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Leaving Care Judgments

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This information sheet provides information about the continuing duties upon Local Authorities towards children, to whom they have provided support under their duties under the Children Act 1989, after reaching 18 years of age. This includes duties towards separated children seeking asylum in the UK. This information sheet is about this group of children.

In October 2010, the Court of Appeal and High Court gave judgments relating to these duties.

Duties upon Local Authorities towards children

The Children Act 1989 sets out various duties towards children. Two key provisions are:-

Section 17: Under this section a Local Authority has a general duty to provide services to a child, who is in the Local Authority's area, if that child is 'in need'. A child is 'in need' if he or she is unlikely to have or maintain a reasonable standard of health or development without services being provided.

Section 20: Under this section a Local Authority has a duty to provide accommodation for a child, who is in the Local Authority's area, who requires accommodation because no person with parental responsibility is caring for him or her.

Continuing duties upon Local Authorities towards children after reaching 18 years of age

In certain circumstances a Local Authority has continuing duties towards someone, whom the Local Authority has been supporting as a child, after that person becomes an adult.

For example, where a Local Authority has been accommodating a child, the Local Authority may have ongoing duties to support that child:

- until he or she is 21 years old; or
- beyond this, possibly until he or she is 24 years old, if the child is in education or training

In order to assess the support that should be provided and to assist a child on turning 18 years of age, the Local Authority is required to provide a Pathway Plan for the child. This is a plan of support to assist the child entering adulthood in relation to matters including accommodation, education, training, employment, social support, practical skills, financial support and contingency plans. The ongoing duties, described here, will apply where a separated child seeking asylum is accommodated by the Local Authority for a period of more than 13 weeks, where part of that period falls after his or her sixteenth birthday.

R (A) v Lambeth [2010] EWHC 2439 (Admin), [2010] EWHC 1652 (Admin)

In this case, which was not concerned with someone who had been a separated child seeking asylum, the High Court emphasised the importance of a Pathway Plan and the detail that is required to ensure that the needs of the child entering adulthood are adequately addressed. The High Court stressed the particular importance of finance and accommodation in the plan.

This judgment will be of importance to all children to whom a Local Authority has a duty to provide a Pathway Plan – including separated children seeking asylum.

R (SO) v Barking and Dagenham [2010] EWCA Civ 1101

This case did concern someone who had been a separated child seeking asylum.

In this case, the Court of Appeal decided that:

- As part of the ongoing duty owed by a Local Authority towards a child, whom the Local Authority had been accommodating, after he or she reaches 18 years of age, a Local Authority is empowered to provide accommodation.
- A Local Authority cannot escape any duty it may have towards a child after he or she reaches 18 years of age by looking to the statutory powers given to the Home Office to provide support asylum-seekers or certain refused asylum-seekers.

The significance of these judgments

These judgments indicate the importance of a Local Authority making a Pathway Plan for the period 18 to 21 years of age (or in certain cases 18 to 24 years of age), including in respect of those it has been accommodating as separated children seeking asylum.

The judgments show that any continuing duty owed to someone who was accommodated as a separated child seeking asylum can include the provision of accommodation.

The judgments show that any continuing duty cannot be displaced or met by the Local Authority referring the person to, or assisting the person to, claim any form of asylum support from the Home Office.

The two judgments referred to in this information sheet are available at:

<http://www.bailii.org/ew/cases/EWHC/Admin/2010/2439.html>

<http://www.bailii.org/ew/cases/EWCA/Civ/2010/1101.html>

Further information

The Migrant Children's Project at the Children's Legal Centre provides more detailed information and advice concerning the situation for separated children seeking asylum. Details about the project can be found at:

<http://www.childrenslegalcentre.com/Migrant+Childrens+Project>

Information available there includes more details about the obligations of a Local Authority to someone whom it has been supporting as a separated child seeking asylum and who has reached his or her 18th birthday. See:

<http://www.childrenslegalcentre.com/Resources/CLC/Documents/PDF%20N-Z/Support%20at%2018%20edit%20November%202010.pdf>