

**Open Report on behalf of Debbie Barnes, Executive Director of Children's Services**

Report to:	<b>Executive</b>
Date:	<b>6 September 2016</b>
Subject:	<b>Unaccompanied Asylum Seeking Children – National UASC Transfer Protocol 2016/2017</b>
Decision Reference:	<b>I011798</b>
Key decision?	<b>No</b>

**Summary:**

There has been a significant increase in the number, of people seeking asylum within the United Kingdom. Within this cohort there have been increases in the number of children who are unaccompanied and seeking safety.

The large number of unaccompanied asylum seeking children has resulted in the government requesting all local authorities to sign up to a voluntary agreement whereby unaccompanied asylum seeking children are dispersed around the country with all local authorities contributing to the welfare and maintenance of the children. This has been particularly important given the high numbers of children who have presented as unaccompanied asylum seeking children in Kent.

This report seeks approval for the Council to enter into a voluntary arrangement relating to the dispersal of unaccompanied asylum seeking children across the country.

**Recommendation(s):**

That the Executive

- (1) approves the entering into by the Council of a voluntary arrangement for the transfer to the Council from other local authorities of responsibility for unaccompanied asylum seeking children on the basis of a regional model of dispersal as described in the Report.
- (2) delegates to the Executive Director for Children's Services in consultation with the Executive Councillor responsible for Children's Services authority to approve the acceptance of specific unaccompanied asylum seeking children pursuant to the said voluntary arrangement and the making of arrangements with other local authorities under section 69 of the Immigration Act 2016 in respect of such children as are accepted.

**Alternatives Considered:**

Not to enter into the proposed voluntary arrangement.

The Council would still have statutory responsibilities for unaccompanied asylum seeking children who present within the county. If a Local Authority refuses to engage in this voluntary programme then the Secretary of State has been awarded new powers under the Immigration Act 2016 which will allow for the dispersal of unaccompanied asylum seeking children to be imposed on local authorities. The proposed voluntary arrangement provides a mechanism for the equitable dispersal of unaccompanied asylum seeking children across the country recognising that Lincolnshire is currently supporting some such children while other local authorities are not.

**Reasons for Recommendation:**

In line with statutory guidance and Lincolnshire County Council's vision for children; unaccompanied asylum seeking children are firstly children who are entitled to the same high quality provision as that which is offered to all children within the county, particularly those who are in need of protection and care. Lincolnshire should continue to strive to be viewed as an authority who takes its responsibilities to those most vulnerable of children as a priority and a voluntary acceptance of the government proposals would go some way in affirming and confirming Lincolnshire as a high performing authority which continues to place the best interests of all children as being the guiding principle of practice within a national framework that ensures an equitable, regionally managed allocation of responsibilities.

**1. Background**

In May 2016 the government wrote to all local authorities with information about the intention to resettle unaccompanied children who are considered to be at risk both in the Middle East and refugee camps across Europe. The voluntary scheme which the government request local authorities agree to engage with is one which will be based on a regional programme of dispersal of unaccompanied asylum seeking children, which will ultimately allow authorities to engage in a reciprocal arrangement of delegating responsibility and receiving responsibility for children as well as allowing for there to be a sharing of resources, knowledge and skills.

Before addressing the wider issues in respect of unaccompanied asylum seeking children within the United Kingdom, it is important for there to be some clarity as to who would fit into the legal category of being an unaccompanied asylum seeking child.

An unaccompanied asylum seeking child is a person, who at the time of making the asylum application:

- Is under the age of 18 or in the absence of documentary evidence appears to be under 18
- Is applying for asylum in his or her own right
- Has no relative or guardian to turn to in this country.

The reasons why children seek asylum are many and varied. They can include the child having been trafficked into the United Kingdom and having managed to flee from the trafficker. Some children will be fleeing child specific persecution by way of example forced marriage, child soldiering and others will seek asylum in the UK because they are experiencing persecution in their home country or in an attempt to flee armed conflict. Some young people will have become displaced from adult carers who had commenced the journey with them.

All local authorities in England and Wales have a legal duty to provide support for children and young people who seek asylum. Section 17 of the Children act 1989 provides a duty on every local authority to safeguard and promote the welfare of children in need within their area by providing appropriate resources to them whilst section 20 requires every local authority to provide accommodation for children in need if they have no person with parental responsibility and or the child has been lost or abandoned.

Within Lincolnshire County Council we currently have responsibility for sixty five unaccompanied asylum seeking children all of which are male. Unaccompanied asylum seeking children are keen to promote their literacy and language skills, enter education, employment or training including university study. The current cohort demonstrates their aspirations and ambitions. Of the sixty five, forty three are between the ages of 15-19 years and twenty two are aged 20-25. Out of the forty three unaccompanied asylum seeking children; three of them are aged 15 and forty are aged 16-19. Thirty two of the 15-19 year olds are in education provision, five are undertaking training and employment, with three awaiting entry to education. Out of the twenty two, 3 are NEET, 5 are in education and 4 are in higher education/university. There has been a shift in the country of origins of the children and young people seeking asylum. By way of example in 2013/4, two children from Syria presented in Lincolnshire, this increased to nine in 2014/5. This can be viewed as a direct result of the civil war in the country.

**Case study about a young man who became a care leaver after arriving in Lincolnshire as an Unaccompanied Asylum Seeking Child supported by Locate.**

*T's Story*

*T is 22 years old and originally from Eritrea. He was granted refugee status with a 5 year leave to remain from April 09 to April 14.*

*T had attended Peterborough College and completed ESOL and Level 3 BTEC National in Applied Science (Medical) in 2013 but had been unsuccessful with his application to Universities last year. The main barriers appeared to be a lack of*

*level 2 Maths and English qualifications and applications to courses that were very competitive in terms of numbers of applicants (e.g. Radiography). T was attending a joinery course as a means of accessing support for Maths and English.*

*T was referred through to our Work Preparation course in March 2014. He attended both days and was a very committed and active member of the group. LCC Young People's Learning Programme (YPLP) were invited to the event to give information about the support they could provide, particularly with Maths and English. T had tried other ways of gaining these qualifications so took the opportunity to register with them.*

*His feedback form from the Work Preparation Programme No 8 stated 'Thanks very much for organising the work preparation course it has been very helpful and I am hoping for more'.*

*The Work Preparation Worker supported T to look at his long term career goal which was to progress to University and use his medical qualification.*

*They used the NHS website to look at a range of career opportunities and skill shortage areas. T decided he would like to apply for Adult Nursing. Sue was able to find a work experience opportunity with an established care home for the elderly locally and he started as an activities organiser in July. The feedback from residents and staff was amazing and both noted his 'caring attitude'. She also supported T with many issues at this time such as renewal of visa and application to Disclosure and Barring Service. T attended additional training for First Aid, Manual Handling etc.*

*Throughout this time T achieved Functional Skills English and Maths at Level 2 through YPLP and Sue gave interview technique support for university. T was successful in interview for Adult Nursing with University of East Anglia which he started on the 22/09/14, a full NHS bursary and a placement at Peterborough City Hospital.*

*He was also offered part time shifts with the care home which he was able to combine with his studies. Deadlines for status paperwork and Maths and English Certificates was tight as original documentation is a requirement for University, Student Finance, DBS etc. and has relied on a lot of support to meet deadlines. T applied in March 2014 for indefinite leave to remain (earliest possible date) and it was August when this was granted and when his certificates arrived.*

*T is extremely happy at the outcome and has worked hard to achieve this. He has taken part in a film by Barnardo's charting his journey and his achievements.*

*As a result of the international situation there has been a rise in the number of children and young people who are seeking asylum across the United Kingdom. There has been a 56% rise in the numbers for the year ending 2015 as compared to the previous year. (It is a point of note that this figure is still less than the peak of 3900 which was reached in 2008.)*

There are two main groups of unaccompanied asylum seeking children which the government is asking local authorities to enter into voluntary arrangements in order to ensure that the needs of these children are met and that the responsibility is shared equitably across the country.

The first of these groups are those children and young people who have managed to make their way from their home countries across Europe and arrived within the United Kingdom and who have been identified as being unaccompanied asylum seeking children within Kent.

Kent County Council has in excess of 900 unaccompanied asylum seeking children of which 300 have been placed in other authorities. The government seeks to encourage all local authorities to enter into a voluntary agreement whereby all authorities will accept the voluntary transfer of these children into their own areas. This in essence will require Kent to delegate their responsibilities to other authorities.

A positive outcome of this work which has led to this position is that there is recognition that throughout the country some authorities have higher numbers of unaccompanied asylum seeking children than others and the issue of delegating and receiving responsibility will enable other authorities to adopt a similar approach within their own areas. The plan is to coordinate the reception of unaccompanied asylum seeking children through a regional hub with an identified regional lead and regional administrator. This will ensure that all local authorities within regions assume responsibility for unaccompanied asylum seekers in an equitable manner. Thus if an unaccompanied asylum seeking child arrives in a local authority area with a low concentration (below 0.07%) of the general child population the expectation will be that the child is cared for by the authority. However if a child was to arrive in a local authority area with a high concentration (over 0.07%) the expectation would be that child would be transferred to an area with lower numbers.

The government anticipates that with the support of the strategic migration partnership, local authorities will set up regional models which will allow for children to initially be transferred within a regional area. However, if there was to be a high number of unaccompanied asylum seeking children within any given region, the expectation would be the child would be transferred to another region

The second group are those children and young people who are currently living in refugee camps in both Europe and other countries, and who are particularly vulnerable by virtue of the fact that they do not have an adult to provide them with the protection that they both need and deserve. The government has committed to resettle up to 3,000 of these children.

It is the intention of the government to resettle this second cohort of children to regions based on the proportion of children in each region. They will work closely with the regional co-ordination team to allocate children to individual authorities.

A regional model of operation will allow for the pooling of resources and also allow for the sharing of skills expertise and knowledge in respect of meeting the needs of this highly vulnerable group of children.

### Legal Issues

As stated above each local authority has statutory obligations towards unaccompanied asylum seeking children depending on where the child first presents. In order to enable a dispersal of responsibilities to authorities across the country, section 69 of the Immigration Act 2016 confers on local authorities a power to enter into arrangements with another authority for the transfer to the other authority of the first authority's statutory obligations towards a child. Where such arrangements are entered into, the statutory responsibility of the first authority transfers once and for all to the second authority and the first authority is relieved of any responsibility from that point on although it remains liable for actions prior to the transfer.

It is envisaged that this is the model that will underpin the dispersal arrangement and delegation is sought to enable such arrangements to be made if the Council enters into the voluntary arrangement.

Under section 72 of the 2016 Act the Secretary of State is granted power to prepare a scheme for transferring responsibilities between specified local authorities in respect of all or some classes of or individual relevant children and to direct those local authorities to comply with the Scheme. This is in essence a reserve power to impose an arrangement on local authorities if authorities do not sign up to the voluntary arrangement proposed. The Scheme cannot be imposed unless an opportunity has been given to the local authorities concerned to make representations and cannot be imposed unless the Secretary of State is satisfied that compliance with the Scheme will not unduly prejudice the discharge by each receiving authority of any of its functions.

Otherwise the Secretary of state has wide discretion in devising such a Scheme.

### *Equality Act 2010*

The Council needs to make sure that it complies with the public sector equality duty set out in S149 Equality Act 2010 when coming to a decision on the proposals. In doing so, the Executive as decision-maker must have due regard to the needs to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it: Equality Act 2010 section 149(1).

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation: section 149(7).

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.

Compliance with the duties in this section may involve treating some persons more favourably than others.

A reference to conduct that is prohibited by or under this Act includes a reference to:

- (a) A breach of an equality clause or rule
- (b) A breach of a non-discrimination rule

It is important that the Executive is aware of the special duties the Council owes to persons who have a protected characteristic as the duty cannot be delegated and must be discharged by the Executive. The duty applies to all decisions taken by public bodies including policy decisions and decisions on individual cases and includes this decision.

To discharge the statutory duty the Executive must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process.

An Equality Impact Assessment has not specifically been undertaken for this proposal but consideration has been given to the public sector equality duty. The relevant protected characteristics for these purposes are age, race and religion or belief. The purpose of the voluntary arrangement is to ensure that unaccompanied asylum seeking children receive help and support that is designed to protect them from potential discrimination, harassment or victimisation. By supporting such children equality of opportunity is enhanced for those children and they are encouraged and enabled to take a full part in society.

### *Child Poverty Strategy*

The Council is under a duty in the exercise of its functions to have regard to its Child Poverty Strategy. Child poverty is one of the key risk factors that can negatively influence a child's life chances. Children that live in poverty are at greater risk of social exclusion which, in turn, can lead to poor outcomes for the individual and for society as a whole.

In Lincolnshire we consider that poverty is not only a matter of having limited financial resources but that it is also about the ability of families to access the means of lifting themselves out of poverty and of having the aspiration to do so. The following four key strategic themes form the basis of Lincolnshire's Child Poverty strategy: Economic Poverty, Poverty of Access, Poverty of Aspiration and Best Use of Resources.

Unaccompanied asylum seeking children suffer from all of the forms of poverty recognised by the Council's policy and which that policy is designed to address. By engaging in the proposed voluntary arrangement the Council would play a full part in addressing the disadvantage of unaccompanied asylum seeking children on a national and regional scale while at the same time ensuring best use of resources as a result of the sharing of responsibility nationally and the pooling of resources knowledge and skills.

### *Joint Strategic Needs Assessment (JSNA) and Joint Health and Wellbeing Strategy (JHWS)*

The Council in exercising its functions must have regard to both the JSNA and the JHWS.

Consideration has been given to the JSNA and the JHWS and their principles and participation in the proposed voluntary arrangement is considered to contribute to the health and wellbeing of unaccompanied asylum seeking children.

### *Crime and Disorder*

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.

Unaccompanied asylum seeking children if not supported are at high risk of being the victims of crime or being drawn into crime. It is the responsibility of the Council to support children to ensure that this does not happen. The proposed voluntary arrangement would potentially lead to the Council taking on responsibility for unaccompanied asylum seeking children for whom it would not otherwise be responsible. However this would be as part of reciprocal arrangements around the country and be part of a regionally managed and supported programme.



### Financial implications:

The home office provides financial support to local authorities who provide for the needs of unaccompanied asylum seeking children by providing the national transfer rates as indicated below.

Within Lincolnshire the last financial year there was a no additional cost implication for UASC with all Home Office funding having covered the costs. The funding covers costs for accommodation and the Authority are also able to off-set some staff costs related to the administration of the service to UASC's. Subject to the Council continuing to receive those grants, and subject to the nature of the needs of the cohort arriving, it is expected that costs will continue to be met through Home Office funding. However, should the needs of the cohort be more complex which may require additional social work capacity, costs may exceed available budget. This will be kept under review and the pressures escalated to national government if appropriate.

### National transfer rates for 2016 to 2017

Age profile	Rates for LA accepting children from Kent 1 <sup>st</sup> April 2016 – 30 June 2016	National Rate 1 <sup>st</sup> April 2016 - 30 June 2016	New national transfer rates 1 <sup>st</sup> July 2016 - 31 <sup>st</sup> March 2017
Under 16	£114 daily	£95 (daily)	£114 (daily)
16 -17	£91 (daily)	£71 (daily)	£91 (daily)
Leaving Care	£200 (weekly)	£150 (weekly)	£200 (weekly)

Thus there are no direct financial implications which are anticipated at this time, although this will be kept under review and escalated to Government if appropriate.

## **2. Conclusion**

As can be seen the government is requesting that local authorities agree to engage in two new operating models in respect of unaccompanied asylum seeking children. The first of these is that a reciprocal arrangement of delegating responsibility takes place and the second is the development of a regional model. Permission is sought for Lincolnshire County Council to sign up to this voluntary scheme and for the authority to continue to provide the high standard of care to all children who require services.

### **3. Legal Comments:**

The Council has the power to enter into the voluntary arrangement proposed. The detailed legal context and relevant considerations are dealt with in detail in the Report.

The decision is consistent with the Policy Framework and within the remit of the Executive if it is within the budget.

### **4. Resource Comments:**

There are no direct resource implications which are likely to be adversely impacted by this action.

### **5. Consultation**

#### **a) Has Local Member Been Consulted?**

Not applicable

#### **b) Has Executive Councillor Been Consulted?**

Yes

#### **c) Scrutiny Comments**

The Children and Young People Scrutiny Committee met on 15 July 2016 and considered a report concerning the Unaccompanied Asylum Seeking Children – National UASC Transfer Protocol 2016/2017.

The Committee supported the recommendations contained in the report.

In addition, the following comments were made:

- It was queried whether the 65 UASC currently living in Lincolnshire attracted any funding. It was reported that the UASC currently in Lincolnshire were cost neutral to the Council as the Government provides funding for all UASC through grants. This may change if the needs for the children are more complex and require additional support.
- Concerns around safeguarding were raised in relation to the difficulty of identifying the age of young people and potentially young adults being identified as school age children and placed within schools. It was highlighted that specifically trained social workers undertook an age assessment of UASC. It was reported that there were a number of cases where a young person presented themselves as under 18 but the age assessment said otherwise. The Council has a good record of appropriately age assessing young people, which was shown by the number of tribunals which were upheld.
- It was questioned whether the Government would take into account that

Lincolnshire already had 65 UASC to ensure that there was an even distribution across the country. It was reported that the Government were aware of how many young people were in each local authority as they send out a list and ask councils to correct the figures. The Strategic Migration Board also kept figures for each region. It was noted that everyone wanted the issue to be addressed in an equitable manner so there was a need to ensure the figures were accurate.

- It was queried what the Council could do to harness community goodwill and commitment to these young people. It was highlighted that the vast majority were aged around 16 or 17 and the Council had a responsibility to place them somewhere suitable taking into account their educational and cultural needs. A lot of young people were placed around the Lincolnshire borders to enable them to access culturally diverse areas. It was agreed that there was a lot more that could be done with communities to provide more support to UASC.
- Concerns were raised about foster carers and whether they would be able to cope with the high needs of UASC. Officers reported that foster carers had been looking after UASC for a number of years and had always been able to ensure their needs were met. Foster carers were trained to provide care to children who were traumatised and when they required additional support or training, then this was provided to the foster carers.
- It was queried what would happen to a young person if they were assessed as not being under 18. It was reported that if a child was age assessed as under 18 then the Council had a statutory duty to provide for their needs. However, if they were over 18, then they were referred to the Border Agency in the most sensitive way possible.
- It was questioned what the Council's duty was to an unaccompanied child and their parents if the parents wanted to join them. It was noted that this had never happened before, but if it did, then under Section 20 of the Children Act 1989, the Council would be obligated to return the child to their parents. However, there was no transfer of rights to the parents from the unaccompanied child living in this country.
- In relation to the resettlement of 3000 children from the refugee camps in Europe and other countries, concerns were raised about the family members and carers who would be accompanying some of these children. It was reported that the Government would be doing assessments of the families and that work was ongoing across the East Midlands to deal with this issue together. There would be an assessment centre for the East Midlands to decide the right place for these people to go and live. It was noted that some areas of the country such as the North West had no asylum seekers or refugees, but Lincolnshire had the second highest number of UASC in the East Midlands. It was highlighted that the refugee situation was very complex as there were Syrian refugees, refugees in Europe from other countries, and those unaccompanied children in Kent. Officers clarified that this protocol was for the 900 unaccompanied children in Kent and not the resettling of families from elsewhere.
- The Committee agreed that how the last paragraph on page 5 of the report was worded did not make it clear that this decision was about unaccompanied children and not families. It was suggested that this

paragraph was rewritten so that it was clearer. *(Note: This paragraph has been amended for the Executive.)*

#### **d) Policy Proofing Actions Required**

See the body of the report.

### **6. Background Papers**

The following background papers as defined in the Local Government Act 1972 were relied upon in the writing of this report.

Document title	Where the document can be viewed
Letter from the Immigration Minister to all Local Council Leaders	Democratic Services
Interim National UASC Transfer Protocol 2016-17 Version 7	

This report was written by Yvonne Shearwood, who can be contacted on 01522 554849 or [yvonne.shearwood@lincolnshire.gov.uk](mailto:yvonne.shearwood@lincolnshire.gov.uk) .