















## **INTRODUCTION: WHAT IS 'NO RECOURSE TO PUBLIC FUNDS'?**

### **1. Who has 'No Recourse to Public Funds'?**

Some migrants are excluded from accessing 'mainstream' housing and benefits because of their immigration status. In brief summary, these include:

- Those who require leave to enter or remain in the UK, but do not have it;
- Those who have leave to enter or remain in the UK, but whose leave is subject to a condition that they do not have recourse to public funds<sup>1</sup>.

In general, we refer to this as having 'No Recourse to Public Funds' or 'NRPF'.

### **2. What are 'public funds'?**

Very broadly, 'public funds' can be defined to include most benefits, tax credits and housing assistance. They include:

- Income-based Job Seekers Allowance (JSA)
- Income Support
- Child Tax Credit
- Universal Credit
- Working Tax Credits
- Child Benefit
- Housing Benefit
- Council Tax Benefit
- Council Tax Reduction
- State Pension Credit
- Attendance Allowance
- Severe Disablement Allowance
- Personal Independence Payment (PIP)
- Carer's Allowance
- Disability Living Allowance (DLA)
- Local authority housing and homelessness assistance

There are exceptions as to eligibility and this can be complex, particularly in mixed households. For further guidance see the Home Office's guide to Public Funds<sup>2</sup> and/or seek specialist benefits advice if needed.

The following are not 'public funds' for 'NRPF' purposes:

- Accommodation and support provided under the Care Act 2014
- Accommodation and support provided under the Children Act 1989
- Asylum support
- Support for victims of trafficking under the National Referral Mechanism (NRM)
- Legal aid
- NHS treatment

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<sup>1</sup> s115 Immigration and Asylum Act 1999

<sup>2</sup> <https://www.gov.uk/government/publications/public-funds>



- State funded schooling
- Child maintenance
- Concessionary travel passes
- Free school meals
- Some government funded childcare
- Mental health aftercare provided under s117 Mental Health Act 1983.
- Some contribution-based benefits
- Etc.

Note though that clients may still need to meet eligibility criteria (which may be linked to immigration status) to be able to access these. Today's training focuses largely on the first four above<sup>3</sup>.

### **3. Applying to lift the 'No Recourse to Public Funds' restriction**

Some people granted leave to remain with an NRPF restriction can apply to lift this condition in order to give the person access to public funds.

A link to the Home Office website and the application form is [here](#).

This is only for people granted leave to remain in the UK for the following reasons:

- As a partner or parent under 'Appendix FM' (under the 10-year route to settlement).
- On account of their private life (under paragraphs 276BE or 276DG of the Immigration Rules).
- Outside the rules on the grounds of family or private life.

The application can be made on one of two grounds:

1. Since being granted leave to remain your financial circumstances have changed and you have become destitute, or there are now particularly compelling reasons relating to the welfare of your child on account of your very low income, or there are now exceptional circumstances in your case relating to your financial circumstances; or
2. You were destitute, or there were particularly compelling reasons relating to the welfare of your child on account of your very low income, or there were exceptional circumstances in your case relating to your financial circumstances, at the time your application was being considered but you failed to provide evidence of this and you now wish to send in this evidence.

Applicants should seek legal advice before completing an application. Note that advising on these applications (including advising a person to make one) is regulated immigration advice and can therefore only be provided by an advisor accredited at OISC Level 1 or above<sup>4</sup>. There is no legal aid for these applications.

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<sup>3</sup> Eligibility for the remainder is outside the scope of today's training but more details are available at: <http://www.nrpfnetwork.org.uk/information/Pages/not-public-funds.aspx>

<sup>4</sup> <https://www.gov.uk/government/publications/clarification-of-the-oiscs-jurisdiction/clarification-of-oiscs-jurisdiction>



**PART 2**

**'NRPF' ADULTS WITH CARE AND SUPPORT NEEDS:**

**THE CARE ACT 2014**

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# 'NRPf' ADULTS WITH CARE AND SUPPORT NEEDS: THE CARE ACT 2014

## 1. INTRODUCTION

Most provisions of the Care Act 2014 came into force on 1 April 2015. Support under the Care Act 2014 does not amount to 'public funds' for NRPf purposes, although individuals seeking support under the Care Act 2014 will of course need to meet the eligibility criteria and can in some cases still be excluded from support because of their immigration status.

The Care Act 2014 deals with adult care, and support to carers. Under the Care Act 2014, local authorities have several **general duties** as well as specific duties to **assess** the needs of individuals, and to **meet their eligible needs**, subject to financial eligibility (and subject to eligibility related to their immigration status, outlined below).

The Care Act 2014 aims to simplify adult care and standardise its provision. It also aims to ensure the adult with care needs is at the centre of assessment and care planning and has control over how their needs are met.

The Care Act 2014 should be read together with the relevant Regulations and the Care and Support Statutory Guidance issued under the Care Act ('the Statutory Guidance'). This is regularly updated online at: <https://www.gov.uk/government/publications/care-act-statutory-guidance>.

References in these notes are to the Care Act 2014 unless otherwise stated.

## 2. GENERAL DUTIES UNDER THE CARE ACT 2014

- S1-7 Care Act 2014
- Chapters 1-5 Statutory Guidance

The Care Act 2014 imposes the following general duties on local authorities:

2.1. The general duty under s1(1) to **promote an individual's 'well-being'** in exercising a function under Part 1 of the Care Act 2014. 'Well-being' is broadly defined in s1(2) as relating to any of the following:

- (a) personal dignity (including treatment of the individual with respect);*
- (b) physical and mental health and emotional well-being;*
- (c) protection from abuse and neglect;*
- (d) control by the individual over day-to-day life (including over care and support, or support, provided to the individual and the way in which it is provided);*
- (e) participation in work, education, training or recreation;*
- (f) social and economic well-being;*
- (g) domestic, family and personal relationships;*
- (h) suitability of living accommodation;*
- (i) the individual's contribution to society*

s1(3) gives a list of matters which local authorities must consider when exercising their powers under Part 1, with an emphasis on the individual's participation in decisions which affect their own well-being.

2.2. The duty under s2(1) to **prevent needs for care and support**:

*(1) A local authority must provide or arrange for the provision of services, facilities or resources, or take other steps, which it considers will:*

- (a) contribute towards preventing or delaying the development by adults in its area of needs for care and support;*
- (b) contribute towards preventing or delaying the development by carers in its area of needs for support;*
- (c) reduce the needs for care and support of adults in its area;*
- (d) reduce the needs for support of carers in its area.*

The local authority must do this with regard to the importance of identifying services already available in the area, and the importance of identifying individuals and their carers whose support needs are not currently being met (s2(2))<sup>5</sup>.

2.3. The duty under s3(1) to **promote the integration of care and support with health services**, where this promotes the well-being of individuals and their carers, contributes to prevention or delay of care needs or improves the quality of care available (s3(2)).

2.4. The duty under s4(1) to **establish and maintain a service for the provision of information and advice** relating to care and support for adults and support for carers. This must include information on the types of care and support available, how to access it, how to access independent financial advice relevant to care and support, and how to raise concerns about the safety or well-being of an adult with care and support needs (s4(2)).

2.5 The duty under s5(1) to **promote diversity and quality in the provision of services**, and the efficient and effective operation of a 'market in services', in order to ensure a variety of providers, high quality, and sufficient information to allow individuals to choose.

2.6 The general duty under s6(1) to **cooperate with 'relevant partners'** (and for the 'relevant partners' to cooperate with local authorities) in the exercise of functions relating to adults with care and support needs and their carers.

'Relevant partners' are defined in s6(7) and include NHS bodies in the authority's area, benefits agencies, police, prisons, and probation.

Under s6(2), local authorities must cooperate with 'such other persons as it considers appropriate who exercise functions, or are engaged in activities, in the authority's area relating to adults with needs for care and support or relating to carers', and s6(3) gives examples including social care providers, providers of medical care, private hospitals and private social housing providers.

Under s6(4), the local authority must make arrangements to ensure internal cooperation between those responsible for the provision of adult social care and those responsible for housing, children's services and public health.

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<sup>5</sup> Local authorities can charge for providing or arranging services to prevent needs for care and support (s2(3)). The Care and Support (Preventing Needs for Care and Support) Regulations 2014 set out what can be charged for, and what cannot. Charges are means-tested (Regulation 3(2)).

2.7 The duty under s7(1) for **local authorities and relevant partners to comply with a request to cooperate in a specific case**, unless it would be compatible with its own duties or would otherwise adversely affect the exercise of its functions.

### 3. REFERRALS FOR ASSESSMENT

Individuals can approach local authorities themselves or a third party can refer them. Most local authorities now have an online referral form. Haringey's is online here:

<http://www.haringey.gov.uk/social-care-and-health/accessing-services/assessment>.

### 4. ASSESSMENTS

- s9 Care Act 2014
- Care and Support (Assessment) Regulations 2014
- Chapter 6 Statutory Guidance

#### 4.1 Threshold for assessment

This is a low threshold – see s9:

*(1) Where it appears to a local authority that an adult may have needs for care and support, the authority must assess;*

*(a) whether the adult does have needs for care and support, and*

*(b) if the adult does, what those needs are.*

If it appears to the local authority that an adult may have needs for care and support, there is a duty to assess regardless of the local authority's view of the adult's needs, or their financial resources (s9(3)), or of their immigration status.

#### 4.2. General Requirements for Assessments

The Care and Support (Assessment) Regulations 2014 set out the general requirements for assessment:

*3(1) A local authority must carry out an assessment in a manner which:*

*(a) is appropriate and proportionate to the needs and circumstances of the individual to whom it relates; and*

*(b) ensures that the individual is able to participate in the process as effectively as possible.*

*(2) In seeking to ensure that an assessment is carried out in an appropriate and proportionate manner, a local authority must have regard to:*

*(a) the wishes and preferences of the individual to whom it relates;*

*(b) the outcome the individual seeks from the assessment; and*

*(c) the severity and overall extent of the individual's needs.*

*(3) In a case where the level of the individual's needs fluctuates, the local authority must take into account the individual's circumstances over such period as it considers necessary to establish accurately the individual's level of needs.*

*(4) A local authority must give information about the assessment process:*  
*(a) to the individual whose needs are being assessed; or*  
*(b) in the case of a child's needs assessment or a young carer's assessment, if the child or young carer is not competent or lacks capacity to understand the assessment process, to all parents of that child or young carer.*

*(5) The information must be provided prior to the assessment wherever practicable, and in a format which is accessible to the individual to whom it is given.*

More detailed guidance on the purpose of an assessment, supporting the person's involvement in the process, appropriate and proportionate assessments, etc. are at Chapter 6 of the Statutory Guidance. The local authority can delegate assessments, as long as they ensure that the body carrying them out 'complies with all the requirements and fulfils all relevant duties under the Act and regulations' (para 6.99 Statutory Guidance).

### **4.3. Types of Assessment**

The types of assessments can include, but are not limited to, the following possibilities (para 6.3 Statutory Guidance):

- Face-to-face assessment with appropriately trained assessor with right skills and knowledge;
- Supported self-assessment, with the same assessment materials as a face-to-face assessment but where the person completes the assessment themselves and the local authority checks its accuracy (para 6.44 Statutory Guidance onwards; see also s2 Care and Support (Assessment) Regulations 2014);
- Online or phone assessment, where needs are less complex or the person is already known to the local authority and needs are being reassessed;
- Joint/integrated assessment with other agencies (eg where adult is in prison or has health and care needs) – see paras 6.75 – 6.83 Statutory Guidance;
- Combined assessment, together with a carer's assessment and/or an assessment relating to a child (paras 6.74 Statutory Guidance).

### **4.4 Content of assessment**

*9(4) A needs assessment must include an assessment of:*  
*(a) the impact of the adult's needs for care and support on the matters specified in section 1(2),*  
*(b) the outcomes that the adult wishes to achieve in day-to-day life, and*  
*(c) whether, and if so to what extent, the provision of care and support could contribute to the achievement of those outcomes.*

### **4.5. Involvement of others in assessment**

Clients should be advised that an assessment of their needs must involve their carer, if any, and should be asked if there is anyone else whom they would like to be involved. If the client lacks mental capacity to decide who they would like to be involved, the local authority can involve anyone who appears to be interested in the individual's welfare:

*9(5) A local authority, in carrying out a needs assessment, must involve:*

- (a) the adult,*
- (b) any carer that the adult has, and*
- (c) any person whom the adult asks the authority to involve or, where the adult lacks capacity to ask the authority to do that, any person who appears to the authority to be interested in the adult's welfare.*

#### **4.6. Assessing whether outcomes can be achieved otherwise than by care and support**

s9(6) requires local authorities to consider whether matters other than the provision of care and support could contribute to the achievement of the outcomes that the adult wishes to achieve in day-to-day life, and whether the individual would benefit from preventative action and/or advice, or 'anything which might be available in the community'.

#### **4.7. Refusing Assessment**

Under s11, a local authority is not required to carry out a needs assessment if the adult refuses it, unless the adult lacks capacity and the local authority is satisfied that the assessment would be in their best interests; or the adult is experiencing or is at risk of abuse or neglect (s11(2)). An adult who has previously refused an assessment but who later approaches the local authority and appears to have care and support needs, should still be assessed despite the earlier refusal (s11(3)). Similarly, an adult who has previously refused an assessment but whose needs or circumstances the local authority thinks have changed, should still be assessed subject to any further refusal (s11(4)). See also paras 6.20-6.21 Statutory Guidance.

#### **4.8. Timescales**

There are no set timescales for assessment in the Act but the Statutory Guidance says:

*6.29 An assessment should be carried out over an appropriate and reasonable timescale taking into account the urgency of needs and a consideration of any fluctuation in those needs. Local authorities should inform the individual of an indicative timescale over which their assessment will be conducted and keep the person informed throughout the assessment process.*

### **5. ELIGIBILITY**

- s13 Care Act 2014
- Care and Support (Eligibility Criteria) Regulations 2015
- Paras 6.100 – 6.128

#### **5.1. Eligibility Criteria**

Following assessment, if a local authority is satisfied that the adult has care and support needs, it must then determine whether the adult meets the eligibility criteria (s13(1)), and must give the adult a written record of its decision (s13(2)).

The eligibility criteria are currently set out in the Care and Support (Eligibility Criteria) Regulations 2015. There is a three-pronged test for eligibility (emphasis added):

*2(1) An adult's needs meet the eligibility criteria if:*



- (a) the adult's needs arise from or are related to a physical or mental impairment or illness;*
- (b) as a result of the adult's needs the adult is unable to achieve two or more of the outcomes specified in paragraph (2); and*
- (c) as a consequence there is, or is likely to be, a significant impact on the adult's well-being.*

## **5.2. Specified Outcomes**

The specified outcomes for 2(1)(b) are defined in s2(2) Care and Support (Eligibility Criteria) Regulations 2015:

- (a) managing and maintaining nutrition;*
- (b) maintaining personal hygiene;*
- (c) managing toilet needs;*
- (d) being appropriately clothed;*
- (e) being able to make use of the adult's home safely;*
- (f) maintaining a habitable home environment;*
- (g) developing and maintaining family or other personal relationships;*
- (h) accessing and engaging in work, training, education or volunteering;*
- (i) making use of necessary facilities or services in the local community including public transport, and recreational facilities or services; and*
- (j) carrying out any caring responsibilities the adult has for a child.*

So the client will need to be unable to achieve two of more of these outcomes to meet the eligibility criteria.

## **5.3. Inability to Achieve Outcomes**

Inability to achieve an outcome is defined in s 2(3) Care and Support (Eligibility Criteria) Regulations 2015 as if the adult:

- (a) is unable to achieve it without assistance;*
- (b) is able to achieve it without assistance but doing so causes the adult significant pain, distress or anxiety;*
- (c) is able to achieve it without assistance but doing so endangers or is likely to endanger the health or safety of the adult, or of others; or*
- (d) is able to achieve it without assistance but takes significantly longer than would normally be expected.*

## **5.4. Fluctuating needs**

Under s 2(4) Care and Support (Eligibility Criteria) Regulations 2015, where the level of an adult's needs fluctuates, in determining whether the adult's needs meet the eligibility criteria, the local authority must take into account the adult's circumstances 'over such period as it considers necessary to establish accurately the adult's level of need'.

## **6. MEETING ELIGIBLE NEEDS**

### **6.1. Duty to Meet Eligible Needs**

A local authority has a duty to meet an adult's needs for care and support which meet the eligibility criteria provided that:

- (i) the adult is ordinarily resident in the authority's area or is present in its area but of no settled residence<sup>6</sup>; and
- (ii) the adult is financially eligible<sup>7</sup>;
- (iii) the adult is not excluded from support due to their immigration status (see below).

Importantly, the duty to meet eligible needs does not apply to needs being met by a carer (s18(7)).

### **6.2. Power to Meet Other Needs**

s19 gives local authorities the power to meet other (non-eligible) needs for care and support, provided the individual is ordinarily resident in their area (or of no settled residence but present in its area).

### **6.3. Exceptions to the duty to meet eligible needs**

S22 prevents a local authority from meeting needs by providing services or facilities provided by the NHS, unless provision would be incidental to the provision of other services and the local authority could be expected to provide it.

S23 prevents a local authority from meeting needs by doing anything which it (or another local authority) is required to do under the Housing Act 1996.

### **6.4. How Can Eligible Needs Be Met?**

The local authority can meet an adult's eligible needs by providing (s8):

- (a) accommodation in a care home or in premises of some other type;*
- (b) care and support at home or in the community;*
- (c) counselling and other types of social work;*
- (d) goods and facilities;*
- (e) information, advice and advocacy.*

The local authority can do this in the following ways:

- (a) by arranging for a person other than it to provide a service;*
- (b) by itself providing a service;*
- (c) by making direct payments.*

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<sup>6</sup> See s39-41 Care Act 2014; Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014; Care and Support (Disputes Between Local Authorities) Regulations 2014 and Chapter 19 and Annex H, Statutory Guidance for more on Ordinary Residence

<sup>7</sup> See Chapter 8 Statutory Guidance and The Care and Support (Charging and Assessment of Resources) Regulations 2014

## 6.5. Accommodation and eligible needs

If the eligible needs are sufficiently “accommodation-related” (ie the need is for care and support normally provided in the home, or providing the care and support would be “effectively useless” without the provision of accommodation), then there is likely to be a duty to accommodate SL v Westminster City Council [2013] UKSC 27.

The availability or otherwise of asylum support under s95 or s4 must be discounted in assessing how eligible needs are to be met Westminster v NASS [2002] UKHL 38.

These cases pre-date the Care Act 2014 but currently remain good law.<sup>8</sup>

An assessment of the care and support needs of an adult who requires accommodation, without consideration of whether the local authority may have a duty to provide them with accommodation in order to ensure their care and support needs are met, is likely to be unlawful.<sup>9</sup>

## 6.6. Care and Support Plan

A care and support plan will specify the needs identified and the extent to which they meet the eligibility criteria, specify which needs the local authority will meet and how, will include a personal budget, and will include advice and information about reducing needs and preventing or delaying needs in the future (s25-26). The plan should be reviewed at least every 12 months but should also be reviewed if there is a change in circumstances or in the person’s needs (see para 13.31- 13.34 Statutory Guidance).

Full details on care and support planning, personal budgets, direct payments and review of care and support plans are at chapters 10 – 13 of the Statutory Guidance.

## 7. URGENT NEEDS

s19 gives local authorities the power to meet urgent needs as follows:

*19(3) A local authority may meet an adult’s needs for care and support which appear to it to be urgent (regardless of whether the adult is ordinarily resident in its area) without having yet—*

- (a) carried out a needs assessment or a financial assessment, or*
- (b) made a determination under section 13(1).*

*(4) A local authority may meet an adult’s needs under subsection (3) where, for example, the adult is terminally ill (within the meaning given in section 82(4) of the Welfare Reform Act 2012).*

This is explained further in the Statutory Guidance:

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<sup>8</sup> See R(SG) v London Borough of Haringey [2015] EWHC 2579 (Admin), para 47, online at: <http://www.nrpfnetwork.org.uk/Documents/SG-Haringey.pdf>

<sup>9</sup> See R(SG) v London Borough of Haringey [2015] EWHC 2579 (Admin), para 54, online at: <http://www.nrpfnetwork.org.uk/Documents/SG-Haringey.pdf>. Note that the Court of Appeal declined to determine this point and so the issue remains unresolved – see SG (by her litigation friend the Official Solicitor) v London Borough of Haringey [2017] EWCA Civ 322, online at <http://www.bailii.org/ew/cases/EWCA/Civ/2017/322.html>

*6.26 The Care Act provides local authorities with the powers to meet urgent needs where they have not completed an assessment. Authorities may meet urgent need for care and support regardless of the person's ordinary residence. See the Care Act 2014, Section 19. Where an individual with urgent needs approaches or is referred to the local authority, the local authority should provide an immediate response and meet the individual's care and support needs. For example, where an individual's condition deteriorates rapidly or they have an accident, they will need a swift response to ensure their needs are met. In some cases, the appropriate response may be that the local authority will meet the adult's needs. In other cases, an immediate referral may be the best way to meet a person's urgent needs, for example by completing the NHS Continuing Health Care Fast Track Pathway Tool. Following this initial response, the individual should be informed that a more detailed needs assessment, and any subsequent processes, will follow. Once the local authority has ensured these urgent needs are met, it can then consider details such as the person's ordinary residence and finances.*

## **8. PERSONS SUBJECT TO IMMIGRATION CONTROL**

### **8.1. Destitution**

s21 Care Act 2014 prevents the local authority from meeting the care and support needs of an adult subject to immigration control<sup>10</sup>, whose needs for care and support have arisen solely because the adult is destitute or because of the physical effects or anticipated physical effects of destitution.

### **8.2. Ineligibility for Support**

In addition, some individuals will not be eligible for support under the Care Act 2014 due to their immigration status, because of the exclusion found in Schedule 3 of the Nationality, Immigration and Asylum Act 2002<sup>11</sup>.

This applies to the following and their dependants:

- (i) Non-EEA nationals with refugee status abroad (in another EEA country);
- (ii) EEA nationals;
- (iii) failed asylum-seekers who have failed to cooperate with removal directions;
- (iv) persons unlawfully in the UK (who have not claimed asylum).

These individuals are not eligible for care and support to meet their eligible needs under Part 1 of the Care Act 2014 unless failing to provide it would amount to a breach of their rights under the European Convention on Human Rights (ECHR) or under EU law. If a local authority intends to refuse support on this basis, they must assess whether that would breach the adult's ECHR rights and/or their rights under EU law.

In practice, this means that adults approaching a local authority for support under the Care Act 2014 are likely to be asked to speak to an immigration officer and/or allow the local authority to contact the Home Office as part of their assessment. Advice should therefore be sought from an immigration lawyer beforehand if possible for those whose immigration status is unresolved or precarious.

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<sup>10</sup> As defined at s115 Immigration Act 1999

<sup>11</sup> As amended by the Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015 (s67)

## 9. INDEPENDENT ADVOCATES

The local authority must arrange for an independent advocate to be available to represent and support an individual for the purposes of facilitating their involvement in the needs assessment and preparing the support plan, if the local authority considers that, without an advocate, the individual would experience substantial difficulty understanding, retaining and using or weighing information, or communicating their views, wishes or feelings (s67).

The role and requirements of the independent advocate are outlined in more detail in the Care and Support (Independent Advocacy Support) (no 2) Regulations 2014 and in Chapter 7 of the Statutory Guidance. The need for an Independent Advocate has been confirmed by the High Court in R(SG) v London Borough of Haringey [2015] EWHC 2579 (Admin).<sup>12</sup>

## 10. SPECIAL CATEGORIES

The Care Act 2014 makes provision for the following categories of people with care and support needs:

- Individuals discharged from hospital (s74 and Schedule 2)
- Individuals receiving s17 aftercare (s75 and Schedule 3)
- Prisoners and persons in approved premises (s76). Chapter 17 of the Statutory Guidance outlines in detail the process relevant to assessment for prisoners and those in approved premises, bail hostels, etc.

## 11. CARERS

### 11.1. What is a 'Carer'?

For the purposes of the Care Act 2014, a 'carer' means an adult who provides or intends to provide care for another adult (s10(3)). This does not include care provided under a contract or 'as voluntary work' (s10(9)), unless the local authority considers it appropriate for the individual to be considered as a 'carer', given their relationship with the adult needing care (s10(10) – see also para 6.17 of the Statutory Guidance). Para 6.18 of the Statutory Guidance suggests that both practical and emotional support are included in the concept of 'caring'.

There is a further definition of a 'carer' in the Glossary to the Statutory Guidance:

*Somebody who provides support or who looks after a family member, partner or friend who needs help because of their age, physical or mental illness, or disability. This would not usually include someone paid or employed to carry out that role, or someone who is a volunteer.*

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<sup>12</sup> <http://www.nrpfnetwork.org.uk/Documents/SG-Haringey.pdf>

## **11.2. Carers' Assessments (s10)**

Where it appears to a local authority that a carer may have needs for support (currently or in the future), the local authority must assess them, regardless of the local authority's view of their level of need, their financial resources and their immigration status.

The assessment must include an assessment of whether the carer is able, and is likely to continue to be able, to provide care; whether they are willing to do so; the impact of the carer's needs for support on their wellbeing; the outcomes they wish to achieve in day-to-day life; and whether the provision of support could contribute to those outcomes (s10(5)). It must consider whether the carer works or participates in education or training, or wishes to do so (s10(6)) and must involve the carer and anyone else the carer asks to be involved (but not necessarily the adult with care and support needs) (s10(7)). S10(8) set out further factors the local authority must consider in carrying out a carer's assessment.

A carer can also refuse an assessment (s11(5) to s11(7)).

The assessment must consider whether the care provided is sustainable – see the Statutory Guidance:

*6.18 Carers' assessments must seek to establish not only the carer's needs for support, but also the sustainability of the caring role itself, which includes both the practical and emotional support the carer provides to the adult. Therefore, where the local authority is carrying out a carer's assessment, it must include in its assessment a consideration of the carer's potential future needs for support. Factored into this must be a consideration of whether the carer is, and will continue to be, able and willing to care for the adult needing care. Some carers may need support in recognising issues around sustainability, and in recognising their own needs. This will allow local authorities to make a realistic evaluation of the carer's present and future needs for support and whether the caring relationship is sustainable. Where appropriate these views should be sought in a separate conversation independent from the adult's needs assessment.*

## **11.3. Carers' Needs and Eligibility**

A carer's needs and eligibility will be assessed in a similar way to those of the individual with care needs – see s13(4) and s3 of the Care and Support (Eligibility Criteria) Regulations 2015:

*13(4) Where at least some of a carer's needs for support meet the eligibility criteria, the local authority must—*

*(a) consider what could be done to meet those needs that do, and  
(b) establish whether the adult needing care is ordinarily resident in the local authority's area.*

*3.(1) A carer's needs meet the eligibility criteria if—*

*(a) the needs arise as a consequence of providing necessary care for an adult;  
(b) the effect of the carer's needs is that any of the circumstances specified in paragraph (2) apply to the carer; and  
(c) as a consequence of that fact there is, or is likely to be, a significant impact on the carer's well-being.*

*(2) The circumstances specified in this paragraph are as follows—*

- (a) the carer's physical or mental health is, or is at risk of, deteriorating;
- (b) the carer is unable to achieve any of the following outcomes—
- (i) carrying out any caring responsibilities the carer has for a child;
  - (ii) providing care to other persons for whom the carer provides care;
  - (iii) maintaining a habitable home environment in the carer's home (whether or not this is also the home of the adult needing care);
  - (iv) managing and maintaining nutrition;
  - (v) developing and maintaining family or other personal relationships;
  - (vi) engaging in work, training, education or volunteering;
  - (vii) making use of necessary facilities or services in the local community, including recreational facilities or services; and
  - (viii) engaging in recreational activities.

(3) For the purposes of paragraph (2) a carer is to be regarded as being unable to achieve an outcome if the carer—

- (a) is unable to achieve it without assistance;
- (b) is able to achieve it without assistance but doing so causes the carer significant pain, distress or anxiety; or
- (c) is able to achieve it without assistance but doing so endangers or is likely to endanger the health or safety of the carer, or of others.

(4) Where the level of a carer's needs fluctuates, in determining whether the carer's needs meet the eligibility criteria, the local authority must take into account the carer's circumstances over such period as it considers necessary to establish accurately the carer's level of need.

Further guidance on carers' assessments is at paras 6.16-6.19 of the Statutory Guidance.

## **12. S1 LOCALISM ACT 2011 – GS v CAMDEN**

GS v Camden [2016] EWHC 1762<sup>13</sup> was a challenge to a local authority's failure to provide accommodation and support to a Swiss national with significant physical and mental health problems. The judge found there to be no eligible needs and therefore no duty under the Care Act, but found that there was a duty to accommodate under the Localism Act 2011.

s1 Localism Act provides a power to accommodate and support in very broad terms: *(1) A local authority has power to do anything that individuals generally may do.*

The judge found that a failure to use this power would render GS homeless and that this, in her particular circumstances, would amount to a breach of Art 3 of the European Convention on Human Rights:

*No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*

There was, therefore, a duty to accommodate, in her particular circumstances.

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<sup>13</sup> <http://www.bailii.org/ew/cases/EWHC/Admin/2016/1762.html>





**PART 3**

**ACCOMMODATION AND**

**SUPPORT UNDER THE CHILDREN ACT 1989**

**NUSRAT UDDIN**

## **Local authorities duties for accommodation and support under the Children Act 1989**

### **The Children Act**

The Children Act 1989 allocated duties to local authorities, courts, parents and other agencies in the United Kingdom, to ensure children are safeguarded and their welfare is promoted. It centres on the idea that children are best cared for within their own families; however, it also makes provisions for instances when parents and families do not co-operate with statutory bodies.

#### **Section 17 of the Children Act 1989:**

- It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part):
  - a) to safeguard and promote the welfare of children within their area who are in need; and
  - b) so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs.

Destitute migrant families with children supported under section 17 will not necessarily receive any services other than subsistence monies and basic accommodation. This may be in a bed and breakfast or a hostel. Local authorities may arrange for someone else to act on behalf of the local authority to provide these services, and are allowed to give cash as well as other services. Section 17 is designed to support children where there is already a carer, and should not be used to support unaccompanied or separated children who have greater needs than this.

#### **Under section 20 of the Children Act 1989:**

- Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of:
  - a) there being no person who has parental responsibility for him;
  - b) his being lost or abandoned; or
  - a) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.

The duty to accommodate under section 20 involves more than simply providing a place to live. A child who fulfils the criteria in section 20(1) is a 'looked after' child and afforded further protection and rights. This can involve consulting with a child about a placement; keeping siblings together; and a general duty to safeguard the welfare of the child.

The Children Act regulations give clear instructions on the writing and reviewing of a care plan for a child who is 'looked after', as well as on the regularity of visits by a named social worker and on access to records. Section 20 also requires a local authority to provide a service to those leaving care.

## **Section 17 of the Children Act 1989**

Duty to safeguard and promote the welfare of children within their area who are in need

### **Within their area:**

Local authorities are under a duty only in relation to a child within their area. But “within the area” simply means that a child has to be physically present in the geographical area of the local authority to trigger the section 17 duty.

### **Child in need:**

Section 17(10) defines as child to be in need if:

- He/she is “unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him/her of services by a local authority”; or
- His/her “health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services”; or
- If he/she is disabled.

s.17(11) – Health means physical mental health and development means physical, intellectual, emotional, social and behavioural developmental

A “child in need” for the purposes of section 17(10) is a child whose needs will not be properly met if social services do not provide services (see R (P and Q) v Secretary of State for the Home Department [2001] EWCA Civ 1151).

### **Duty to Assess whether the child is in need:**

- Social services must assess any child that is or may be “in need”
- Social services can therefore only refuse to assess where there is no realistic prospect that on assessment the child will be found to be “in need”.

### **Timeframes to Assess:**

An initial assessment needs to be undertaken in a timely fashion, appropriate to the urgency of the situation.

- “Working Together to Safeguard Children” government guidance published in April 2013 recognises that the “timeliness of an assessment is a critical element to the quality of that assessment and the outcomes for the child.
- Paragraph 54
  - The speed with which an assessment is carried out [...] should be determined by the needs of the individual child and the nature and level of any risk of harm faced by the child. This will require judgements to be made by the social worker in discussion with their manager on each individual case.
  - The guidance makes clear that within one working day of a referral being received a social worker should make a decision about the type of response that is required and acknowledge receipt to the referrer.
  - The maximum timeframe for completion of an assessment should be 45 days, but the guidance acknowledges that sometimes the needs of the child will mean that a quick assessment will be needed.
- Paragraph 54 to 58
  - Where particular needs are identified at any stage of the assessment, social workers should not wait until the end of the assessment before providing services.

**Power to Provide Support:**

- Section 17(6) CA 1989 sets out that local authorities have the power to provide a range and level of services appropriate to meet a child's needs, including providing accommodation and financial subsistence
- Section 17(3) CA 1989 makes it clear that a local authority has the power to provide support to the entire family

**Section 20 of the Children Act 1989**

Duty to provide accommodation for any child in need within their area who appears to them to require accommodation as a result of—

- there being no person who has parental responsibility for him;
- his being lost or having been abandoned; or
- the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.

As long as the young person was supported by the local authority under s20 of the Children Act 1989 for at least 13 weeks prior to their 18th birthday, they will also be entitled to support under ss23C-E and 24-24D of the Children Act 1989 (the provisions inserted into the Act by the Children (Leaving Care) Act 2000) once they turn 18.

Broadly speaking, this means that the local authority is obliged to provide the young person with a personal adviser (who is not their social worker), and prepare a Pathway Plan setting out the young person's needs during their transition to adulthood (at least the age of 21), how those needs are to be met and planning for contingencies in the event those plans are unsuccessful. The list of matters to be covered in the Pathway Plan is set out in secondary legislation (from 1 April 2011 the Care Leavers (England) Regulations 2010 (SI 2010/2571)).

These obligations remain binding on the local authority until the young person turns 21, but if the young person is pursuing a programme of full-time education that extends beyond their 21st birthday then the obligations continue to bite until the young person's 25th birthday (s23 of the Children Act 1989). Many local authorities consider that this only applies to university education, not other forms of education. That is incorrect. Neither *s.24B Children Act 1989* nor the *Children Act Guidance and Regulations Volume 3: Planning Transition to Adulthood for Care Leavers (Ch.5)* make any restrictions on the level of education available to care leavers.

**Aged 16-18**

- Duty to ensure pathway plan is in place by 16th birthday
- Duty to make assessment and meet needs
- Duty to provide financial support
- Duty to provide Personal Adviser
- Duty to ensure accommodation

**Aged 18-21**

- Duty to maintain contact and to provide support through Personal Adviser
- Duty to assist with costs of education, employment and training

**Aged 21 and over**

- Duty to 18-21 year olds continues if still in education or training
- Duty to ensure vacation accommodation for higher education

It is also arguable that such support to a young person as a care leaver includes providing practical assistance in securing appropriate immigration advice and representation. This is something that rarely happens in practice but ought to be done, applying the concept of the local authority's corporate parenting duty.

### **NASS support v Leaving Care support**

What if the young person is eligible for both. The Court of Appeal dealt with this issue, in *R (SO) v Barking & Dagenham LBC* [2010] EWCA Civ 1101, with LJ Tomlinson deciding that: since the powers under s.95 and s.4 of the Immigration and Asylum Act 1999 are residual, and cannot be exercised if the asylum seeker (or failed asylum seeker) is entitled to accommodation under some other provision, a local authority is not entitled, when considering whether a former relevant child's welfare requires that he be accommodated by it, to take into account the possibility of support from NASS. (para 40) So responsibility will fall on the local authority notwithstanding entitlement to asylum support from the Home Office. Local authorities are not entitled to refuse leaving care support on the basis that the migrant care leaver is entitled to s.95 or s.4 support.

This will, however, be subject to s54 read with Schedule 3 of the Nationality, Immigration and Asylum Act 2002, and also the assessment by the local authority of whether support is required to avoid a breach of a migrant care leaver's rights under the European Convention on Human Rights.

References:

<http://www.ilpa.org.uk/resources.php/16693/ilpa-working-with-migrant-children-community-care-law-for-immigration-lawyers-by-adam-hundt-and-zubi>

[http://www.seekingsupport.co.uk/files/seeking\\_support031113.pdf](http://www.seekingsupport.co.uk/files/seeking_support031113.pdf)

<http://www.publiclawproject.org.uk/data/resources/121/s-17-updated-July-2014-12.9.14.pdf>

[http://www.nrpfnetwork.org.uk/policy/Documents/NRPF\\_national\\_picture\\_final.pdf](http://www.nrpfnetwork.org.uk/policy/Documents/NRPF_national_picture_final.pdf)

<http://resources.leavingcare.org/uploads/b6c26382befe1023c5ecbf2880bca3c9.pdf>



**PART 4**

**ASYLUM SUPPORT**

**JENNINE WALKER**

## Asylum support

- You can apply for asylum support if
  - i. you have made a claim for asylum in the UK under the Refugee Convention or Article 3 of the European Convention on Human Rights and are waiting for a decision or you are the dependant of an asylum seeker, and no application for support has been made for you
  - ii. you have appealed against the refusal of your asylum claim and you do not have the decision yet, and you want to apply for support
  - iii. your application for asylum has been refused and all rights of appeal have been exhausted, and you wish to apply for support until you can make arrangements to leave the UK
- Application made on form ASF1  
<https://www.gov.uk/government/publications/application-for-asylum-support-form-asf1> - see guidance notes  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/489117/help\\_guidance\\_for\\_asylum\\_support\\_manual\\_application\\_form\\_v11.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/489117/help_guidance_for_asylum_support_manual_application_form_v11.pdf)
- Key requirement is that you need to be “destitute”, which means that you are, or are likely to become, homeless or run out of money within the next 14 days.
- What will you get?
  - Accommodation on a no choice basis anywhere in UK (generally not London or South East)
  - £36.95 for each person in your household in cash
  - But if your asylum claim has been refused you will get £35.39 per person on a payment card (no cash)
  - It is possible to apply for additional support eg if you are pregnant, or have a baby or toddler
- There are appeal rights if application refused or support terminated

### Useful resources

- Home Office website dealing with asylum support with links to relevant forms  
<https://www.gov.uk/asylum-support>
- Asylum Support Appeals Project – charity that can help people who are appealing against a decision that they are not entitled to asylum support  
<http://www.asaproject.org/>



**PART 5**

**SUPPORT TO VICTIMS OF TRAFFICKING**

**NINA RATHBONE PULLEN**

**Wilson's:**  
Believe in justice for all

## SUPPORT FOR VICTIMS OF TRAFFICKING AND THE NATIONAL REFERRAL MECHANISM

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Presentation by Nina Rathbone Pullen,  
Wilson Solicitors LLP

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### What this presentation will cover:

- Snapshot of human trafficking in the UK
- Definition of human trafficking and the European Legal framework
- How the UK implement's its obligations to victims of trafficking – the National Referral Mechanism (NRM)
- How victims of trafficking access support
- Types of litigation

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### Human trafficking in the UK

- No universally agreed estimates that accurately reflect the numbers of trafficked persons.
- In 2016, 3805 individuals were referred to the UK authorities as potential victims of human trafficking.
- The numbers of individuals being referred as victims of human trafficking has increased every year since 2012.

<b>"Push" factors:</b>	<b>"Pull" factors:</b>
<ul style="list-style-type: none"><li>• Lack of opportunity</li><li>• Poverty</li><li>• Family debt</li><li>• Discrimination</li><li>• Violence and Conflict</li></ul>	<ul style="list-style-type: none"><li>• Demand for cheap labour</li><li>• Demand for sexual services</li><li>• Lack of employment rights</li><li>• Low risks, high profit</li><li>• Hostile environment</li></ul>

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### Nationalities of victims of trafficking in the UK

- Top six countries of origin according to National Crime Agency statistics for 2016 were:
  - Albania
  - Vietnam
  - UK
  - Nigeria
  - China
  - Romania
- Over 100 different nationalities represented in the 2016 statistics.

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### Common types of trafficking in the UK

- Sexual exploitation
- Labour exploitation
- Forced criminal activity
- Organ harvesting

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### Legal definition of human trafficking

- Article 3 of the "Palermo Protocol" defines trafficking as:

*(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;*

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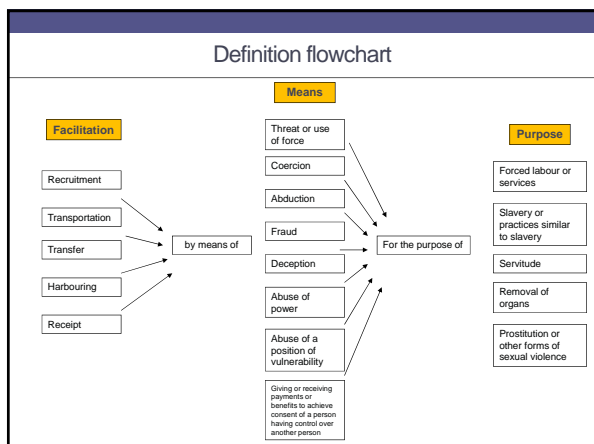
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**Initial approach in assisting victims of trafficking**

- Take time to let the client talk
- Be friendly and approachable
- Fear of disclosing full account of trafficking:
  - still under the control of their trafficker(s)
  - taught a 'legend' by their trafficker(s)
  - taught not to trust authorities
  - afraid of consequences of breaking Juju oath (Nigerian and other West African victims)

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**Council of Europe Convention on Action against Trafficking - ECAT**

ECAT is a comprehensive treaty which has three main aims:

- 1.Prevent trafficking
- 2.Protect the Human Rights of victims of trafficking
- 3.Prosecute the traffickers

European Directive on preventing and combating trafficking 2011/36/EU

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### National Referral Mechanism (UK)

1. "First Responders": police, social services, immigration officers, named NGOs – not solicitors – make a referral to the COMPETENT AUTHORITY
2. Home Office (non-EU) and UKHTC (EU and British citizens) act as the "COMPETENT AUTHORITY"
3. Reasonable Grounds Decision issued
4. 45 day reflection delay – access to support and safe house...

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### National Referral Mechanism (UK)

- ...
5. Conclusive Grounds Decision
  6. 1 year renewable residence permit if:
    - a. Assisting the police with investigation / prosecution
    - b. Bringing a claim for compensation against the traffickers, or
    - c. Personal circumstances make a grant of leave necessary.
  7. Residence permit = recourse to public funds

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### Types of legal challenges

- Refusal to identify someone as a victim of trafficking – negative "reasonable grounds" or "conclusive grounds" decisions
- Unlawful detention of victims of trafficking by the Home Office
- Refusal to grant a residence permit / other form of leave to remain in the UK
- Challenges to the adequacy of support provided to victims of trafficking by the Home Office / Local Government
- Compensation claims against traffickers in the employment tribunal or as a civil claim
- Failure to investigate allegation of human trafficking – action against the police.

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**PART 6**

**REFERRALS TO A LEGAL AID SOLICITOR**

## REFERRALS TO A LEGAL AID SOLICITOR

### 1. Legal Aid Availability and Eligibility

Legal aid is available for advice and legal representation relating to assessments and support under the Care Act 2014 and under the Children Act 1989. This includes challenges to a refusal to assess and challenges to a delay.

Legal aid is also available for asylum support applications where accommodation is sought (for providers with welfare/benefits legal aid contracts) and for Judicial Review challenges to asylum support decisions and NRM decisions.

Client must be financially eligible for legal aid and their case must also meet the merits criteria to qualify for legal aid.

Means testing is required to assess financial eligibility – income and capital. This is complex but in summary:

- The period of calculation when determining income is the calendar month up to and including the date of the application for legal aid.
- Clients are 'passport' through the gross income and disposable income test (but not through capital assessment) if in receipt of Income Support, Income-Based Job Seeker's Allowance, Income-Related Employment and Support Allowance; Guarantee Credit; Universal Credit.
- Otherwise, need to carry out a full means assessment.
- Disposable capital not to exceed £8,000 (with contribution payable for work under a legal aid certificate if capital of more than £3,000).
- Gross income not to exceed £2,657 per month (\*Additional gross income cap for those with more than four dependent children).
- Disposable income not to exceed £733 per month.
- Deductions for dependents, rent, employment expenses, etc.
- Resources of the client's partner must be taken into account and added to those of the client.

### 2. Useful details and documents for referrals

The following are likely to assist a legal aid solicitor in determining whether they will be able to take on a potential client's case:

#### Personal Details

1. Full names and DOB of client and any partner, carer and other family members.
2. Contact details – phone number, address, email.
3. Any access requirements.
4. Any urgency.

#### Legal Aid eligibility

5. Details and evidence of all sources of income and of any savings.
6. If working, all payslips from last 3 months.



7. If in receipt of benefits, letter(s) confirming this, dated within the last 6 months.
8. Full copies of bank statements for all open accounts held (even those with zero or negative balance, those no longer used) for the last 3 months.
9. Evidence of rent/mortgage payments over the last 3 months.
10. Statement from friend/family member who is supporting client detailing support provided and when support started.

**For Care Act 2014/Children Act 1989 cases: Previous contact with local authority**

11. Have they approached the local authority for an assessment? If so, when and how?
12. What documents do they have in relation to this? Correspondence, assessments, care plans etc.
13. Do they know who is dealing with their case there? Contact details?
14. Is an assessment being carried out? What has happened so far? Dates?

**For Care Act 2014 cases: care needs**

15. To what extent are they able to achieve these outcomes? How do they manage at the moment?
  - (a) managing and maintaining nutrition;
  - (b) maintaining personal hygiene;
  - (c) managing toilet needs;
  - (d) being appropriately clothed;
  - (e) being able to make use of the adult's home safely;
  - (f) maintaining a habitable home environment;
  - (g) developing and maintaining family or other personal relationships;
  - (h) accessing and engaging in work, training, education or volunteering;
  - (i) making use of necessary facilities or services in the local community including public transport, and recreational facilities or services; and
  - (j) childcare responsibilities.

**For s17 Children Act 1989 cases: current support**

16. Who is currently providing accommodation/financial support? Who else is living there? (Why) do they need to leave?
17. Full detailed history of accommodation and support – names, addresses, dates, contact details if possible.
18. What are the conditions like in current accommodation? Who sleeps where? Are they affected by the conditions in accommodation and if so how?
19. Who's paying for food/travel?
20. Are they working or have they been in the past?
21. Full bank statements for all accounts for the last six months.

**Health**

22. Details of any medical conditions/disability.
23. Who is their GP?
24. Any other medical professionals involved in their care? Full details.

### **Immigration status**

25. What is their immigration status?
26. Are there any applications pending with the Home Office? A copy if possible.
27. Details of any immigration representatives.

### **3. Time Limits**

Note that a challenge to a local authority's assessment (or failure to assess) by way of Judicial Review will need to be brought promptly, and in any event within 3 months – so refer asap.