

LEAVING CARE: LEGISLATION AND CASES

CORAM CHILDREN'S
LEGAL CENTRE

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+ CORAM CHILDREN'S LEGAL CENTRE

- Is a unique, independent charity (non-profit) concerned with law and policy affecting children and young people.
- Opened in 1981, as the major UK project for the International Year of the Child: staffed by lawyers and professionals with expertise in child law.
- The Centre is funded by grants from the statutory and charitable bodies
- The Centre works both in the UK and around the world to promote the rights of children and young people,.

+ What is new?

- The Children Act 1989 Guidance and Regulations 2010
- Vol 2: Care Planning, Placement and Case Reviews
- Vol 3: Planning Transition to Adulthood for Care Leavers
- The Care Planning, Placement and Case Review (England) Regulations 2010, especially Regs 39-44
- Care Leavers (England) Regulations 2010 – came into operation 1st April 2011
- E (SO) v London Borough of Barking and Dagenham
- A series of cases on LA duties

+ Existing categories of care leavers

- **Eligible children:** Aged 16 and 17 who have been looked after for at least 13 weeks since the age of 14 and who are still being looked after.
- **Relevant children:** Aged 16 and 17 who have been looked after for at least 13 weeks since the age of 14, who have been looked after at some time while 16 or 17, and who have already left care.
- **Former relevant children:** These are young people aged between 18 and 21 who have been either relevant or eligible children or both. If, at the age of 21, the young person is still receiving assistance from the local authority with education or training, then he or she remains a former relevant child.
- **Qualifying children**

+ Relevant children

New category of relevant children added by Para 3 Care Leavers Regulations 2010 (in force 1 April 2011):

- Aged 16 or 17
- Not subject to a care order
- On attaining 16 the child was detained or in hospital and immediately before was looked after by a LA for a period(s) amounting to 13 weeks beginning after the child was 14.
- Detained includes in a remand centre, YOI or a secure training centre or any other institution pursuant to an order of a court

+ New category of care leaver

- The Children and Young Persons Act 2008 has added a new category of care leaver who will be eligible for leaving care services.
- This benefits care leavers who were not in education or training beyond their 21st birthday, but who later decide to return to education or training.
- Must be under 25 and must be a former relevant child
- The duties owed to them must have come to an end when they reached 21 (this means that their pathway plan did not make allowance for a programme of education or training that continued beyond their 21st birthday)
- The individual must inform the local authority that they wish to pursue a programme of education or training

+ New duties continued

- Carry out an assessment,
- prepare a pathway plan not more than 3 months after being informed; and
- provide assistance to the extent that his education/ training needs require it, including accommodation expenses and a grant to meet expenses
- Duties subsist as long as FRC continues the programme in the pathway plan;
- If claimant should have been looked after and was not (eg G v Southwark type case) he is entitled to be treated as if he had been (R (TG) v Lambeth [2011] EWCA Civ 526 and R (MM) v Lewisham)

+ Children Act 2008: changes that came into force from 1st April 2011

- **The age of support** -The 2008 act amends the Children Act 1989 and substitutes the age of 25 rather than 24 as the upper age of support (unless still in education of course).
- **Removal of restriction on cash payments**- s. 17 Children Act 1989: cash payments to families only in "exceptional circumstances". Restriction removed by the 2008 Act.
- **Pathway planning**: should identify immediate needs and look forward to longer-term future care needs. Plan must be continuously monitored and reviewed (every 6 mths).
- **Personal adviser**: Care Leavers Regulations 2010: where accommodation provided by LA under s.23, must visit child within 7 days and then at least every 2 months

+ Asylum seeking / separated children

- For many unaccompanied asylum seeking children, discretionary leave to remain expires at the age of 17 ½
- This will effect entitlement to Children Act support: to continue receiving support child must apply for an extension of leave to remain **before** its expiry.
- Once application is made, entitlement to support under the CA 1989 continues until
 - A decision is made to refuse further leave and the time for appealing that decision has expired
 - Appeal rights are exhausted and appeal against refusal unsuccessful

+ Triple planning for separated children

Local authorities need to plan for 3 possible outcomes for separated children:

- Equipping the child for the future if he or she receives leave
- Preparing the child to return to country of origin if he / she is refused an extension of leave to remain, is being returned, or if child decides to leave of his/ her own accord
- Supporting a child who has been refused leave to remain, who has exhausted all appeals but who has not been removed ('end of the line' cases).

+ R (SO) v London Borough of Barking and Dagenham

- Court of Appeal case: 18 year old former relevant child from Eritrea – asylum seeker – not in education or training.
- Very complex case – is there a duty to provide accommodation to a care leaver post 18 and on whom does the duty fall? LA or NASS?
- 23C(4)(c)CA 89 - ***It is the duty of the local authority to give a former relevant child other assistance to the extent that his welfare requires it.***
- High Ct said local authority had no power to provide accommodation under the CA 89 to a former relevant child. But if they did, he would have held that LA could assume child would receive support from NASS at least until the result of any application was known and thus welfare did not require provision of accommodation.

+ Local authority power

- Does the local authority have the power to accommodate a former relevant child under s.23(4)(C)? ('other assistance to the extent that his welfare requires it')
- S.17(6) In the exercise of its functions to safeguard and promote the welfare of children, the LA may provide accommodation, give assistance in kind or in exceptional circumstances in cash.
- The provision has a long history - was in the CYPA 1963 and in Child Care Act 1980. Previous authorities confirmed that power to provide **assistance** included paying for accommodation.
- C/A decided that the section **does** give local authorities the power to provide accommodation to a former relevant child

+ Can the local authority take into account NASS (UKBA) support?

- Can the LA take into account NASS support whether a former relevant child's welfare requires that he be provided with accommodation? No – they cannot.
- The powers under the Immigration and Asylum Act 1999 which provide for support of asylum seekers and their dependents are residual and cannot be exercised if the asylum seeker or failed asylum seeker is entitled to accommodation under some other provision.

+ What about 'end of the line' cases?

- Young persons whose appeal rights are exhausted – often not removed and remain in the UK – often because not able to get travel documents/ not clear which nationality they are / identity etc.
- Para 6 Schedule 3 Nationality and Immigration Act 2002 – failed asylum seekers can receive leaving care services until they fail to comply with removal directions set by the Immigration Service.
- However some may be 'persons unlawfully in the UK' and ineligible for leaving care: complex to determine but will apply to most over 18s whose appeal rights are exhausted. Still entitled to receive support if it would breach their ECHR or rights under EU treaties.
- Before withdrawing support should provide reasons in writing and carry out a human rights assessment

+ Advice Lines and Legal Services

- CCLC provide legal advice, information and representation through advice lines and case work
- Community Legal Advice (Education): **08453 454345**
- Migrant Children's Project Line: **01206 877918**
- Child Law Advice Line: **08088 020008**
- Child Protection Advice Line: **07884 262362**
