decisions. This will involve an assessment of a child or young person's maturity and understanding of the issues. Like all professionals, a legal representative will conduct their own assessment of whether a child or young person is competent to understand the advice they are given and to give instructions. As competence changes depending on what a child or young person needs to understand, a lawyer might find that a child is not competent even where a social worker believes that they are.

#### **e. Supporting a young person's immigration or citizenship application**

Immigration applications for children in care and care leavers will necessarily focus on their well-being and developmental issues. The child or young person's allocated social worker or personal adviser will be best placed to address and explain these needs.

Therefore, social workers and personal advisers may be asked to provide supporting statements for a child's immigration or citizenship matter. If they are not, then the social worker should ask the legal representative if a statement would be helpful.

The Home Office and the Courts have a legal duty to consider the best interests of a child as a primary consideration at all stages of decision making.

#### **Best Interest Determinations**

Article 3(1) of the United Nations Convention on the Rights of the Child 1989 ('UNCRC') provides: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

'Best interests', broadly speaking, refer to a child's general well-being taking into consideration a wide range of factors, including the views of the child, the need for a safe environment, family and close relationships, access to education and healthcare, and development and identity needs. It is now clearly settled law in the UK that the best interests of the child are relevant to all decisions and decision-making processes directly or indirectly affecting a child. In addition, Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Office to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. This includes the child's best interests being treated as a primary consideration when considering immigration, asylum and nationality matters.

In cases dealing with a child's best interests, it is necessary to first identify what those interests are and how the child may be affected by a particular outcome.

Any supporting statement should cover the following:

- Any specific vulnerabilities and support needs, which support services are in place for the child
- Educational needs
- Medical needs, including treatment and medication
- Mental health
- Language needs
- Social connections and support network in the UK
- Family connections in the UK and also abroad
- Can parents meet the child's needs
- Comment on any expert assessments, such as psychological
- Are there any current risks?
- What would it look like if the young person no longer had access to their current support network?
- The social worker's view of the young person's best interests (particularly if under 18)?

This list is not exhaustive and will differ case to case. The child's representative will advise if any specific information about the child is required.

It is important to note that any supporting statements should be based around a social work assessment (professional assessment of the young person's current circumstances) and so is not an assessment of their asylum claim or risk on return.

Social workers should bear in mind that if they are providing a statement within an immigration appeal then they may be asked to give evidence.

## 4. Continuing support for Care Leavers

The Children & Social Work Act 2017 introduced new duties for local authorities towards care leavers and different categories of former relevant young people within The Children's Act 1989, including;

- Care leavers supported under section 23C; All care leavers aged between 18-21 years old AND those over the age of 21 who are pursuing a programme of education or training that is recorded in their pathway plan and has been approved by Social Services.
- Care leavers supported under section 23CA; All care leavers aged between 21 and 25 years old who want to return to their education and/or training
- Care leavers supported under section 23CZB; All care leavers aged between 21 and 25 years old who need help

Statutory guidance from the Department for Education, '[The Children Act 1989 guidance and regulations Volume 3: planning transition to adulthood for care leavers](#)' and '[Extending Personal Adviser support to all care leavers to age 25](#)', should be referred to for guidance on how these duties should be applied and where it may include financial assistance. However in general it should be noted that the changes impose a duty to provide financial assistance (accommodation and money) to care leavers being supported under section 23C (to the extent that a young person's education/training AND welfare needs require it) and 23CA (to the extent that a young person's welfare and education/training needs require it).

Migrant young people who have been granted leave to remain are entitled to the same duties of support and care from the local authority as any other care leaver.

Migrant young people who still have an outstanding application (including pending appeals) have the same duties of support and care from the local authority as any other care leaver. The responsibility to provide accommodation and financial support remains with the local authority (rather than the Home Office for example) until care leaving duties are discharged (based on case lawR (SO) v Barking and Dagenham LBC [2010] EWCA Civ 1101).

However, if a care leaver's application is refused by the Home Office and the tribunals and they become 'appeal rights exhausted' their care leaving rights might be affected. This is when they fall under one of the categories of excluded persons in Schedule 3 of the Nationality, Immigration, and Asylum Act 2002 (which places a bar on the provision of social services' support to a person who is 'in breach of immigration laws') and the local authority must carry out a Human Rights Assessment (HRA). This assessment is to determine whether removing or denying someone's leaving care support would breach their human rights and if so, whether to continue to provide such support to the extent required to avoid this breach.

The local authority may be a member of [NRPF Connect](#), which shares information with the Home Office on former looked after children without recourse to public funds. It

also has published [guidance](#), and an accompanying [HRA template](#), which may be used when deciding when and how to carry out a Human Rights Assessment.

It's important to note that this guidance stresses that during the HRA process, new matters may be identified relating to barriers to removal. These need to be put before the Home Office. For example;

- The person has never made an application to the Home Office.
- New circumstances, such as the birth of a child, or diagnosis of a medical condition, have arisen since the person made their most recent application to the Home Office.
- It appears that the person may be able to make a claim under the Immigration Rules, or that a child may be entitled to register as a British citizen, which may then enable their parent to pursue an application under the Immigration Rules.
- The person made their previous application without legal advice or did not appear to have good quality legal advice, made the wrong application, or did not lodge an appeal against a Home Office refusal when they had the opportunity to do so.

In these instances the young person will need to be supported to access good quality immigration advice. The guidance also states that if an application is submitted as a result of receiving legal advice, then this would need to be treated as a barrier to return until the claim is finally determined by the Home Office and/or appeal courts. When a barrier to return is identified, social services' support should be provided if the person qualifies for this.

If the person is advised by their immigration adviser that no further applications can be made, the outcome of such advice would need to be recorded in the HRA. It is at this stage that the assessment will need to consider whether or not terminating support will breach the young person's human rights.

The law as it has developed through the courts recognises that if a decision to terminate support forces a person to be homeless and/or destitute, this amounts to inhuman treatment and as such, is a breach of the person's human right to be free from inhuman treatment (Article 3 right).

Human rights assessments should cover:

- If support is terminated, what will happen to the care leaver if they remain in the UK and specifically what other sources of support can they access to avoid becoming homeless and/or destitute? Through court cases, it is now recognised that when looking at what will happen to a care leaver if their care leaver support is terminated and they remain in the UK, Social Services can not take into account the availability of asylum support (either s.95/s.4) as an alternative option.

- If support is terminated, can the care leaver reasonably be expected to return to their country of origin to avoid becoming homeless and/or destitute in the UK? The assessment should address both practical and legal barriers to their return.
- The impact of the decision to terminate support on all of the care leaver's human rights i.e. not just Article 3 (right not to be subject to torture or inhuman or degrading treatment) and Article 8 (right to private/family life)

Human rights assessments will look at whether the particular form of support the care leaver is receiving must be provided to avoid a breach of the care leaver's human rights and if the answer to this is yes, support is to be limited to the extent required to avoid the breach of their human rights.

Crucially, it must be remembered that this area of law is complicated, legislation and case law changes regularly, and so legal advice will need to be sought to establish what care leaving duties the young person may be entitled to before terminating support.

Each young person will have individual circumstances and needs, and so decisions will need to be made on a case by case basis. For example, it may be that the young person has needs that would warrant a community care act assessment. However, if a decision to terminate support has been made, this decision will need to be explained in person and then put in writing, giving at least 28 days notice from the date of receipt. At this time the young person should be directed to specialist organisations who can advise on them around their rights to challenge such a decision, whilst steps are taken to refer the young person to Migrant Help for Home Office support and accommodation (if eligible). This referral should include any relevant evidence in regards to vulnerability and local connection, so that any requests to remain in the area may be supported.

## **Annex 1: Obtaining ID documents**

### **i. UK birth certificate**

A birth certificate is always required when applying for a child's passport or within family court proceedings. However, having sight of the child's birth certificate at the earliest opportunity will also provide information about parental responsibility and place of birth for parents.

Birth certificates are a public record, which means that anyone can apply for one provided they have the full name and DOB details for the child and parents.

Further information on obtaining a child's UK birth certificate is available [here](#).

### **ii. British passports**

Anyone who is 16 years or older can consent to their own UK passport application, unless they are subject to a care order (or there are other capacity issues). If they are subject to a care order (full or interim) the local authority can make an application on their behalf, giving parental consent.

It will still be good practice to inform any other party with parental responsibility that the application is being made, but their consent will not be required if they are not engaging, or they are refusing to provide it.

It will be more complicated for children who are under 16 and looked after by the local authority under Section 20. In this instance, consent will need to be sought from the parents (or guardians).

In some exceptional circumstances, the HM Passport Office may consider issuing a passport without parental consent. To request this the local authority will be required to explain why someone with parental responsibility is unable to support the application. Applications in these circumstances will be considered on a case-by-case approach.

The Home Office guidance, states the following:

*"Where a child is accommodated and the whereabouts of a person with parental responsibility is unknown, the Local Authorities Children's Services Department should explain in full why they have given consent in the absence of a person with parental responsibility. The letter should give details of how long those with parental responsibility have been missing and tell us what steps have been made to find them. Consideration will be given to issuing a passport, dependent upon the individual circumstances.*

*When a child is accommodated and the whereabouts of a person with parental responsibility is known, but consent to passport facilities are withheld, HM Passport Office will be unable to issue a passport."*



Further information is available [here](#).

If parents withhold consent, legal advice should be sought from the in-house legal team to explore any other legal options to assist the child obtain a passport.

### iii. Foreign identity documents

Foreign identity documents (such as passports) should usually be obtained for all eligible children in care or care leavers, **as long as they and their family members are not claiming asylum / seeking protection from their country of origin**. Having a passport is important for all of the reasons we have already mentioned, but also because a valid passport is also essential for some immigration applications to the Home Office.

Whilst most care leavers are eligible to apply for their own foreign identity documents, they may require support with completing the application forms and/or gathering the necessary evidence when applying for the first time (such as evidence of their parents' nationality). Ideally, this information will be held on the child's social care records but if not, social workers may need to engage with parents in the first instance or contact an Embassy (where appropriate and safe to do so) so that they can help trace and verify parental nationality.

Renewal applications for care leavers who already have identity documents will be straightforward, but they may need some support and help paying for the fees.

Obtaining foreign identification documents for children, however, is not as straightforward.

Procedures for applying for identity documents differ from country to country and it is vital that, where safe to do so, the embassy in question is contacted in advance to ensure that the process is completed successfully. Social workers will need to have some information in advance of making the phone call to the embassy so that they can provide accurate advice on the requirements.

Having answers to the following questions will assist:

- Name
- Place and DOB of the child
- Parent's names and DOBs and places of birth
- Information on which parent(s) hold parental responsibility and confirmation they consent to the application being made
- Child's place of birth
- Child's legal status with the local authority, e.g. care order

However, social workers will also need to consider the following issues:

- **Who will apply for the identity document**

If the parents are still engaged with the local authority and have regular contact with their child, they may be able to assist with the application.

If parents are unable or unwilling to assist and parental consent is required, the embassy will need to clarify the requirements to make an application on behalf of a child, which will be significantly different to requirements if parents were involved.

For example;

- Some countries will accept an application for an identity document / passport if one party with parental responsibility (e.g. the local authority) gives consent
- Some countries will only allow the local authority to make an application for an identity document / passport on behalf of a child if everyone with parental responsibility also gives consent (e.g. both parents)
- Some countries will only allow local authority's to make applications for an identity document / passport on behalf of a child if they are subject to a full care order (rather than an interim care order)
- Some countries will allow children aged 15+ to make their own application for an identity document / passports

If it is not possible to engage parents within this process and the consent of birth parents is required, the embassy will advise on their specific requirements to dispense of parental consent so that the local authority can apply for an identity document / passport on behalf of a child. This will often include obtaining a court order.

- **Translation**

Most embassies will require an application to be made in their national language and the documents will need to be translated.

Some embassies will assist with completing the application and will require the supporting documents to be translated by an official translator. The embassy must be contacted in advance to clarify if this is the case to ensure that the documents are translated as required.

- **Legalisation**

Some embassies will require supporting documents, such as the child's birth certificate (if born in the UK) and the court orders to be legalised. Essentially, this means that a document issued in the UK will be recognised in another country.

This process will require the document to be signed by an immigration adviser in the first instance and then sent to The Legalisation Office. The local authority's in-house legal team will be able to assist if this is a necessary requirement.

Further information can be found [here](#).

- **Supporting documents**

Generally, the following documents are required but must be clarified by embassy in advance:

- Child's birth certificate
- Translation of birth certificate (if UK birth certificate)
- Legalisation of birth certificate (if legalisation is required)
- Care order
- Translation of care order
- Legalisation of care order
- Letter from the local authority, confirming the child's legal status with the local authority and confirming the name and details of the social worker who will be present with the child at the appointment with the embassy
- Translation of the letter from the local authority
- The social worker may be required to provide identification
- Evidence of parents' nationality

This list is not exhaustive. The embassy concerned will advise of the exact documents required.

## **Copyright information**

This publication is covered by the Creative Commons Licence BY-NC 4.0 allowing for limited use provided the work is properly credited to South London Refugee Association and Coram Children's Legal Centre, and that it is for non-commercial use. South London Refugee Association and Coram Children's Legal Centre do not hold the copyright to the content of third-party material included in this report. Reproduction or any use of the images/maps/infographics included in this report is prohibited and permission must be sought directly from the copyright holder(s).

**© South London Refugee Association 2023**