

HERTFORDSHIRE COUNTY COUNCIL

**CABINET
MONDAY 19 MAY 2003 AT 2.00 P.M.**

Agenda Item No.

6

UNACCOMPANIED ASYLUM-SEEKING AND REFUGEE CHILDREN

Report of the Director of Children, Schools and Families

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1. Purpose of Report

- To present for approval the Policy for Unaccompanied Asylum-Seeking and Refugee Children (Appendix 2) which outlines the commitments the County Council will make to asylum-seeking and refugee children, under the age of eighteen, who are unaccompanied by an adult.
- To set out the legal position in relation to unaccompanied asylum-seeking and refugee children, and to describe the current numbers and provision of services.

2. Summary of Report

- 2.1 The numbers of unaccompanied asylum seekers has increased considerably in the last few years. The local authority's duties towards these children are governed by the Children Act 1989, which states that we shall provide accommodation for any child who appears to require accommodation as a result of there being no person with parental responsibility for them. If local authorities do not meet these obligations they lay themselves open to judicial review.
- 2.2 Consequently, it has been deemed necessary to develop a Policy that will lay down the commitments the County Council will make to these children, and guide the response of practitioners and services. The Policy was considered by Strategy Panel on 27 February 2003. The Panel welcomed the Policy and did not ask for any changes. It has subsequently been sent out to partner agencies for consultation, and their feedback has been factored into the Policy.
- 2.3 The costs of the service will be met from Quality Protects Special Grant, and from the Home Office grant set aside for this purpose.

3. Conclusion

This final version of the Policy is submitted to Cabinet for approval.

1. Introduction

- 1.1 The numbers of asylum seekers has increased considerably in the last few years, particularly as a result of the conflict in Kosovo. This trend has included a significant increase in the number of asylum-seeking and refugee children, under the age of eighteen, who are unaccompanied by an adult. The local authority's duties towards these children are governed by the Children Act 1989, the implications of which are set out in section 2 on the Legal Framework, and in Appendix 1.
- 1.2 Although the numbers of unaccompanied asylum-seekers in Hertfordshire by no means compare to the numbers in those authorities that have a port of entry, they have reached a point where it has been deemed necessary to develop a Policy that will lay down the commitments the County Council will make to these children, and guide the response of practitioners and services. Accordingly, the CSF Plan 2002/3 contained a commitment to develop and implement a CSF policy for working with unaccompanied asylum seeking children (Action Sheet 5.5.6).
- 1.3 The CSF Plan for 2003/4 builds on the above commitment. Action Sheet 5.4.2, to implement and evaluate services that support unaccompanied asylum seekers, outlines the following tasks which will contribute to implementation of the Policy:
- Establish a dedicated team to ensure that unaccompanied asylum seekers receive a holistic care and education service.
 - Ensure that all unaccompanied asylum seekers who are looked after or are care leavers have a Care/ Pathway Plan.
 - Establish procedures to ensure that all unaccompanied minors receive schooling that meets their education needs
 - Develop arrangements to ensure that unaccompanied asylum seekers aged over sixteen can access appropriate further education, training and employment opportunities
 - Develop commissioning plans to ensure that all unaccompanied asylum seekers have accommodation that meets their needs
- 1.4 Current numbers nationwide and in Hertfordshire are set out in Section 3 of the report, on Care Management issues. This section also sets out the immigration regulations that apply to unaccompanied asylum-seekers and the issues that have been raised. A breakdown of data is attached as Appendix 3.
- 1.5 The report also outlines service issues under the following themes, the first three of which relate to relevant sections in the Policy:
- Accommodation/ Placements (section 4)
 - Education (section 5)
 - Health and Personal Support (section 6)
 - Staffing Structure (section 7)

1.6 The County Council's approach is to meet our legal obligations to these children whilst ensuring the most cost-effective use of resources. Financial implications are laid out in section 8.

1.7 **Consultation Feedback**

The Policy was drafted in consultation with CSF staff, as well as staff from Adult Care Services and headteacher representatives on the Strategic Management Partnership Group. It was then sent out to partner agencies and has been amended in the light of that consultation. The consultation forms were sent out to CSF staff, voluntary organisations, secondary schools, and foster carers who work with unaccompanied asylum seekers, Primary Care Trusts and Looked After Children and Leaving Care specialist nurses, NCH and the Connexions Service. We received the following responses:

- 1 from a teacher
- 3 from foster carers
- 1 from Connexions
- 5 from Primary Care Trusts
- 2 from voluntary organisations
- 2 from specialist nurses
- 2 from CSF staff

1.8 No major issues have arisen from the consultation exercise although feedback has raised a number of points which have led to minor amendments and additions to the Policy, the significant ones being set out below.

1.9 Although health needs had been addressed in Section 6 of the draft Policy, under the heading "Personal Support", PCTs and specialist nurses felt that health needs should be given a higher profile. Accordingly, this section has been re-titled "Health and Personal Support". An additional commitment has been added that, where they are looked after children, we will ensure that they have a Personal Health Plan which outlines how their health needs will be met (as all other looked after children do). PCTs also expressed concern that they should be helped to track unaccompanied asylum seekers to ensure that they are receiving appropriate NHS services. The role of the specialist Looked After Children and Leaving Care Nurses will be key in helping to achieve this.

1.10 Voluntary organisations working with refugees were keen that unaccompanied asylum seekers contact with community groups should be with groups from their culture of origin who can give them advice and support in their mother tongue. This commitment has been added to the list of additional requirements to statutory reviews set out in para 2.9 of the Policy.

- 1.11 Connexions were keen that their support role in the sections on education and employment should be given greater prominence, and the services they can offer spelt out more explicitly. Paras 3.4, 3.7, 4.2, and 4.3 of the Policy have been augmented to include these commitments.

2. Legal Framework

- 2.1 The immigration status of unaccompanied asylum-seeking and refugee children is determined by the Home Office, not the County Council (see paras. 3.4 and 3.5). However, local authorities' legal responsibilities towards them are clear and unambiguous. Under the Children Act 1989 *the local authority shall provide accommodation for any child in need, who appears to them to require accommodation as a result of there being no person with parental responsibility for them.* The legal advice on this is clear in that if we have unaccompanied asylum-seeking children under 16 they should be accommodated under the provisions of section 20 of the Act, thus becoming looked after children. If local authorities do not meet their obligations under the Children Act they lay themselves open to judicial review. The legal position under the Children Act is set out in more detail in Appendix 1. (Children Act 1989 section 17 (1), section 20 (1)).
- 2.2 In 1995 the Department of Health Social Services Inspectorate produced Practice Guidance for professionals and people working with unaccompanied asylum-seeking children. The British Agencies for Adoption and Fostering (BAAF) produced a new practice guide in 2001, with the support of the Department of Health. The guidance deals with the Framework for the Assessment of Children in Need and their Families, the Children (Leaving Care) Act and the introduction of the National Asylum Support Service (NASS). According to the Guidance, unaccompanied asylum-seeking children aged fifteen and under should be treated as looked after children under section 20 of the Children Act.
- 2.3 **16 and 17 year olds**
The Children Act states that every local authority shall provide accommodation for any child who has reached the age of sixteen and whose welfare is considered to be seriously prejudiced if the authority do not provide him with accommodation. (Children Act 1989 section 20 (3)). In relation to children who first present when aged sixteen and seventeen, they should be dealt with under this section or under section 17 of the Act (which deals with children in need). The legal advice of the County Corporate Law Group is that the Local Authority still has to provide accommodation to someone aged sixteen "whose welfare the authority consider is likely to be seriously prejudiced if they do not provide him with accommodation". This opinion is also set out in the BAAF practice guide which says that all unaccompanied child aged seventeen and under should be considered as in need of being accommodated.

2.4 Therefore, once the Framework for the Assessment of Children has been completed in individual cases, the identified needs of those aged sixteen and seventeen may be met through the provision of appropriate services under Section 17 to ensure that their welfare is not seriously prejudiced. The exception would be where their welfare could be seriously prejudiced if they were vulnerable to any form of abuse, involvement in prostitution, or addiction to illegal substances, in which cases it is recommended that they are accommodated under Section 20.

2.5 **National Assessment Framework**

The time scale for the completion of the core assessment should be no more than 35 working days. This is sometimes a challenging timescale in asylum seeker cases because specialist assessments may need to be commissioned. Short-term care arrangements will be necessary whilst the assessment is undertaken. Wherever possible, consideration should be given to supporting any current arrangements.

2.6 **Care Orders**

Unaccompanied asylum-seeking and refugee children are likely to have no access to their parents' consent in the determination of important choices in their life. Consideration is given to applying to the court for a Care Order where the child has additional needs and they would be at risk of significant harm if the authority did not have an order. In these cases, the threshold criteria for "significant harm" will need to be satisfied.

2.7 **Children (Leaving Care) Act 2000**

Unaccompanied asylum-seeking children and refugees who are looked after are entitled to the same service as any other children who have been looked after when they leave care. The definitions and commitments as described within the Hertfordshire County Council Leaving Care Policy are therefore applicable to this group of young people.

2.8 **Race Relations Amendment Act**

The provisions of the Race Relations Amendment Act need to be taken into account when planning and delivering services to asylum seekers. Therefore it is necessary that unaccompanied asylum seekers receive the same services as other looked after children if we are not to be in breach of our responsibilities under the RRAA to eliminate discrimination. Similarly, it is important that accurate data is available so that we can fulfil the requirement to monitor services.

3. Care Management Issues

3.1 The national Children in Need report for 2001 shows that, across the country, local authorities are supporting 12,600 children in need who are asylum seekers, of which 1,500 are LAC. In 2002/3 Hertfordshire

supported 132 unaccompanied asylum seekers, 52 of whom were supported by CSF. A further 80 children aged sixteen and seventeen were supported by Adult Care Services Asylum Seeker Team (AST) during 2002/3. As at 31 March 2003, CSF were supporting 46 asylum seekers. Of these children only two are girls, and only three are under 14. In addition, AST are currently supporting a further 48 young people aged 16-18, making a combined total of 94. A breakdown of data is attached as Appendix 3.

3.2 Of the 46 children currently supported by CSF, 22 are looked after; the rest are currently supported under Sec 17 of the Children Act, for children in need. Six of this latter group are under 16 and will become looked after when we implement the proposal that all unaccompanied asylum seekers under 16 should be accommodated under Section 20 of the Children Act. The addition of these unaccompanied asylum seekers has, and will continue to, contribute to the rise in looked after children numbers, which in March 2003 stood at 947. This also has a knock-on effect on our adoption figures as none of these children are likely to be adopted. However, their contribution to the overall increase in LAC numbers means that a higher number of other children have to be adopted to meet our percentage adoption targets.

3.3 The number of new arrivals has increased considerably in the last two years. The total number of new assessments from January 2001 until 31st October 2002 was 140, giving an average over the 18 months of 6.4 new cases per month (although the actual number each month fluctuates widely). The overwhelming majority of the children that CSF are currently supporting are from the Balkans – 40 out of 46, with 27 of these being Kosovan.

3.4 **Applications for Asylum**

Complex legal and political issues are raised in relation to unaccompanied asylum-seeking and refugee children. A lack of understanding of the social and political context in which these children have lived can lead to questions about the validity of their claims for asylum. Some of the children have suffered extreme trauma. Some are fleeing violence and oppression and others are economic migrants. The responsible agency to determine their status is the Home Office.

3.5 There are two ways to apply for asylum:

- to the immigration officer on arriving at the port of entry (the airport, sea port or at Waterloo Station if coming through the Channel Tunnel)
- applying to the Home Office after entering the country as a student, illegal entrant, or visitor.

The first group are called 'port of entry applicants' and are the responsibility of the local authority in which the point of entry is located. The second group are called 'in country applicants' and are the responsibility of the first local authority they apply to for assistance. A brief guide to the terminology and definitions of the relevant

immigration regulations are included in section 8 of the Policy: Terminology, Definitions and Legal Framework.

- 3.6 There has been a considerable increase in the number of unaccompanied asylum-seeking children arriving in Hertfordshire. The County is served by two major motorways and a number of children have been found close to the M1 and the M25. In some cases they have had contact with other agencies and local authorities. Practice Guidance is being drafted to ensure that checks are made to establish whether unaccompanied asylum seekers have applied to any other authority.
- 3.7 Determining the age of the unaccompanied asylum-seeking child in the absence of legal documentation is a problem. The Home Office is the responsible agency for determining the age of the child. A combination of social and cultural factors can make accurate age determination difficult. The context of children's lives must be taken into account, as well as physical factors and other information. Children who have to take responsibility for themselves may have the physical and emotional attributes associated with those of older children.
- 3.8 In some cases there has been a belief that the age of the person is that of an adult. It is unclear whether they have deliberately sought to mislead or that they did not genuinely know their age. Where there is concern they can be referred back to the Home Office for a redetermination of their age. Recent Home Office guidance (July 2002) states that "where a SSD disagrees with Immigration and Nationality Directorate's (IND's) assessment of age, it is IND's policy to accept the SSD's professional assessment". Refusal to provide a service on the grounds of age has exposed other L.A.s to judicial review.
- 3.9 The responsibility to respond to the child according to the age as defined by the Home Office rests with the Local Authority. It is very important that vulnerable children are not left without services while their age is being determined by professionals. However, the Care Practice Standards places the responsibility for the care and protection of children, in Foster and Residential Care, with the Managers of these services. Where they believe that the young person referred to them may not be a child they will have to make a decision whether or not to admit the child to their service. In these cases an alternative service should be provided in order to meet the statutory responsibility.
- 3.10 Since April 2001 services to unaccompanied asylum-seeking and refugee children have been provided by both Children, Schools and Families and by the Adult Care Services Asylum Seekers Team (AST). In general, CSF have dealt with the under sixteens and the AST have dealt with newly referred sixteen and seventeen year old children. The current arrangement creates a two-tier system of providing care services to unaccompanied children. The children referred directly to

the AST will not have had an assessment as required under the Framework for assessing children.

- 3.11 As from April 2004 the responsibility for any single adults or families transfers to the National Asylum Support Service and the AST will transfer to CSF. This means that, from that date, the sole responsibility for dealing with unaccompanied asylum seeking and refugee children aged 17 and under will be with CSF.
- 3.12 The provision of interpreting and translation services is critical in the work with this group of children. The majority will arrive with extremely limited understanding of spoken or written English. These services are needed at the first interview on their arrival at the office. Language Line (a national telephone interpreting service which HCC subscribes to) is often used at this point. At subsequent interviews arrangements are made for an interpreter to be in attendance.

4. Accommodation/ Placements

- 4.1 Of the 46 children currently supported by CSF 29 are placed in Herts, and 17 outside the County. 22 are in foster placements and 24 are in a range of other accommodation, 2 of which are kinship placements. Currently, no children are in residential accommodation although up until recently, two were placed in a residential unit, Wherever possible children who have arrived with, or subsequently identified, a close relative have been placed together.

4.2 Fostering

Eighteen of the fostered children are in in-house placements, and four in agency fostering placements. The experience of caring for these children in foster placements has varied according to the needs of the child, the experience of the carers and the availability of a supportive network. In a few cases the children have attained the age of eighteen and the placements are now being converted into supportive lodgings. Key factors which place a strain on the foster placement are the difficulties in communication through not having a shared common language, the availability of a place at a school or college, a lack of understanding of the refugee making process and the specific needs of unaccompanied asylum seeking children. Some of the children find living in a foster family quite stressful and have asked that they be allowed to live on their own before they are aged sixteen. Some young men do not see themselves as children who need to be cared for, but as men.

- 4.3 Our fostering strategy will be twofold. First, to follow Kent in developing "host families". These are families who are unwilling to make a long-term fostering commitment, but would be willing to take on asylum seekers who are relatively unchallenging and are in our care for a relatively short period. Second, to seek to recruit from asylum seekers'

own communities of origin carers who would not otherwise seek to foster for the County Council.

4.4 **Residential**

The experience of caring for these children in the residential setting is generally positive. Peer support, structured routines and the relative stability of the arrangements does appear to provide a sense of security for a child who has had to manage a lot of change in a short period of time. Staff have also developed knowledge, experience and understanding of their complex needs. However their behaviour is relatively unchallenging and does not require the intensive levels of staffing that is provided in our residential units.

4.5 **Supported Lodgings**

In relation to lodgings the experience varies according to the age of the child, their previous experience, the type of accommodation and the community in which it is located. 24 children are currently living in a range of supportive lodgings, including kinship placements. Some children have been placed in lodgings in the North London area. This is due to the availability of accommodation in that area and the fact that a community is developing there which reflects their own culture. Some independent organisations, such as the Red Cross, have developed a range of skills and experience in providing supported accommodation to asylum seekers. We will be exploring contractual arrangements with such organisations, to provide supported accommodation for young people aged 16 and over.

4.6 If during the assessment information is provided, by the child, about members of their extended family or neighbours from their town or village then they will be assessed to see if they are able and willing to provide accommodation and support. In some cases this may not be possible due their own circumstances, for example the accommodation is for a single person or that their application for status has been refused. However, whenever possible our policy will be to place children in kinship placements, and to develop placements connected to the community of origin.

5. **Education**

5.1 The Authority has a duty to make education available to all school aged children and this includes unaccompanied asylum-seeking and refugee children. Under the Education Act 1996 and the DfES Code of Practice on School Admissions unaccompanied asylum-seeking children are entitled to a school place and free education up until the age of 18, provided, that their education starts before the age of 16. In these circumstances it is unlawful for a LEA to say they have no places in their local schools. Children who arrive in the UK at age 16 or over may receive education at the discretion of the LEA. Our duties under the Children Act are likely to be construed as encompassing assisting them with obtaining education. In addition, under the Education of Looked

after Children Policy, children who are looked after must have a Personal Education Plan.

- 5.2 Unaccompanied minors should be considered for admission to Primary or Secondary Schools under Rule 2 of the Statement of Admission Criteria. They have significant social needs, which can be met through admission to a school. These children have lost attachment to their parents and family network. Admission to a school enables them to establish stable and appropriate relationships with peers, teachers and other support workers. Admission should be within twenty days of the application for their admission to a school.
- 5.3 Their educational needs vary depending on their age and the educational opportunities they had prior to their arrival in the County. However, the reports on those that do have a school placement are positive. Attendance, motivation and their general abilities are good. They are generally well supported in school and their understanding and ability to communicate in English progresses satisfactorily. However, there is a minority of children who lack motivation to engage with education.
- 5.4 Many of the unaccompanied children coming into care are in the Year 10 cohort. With little or no English it is inadvisable to put them in this year group, as they would be unable to understand GCSE curriculum.
- 5.5 Children who are in lodgings in North London are also disadvantaged in that their local schools have no places and the County Council is not in a position to enforce Rule 2. Some attend an Arts and Media Centre in Islington.
- 5.6 Schools with an Ethnic Minority Achievement budget can use it to support asylum-seeking and refugee children through the provision of School Based Interpreters. Schools who do not receive this funding may be eligible for low level of support from their local Ethnic Minority Achievement Centre.

6 Health and Personal Support

- 6.1 All children who are accommodated will have a medical and other health checks. There are no significant physical health issues being identified although accurate information on immunisations is difficult to obtain. Some have needed dental treatment for decay. In some cases there has been a difficulty in securing a NHS dentist.
- 6.2 Some children have experienced inadequate health care with limited levels of immunisation and come from areas where some diseases are common. Asylum-seeking and refugee children are entitled to free emergency treatment from a General Practitioner including consultation. They should receive the same level of service as any other child.

7. Staffing Structure

7.1 Current care management services are delivered through Quadrant Referral and Assessment Teams and Long Term Teams, and staff in Adult Care Services Asylum Seekers Team. These teams are a combination of Social Workers and Professional Assistants. Education services are delivered by a range of different sections, with supporting expertise provided by MECSS.

7.2 The key issues for this group of young people are:

- The complex legal and care management issues for this group of children tend to be around their refugee/ asylum seeker status, rather than around their looked after status which is usually relatively straightforward, i. e. care proceedings are rare, and there no contested custody situations with parents.
- These young people have fed back that learning English as a second language, and educational achievement, are areas that are particularly important to them.

7.3 Accordingly, it has been decided that MECSS are in the best position to provide a holistic, integrated service to this group of young people because:

- they have in-depth knowledge of refugee/asylum seeker legislation and networks, and close contact with their communities, and placing the service with them would therefore provide the most efficient use of resources
- they have considerable expertise and well-established networks for the education of refugee children.

7.4 This MECSS Unaccompanied Asylum Seeker Team will offer an integrated service, providing both education and social care support. The team is currently being recruited to and will become operational in Summer 2003.

8. Financial Implications

8.1 The costs of setting up the unaccompanied asylum seeker team will be met from Quality Protects Special Grant in 2003/4.

8.2 Costs of placements for unaccompanied asylum seeking and refugee children are claimed quarterly against the Home Office grant set aside for this purpose. Should we succeed in getting the full Home Office funding for which we are eligible for we will not be in a funding shortfall position in 2002/3. This is primarily due to the fact that a majority of children are placed in inexpensive supportive lodgings placements. Development of a range of placements in 2003/4 will aim to ensure that we make full use of Home Office funding whilst meeting needs appropriately.

- 8.3 However, the use of in-house looked after placements by UAMs has led to consequential expenditure on other looked after children, in as much as it has meant that these placements are not available for other looked after children, so the latter have had to be placed in agency placements. Currently, there are 18 asylum seekers placed in in-house fostering placements that are not kinship placements. The knock-on effect of this is that 18 other looked after children have had to be placed in agency fostering placements which are considerably more expensive than their in-house counterparts. Based on the average cost of an agency fostering placement, the net annual cost to the department of these places is £481,128. Should there be a similar increase in the number of asylum seekers throughout next year, resulting in a further 18 placements, the net cost to the department in 2003/4 would be £741,739. We intend to seek recompense from the Home Office for this consequential expenditure.
- 8.4 To counteract the effect of the above trend, it is proposed to develop a range of specialised cost-effective placements for unaccompanied asylum-seekers as outlined in section 4 of the report. As such placements would be specifically generated for this group of children, it would minimise the impact on the overall placement pool. This development will be facilitated by the placement of the service with MECCS, who already have contact with a large number of refugee families of the relevant ethnic and cultural origin.

Background papers used by the author when compiling this report:

Department of Health: *Unaccompanied Asylum-seeking children: Practice Guide* (1995)

British Agencies for Adoption and Fostering: *Food, Shelter and Half a Chance - Assessing the needs of unaccompanied asylum seeking and refugee children* (2001)

Report to Cabinet 22 July 2002: Leaving Care Policy

Report to Strategy Panel 27 February 2003: Unaccompanied Asylum-Seeking and Refugee Children

If you would like to know more about the issues referred to in this report please contact Andrew Wellington (Tel: 01992 556980)

Legal responsibilities

1. **It is the general duty of every local authority to safeguard and promote the welfare of children within their area who are in need by providing a range of services appropriate to those children's needs. The local authority shall provide accommodation for any child in need, who appears to them to require accommodation as a result of there being no person with parental responsibility for them. Every local authority shall provide accommodation for any child who has reached the age of sixteen and whose welfare is considered to be seriously prejudiced if the authority do not provide him with accommodation.**
(Children Act 1989 section 17 (1), section 20 (1), section 20 (3)).
2. Unaccompanied asylum-seeking and refugee children are by definition children in need.
3. An unaccompanied child is a person who is under the legal age of majority and is not accompanied by a parent, guardian, or other adult, who by law or custom is responsible for him or her.
4. An asylum seeker is someone waiting for a decision on their asylum claim.
5. A refugee is someone outside of his or her own country "owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. Refugee status is recognised by a government, not granted.
6. The Children Act states that the local authority shall provide accommodation for any child in need, who appears to them to require accommodation as a result of their being no person with parental responsibility for them. Unaccompanied children may or may not have anyone with parental responsibility for them in another country. In any case they will not have anyone available and able to make decisions on major issues for them in this country.
8. The Act also states that every local authority shall provide accommodation for any child who has reached the age of sixteen and whose welfare is considered to be seriously prejudiced if the authority do not provide him with accommodation. Their welfare could be said to be seriously prejudiced by reason of being unaccompanied.
9. The Children Act requires the local authority to take account of race, language, religion and culture.
10. The Race Relations Amendment Act requires the local authority to ensure that the function and policies do not adversely affect any racial group.