



Looked After Children and the EU Settlement Scheme:

A guide for local authorities





Introduction

Following the UK's departure from the European Union (EU), all EU, European Economic Area (EEA) and Swiss citizens who want to live in the UK need to apply for a new immigration status. The EU Settlement Scheme (EUSS) has been set up to grant this status. Everyone, including children, must make an individual application. For looked after children, the responsibility for these applications lies with their local authorities.

But as shown in this briefing, The Children's Society's research through recent Freedom of Information (FOI) requests reveals shockingly low numbers of EU looked after children and care leavers have so far received status through the EUSS. There are multiple reasons for this, including:

- Difficulty in identifying those who need to apply.
- Complicated application processes and individual cases.

- Unclear, or a lack of, statutory guidance.
- Overstretched capacity within local authorities.

Whatever the reasons, as the 30th June 2021 deadline looms, there is a danger that these vulnerable young people will risk becoming undocumented and lose access to vital healthcare and rights.

How many young people does this affect?

The Home Office has estimated that there are 5,000 looked after children and 4,000 care leavers who would need to apply for immigration status through the EU Settlement Scheme.² But the exact number is not known nationally or on a local level, resulting in the first challenge facing local authorities.

'I was really distressed at the time and I asked him about what could happen to my status, and that I didn't have my card...I was just really distressed and I was really anxious.'¹



Who is responsible?

The Home Office produced non-statutory guidance to local authorities on the EUSS regarding their roles and responsibilities to making or supporting applications for looked after children. Yet after consultation with stakeholders, we found many local authorities are still unaware of the existence of this guidance. It is clear that the Home Office needs to do much more work with local government in order to raise awareness and provide additional resources for already-stretched local authorities to undertake this pressing task.

The Children's Society has called on the Home Office to grant automatic status to EU/EEA/Swiss national looked after children and care leavers, given the complexity of some of their cases, the low levels of granted status to date and the damaging effects that becoming undocumented could have on this already vulnerable group. We have also called on the Government to extend the EUSS deadline, especially in light of CV-19. The delays CV-19 is likely to cause to application processes will have an impact on looked after children, and other vulnerable children and families. Nonetheless, in lieu of these changes taking place, it is vital that local authorities act quickly to ensure these vulnerable young people in their care are not left undocumented.

What is the purpose of this document?

This briefing acknowledges the challenges facing local authorities, and seeks to provide constructive guidance to ensure swift action on their part to prioritise EUSS applications for looked after children in their areas. It

is designed to inform elected members of local authorities (such as lead members for children, Children's Services Scrutiny Committees and Corporate Parenting Panels) on what they can do to support looked after children in their area whose immigration status has been made uncertain by Brexit.

This guide applies throughout the UK, as although care law can vary across the nations, requirements for local authorities around the EUSS are roughly the same. (We use the term local authority throughout the report, though we note that it will be Health and Social Care Trusts responsible in Northern Ireland.)

Local authorities have a vital role to play in ensuring that no child or vulnerable young person is left behind by this scheme. However, confusion and a lack of oversight remains. This document seeks to clarify the role of local authorities during this time, and what support is available to help them. It also aims to show elected members, lead members, scrutiny committees and corporate parenting panels what they need to do for their children, and how civil society can work with them to achieve this.

The briefing outlines:

- What Brexit means for the immigration status of many looked after children and care leavers.
- What the EU Settlement Scheme is and what it involves.
- What the local authority is responsible for and what steps should be taken.
- What local authorities can do to support and scrutinise children's services and social workers in their area.

Looked after children and the EU Settlement Scheme: At a glance

Who: Local authorities need to identify all children and young people who are in their care, on the edge of care or have left care, who have unresolved immigration issues. This urgently includes EU, European Economic Area (EEA) and Swiss national children, or children who may be able to apply for the Settlement Scheme through a family member.

What: All EU/EEA/Swiss national looked after children and care leavers should be referred for specialist legal advice to see what immigration applications should and can be made in keeping with their best interests. In most cases, local authorities need to support those young people to make applications to the EUSS and, where appropriate, support the child to register as a British citizen.

How: Local authorities have a responsibility to act in the best interests of their looked after children and care leavers. This includes ensuring that children and young people's immigration and nationality issues are addressed early and with their long-term well-being in mind. Due to the complexity of these immigration applications, it is imperative that social workers support children and young people to access specialist legal advice – such as free specialist advice available from legal aid providers and community organisations funded to support vulnerable applicants to access the EUSS – to ensure their applications are made correctly and completed. Local authorities should implement ways to monitor application progress and assess their effectiveness, especially in how to support social workers to seek specialist legal advice.

When: The deadline to apply to the EU settlement scheme is 30 June 2021. However, as applications can take a long time – particularly for complex cases or those involving children – applications should be made straight away, and expert advice should be found as a matter of urgency. Furthermore, COVID-19 means most face-to-face EUSS outreach services and immigration legal advice services are no longer running and have switched to phone or online. This is likely to cause further delays to applications, so we urge local authorities to begin the process as quickly as possible.

Why: Uncertainty around immigration status can be deeply damaging for a young person's well-being. Furthermore, children and young people who do not settle their status or become British citizens by the June 2021 deadline could lose lawful status in the UK and become undocumented. This would leave them subject to the Hostile Environment policies and potentially facing detention and deportation. Losing lawful status would leave these vulnerable young people unable to access vital benefits or healthcare services and unable to work, open a bank account or hold a driving licence. They would be at substantially increased risk of homelessness, destitution and exploitation.



What is the EU Settlement Scheme (EUSS)?

Following the UK's departure from the EU, all EU, European Economic Area (EEA) and Swiss citizens who want to live in the UK need to apply for a new immigration status. The EU Settlement Scheme (EUSS) has been set up to grant this status. Everyone, including children, must make an individual application.

A successful application will provide EU, EEA and Swiss citizens with a digital status. Based on how long they have lived in the UK, an applicant will be granted either settled or pre-settled status. Both statuses allow the recipient to continue living and working in the UK. Those with pre-settled status will need to re-apply for settled status once they have accrued (or are able to provide evidence of) five years' continuous residence in the UK, and will need to meet certain criteria to access benefits.

The process is relatively straightforward for applicants with a long tax or benefits history in the UK, but more complex for most separated children and care leavers. Where complexities arise they can be insurmountable without the proper support and legal advice. Children in need are at particular risk of failing to make applications, and are often reliant on their family or social worker to make an application on their behalf.

Failing to make an application puts someone at risk of losing lawful residence in the UK and/or becoming undocumented, cutting off their access to vital services. Young people would find themselves, almost overnight, with many of their rights gone; they would be unable to access benefits, health services, work or open a bank account, and would be at increased risk of being detained and possibly removed from the UK.

Local authorities have a responsibility to act and ensure the best interests of their looked after children and care leavers are upheld – **it is never in the best interests of a child or young person to become undocumented.**

In early 2020, The Home Office reassured civil society that: 'Children who have[sic] do not apply because their parent or guardian did not submit an application on their behalf can submit a late application. This includes children in care and care leavers.'³ However there is currently still no policy that allows for this, and losing status remains the legal default. Furthermore, the impacts of even a short period of living undocumented (eg between when the deadline ends and the young person makes an out of time application) could be devastating.

Where do things stand: New FOI data from local authorities

The Home Office estimates that there are 9,000 EEA looked after children and care leavers in the UK care system, however this is an experimental figure. Although the Home Office and Department for Education committed to surveying local authorities to uncover the actual number, the results of this have not been made public.

To try and fill in the evidence gap, the Refugee and Migrant Children's Consortium (RMCC) and The Children's Society sent FOI requests

to every local authority or children's services provider in the UK, asking for the data (number of looked after children or care leavers, numbers of applications, numbers of awarded status) as it was on 6 January 2020.

By the time of publishing this report we found that only 11% of European children either currently in the care system or who have recently left care had been awarded status (in the 153 UK local authorities that were able to provide information).⁴

We sent FOI requests to 211 authorities, accounting for every children's service provider in the UK:

3,612 looked after children

and care leavers were identified by 153 local authorities across UK, which we can confidently say is an underestimate.

This includes a minimum of

1,794 children

for whom the state has parental responsibility.

58 local authorities did not respond or were not able to answer the FOI. 32 were unable to provide the data or did not hold the information in a reportable format whilst 26 did not respond in time.

There have been

730 applications

for looked after children or care leavers to the EUSS, and 187 applications for citizenship.

Of these 730, there are only

404 receipts of status

through the EUSS (282 settled, 122 pre-settled).

Although not comprehensive, this data offers a strong indication that there are serious and urgent concerns around settling the migration status of vulnerable children whose status has been impacted by Brexit.



More than a fifth of the local authorities who responded did not hold vital data in a reportable format, and inconsistencies in reporting imply that there is a lack of oversight of this issue. Effective monitoring and tracking is key to ensuring that local authorities are acting in the best interests of all looked after children and care leavers in their area. **Local authorities need to have an accurate picture of how many children need to apply to the scheme or for citizenship as a benchmark** and this information needs to be accessible to those in scrutinising roles.

The ratio of applications made to number of young people identified is also too low. The reasons for this are not clear from the data, though we know from engagement with stakeholders that there is not always the expertise and capacity in local authorities to deal with the complexities often involved in making applications. The process of gathering the necessary documentation, such as passports or biometric residency cards, can be labour intensive and time-consuming – yet applications often cannot be made until this step is first completed. It can take well over a year to get a young person to access legal support (see Case Study 1 on **page 10**), recover requisite identify documents, gather evidence of residency, make an application and then receive status. These low numbers of applications are worrying given the June 2021 deadline and **we urge local authorities**

to increase the number of applications being made. The current Covid-19 health crisis is also likely to lead to delays in young people acquiring nationality and evidence of residence documents, due to closures or reduced services of embassies, GPs, schools and other community services. This highlights the need for long lead times for applications.

Finally, once applications have been made, the number of young people in receipt of a stable status is too low. Our data indicates that there were only 730 confirmed applications, and of these only 404 receipts of status. There are a range of possible reasons for this (including delays in decision-making as some applications have taken months), but **timely intervention and clearer guidance for local authorities is needed to ensure these young people are not left without status.**

There are structural reasons and faults for these low numbers, particularly around Home Office and national Government design, and implementation communications of key strategy around the issue. Local authorities face many pressures and budget cuts which can hinder capacity. Nevertheless, local authorities have a duty to protect and act in the best interests of their looked after children, and can in the coming months take key steps to prevent them from slipping through the net and becoming undocumented.

Guide for local authorities: Who needs to apply?

The first step in securing the status of looked after children and care leavers in your local authority area is to know who needs to apply. Collecting accurate nationality data is essential and should be done proactively, as many young people will not be aware of their need to apply. This may be because they:

- Were born in the UK but are not British (and may not realise this).
- Assume that because they are in care, their local authority, carer or social worker will handle it completely on their behalf.
- Assume that as a child they do not need to act, or that it does not affect them.

- Feel scared or overwhelmed, and too frightened to ask for support.
- Are not an EU/EEA/Swiss citizen and therefore not an immediately identifiable candidate for the EUSS, but may be able to apply because they are the family member of an EU/EEA/Swiss citizen.

This data should be collected so local authorities can meet their corporate parenting duties and settle the immigration issues of their looked after children and young people. This data should not be collected for the purposes of immigration control and should not be shared with the Home Office.

Good practice: Leicester City Council

EUSS applications for our looked after children and care leavers are monitored corporately through an Immigration, Asylum and Resettlement Meeting Group chaired by the Chief Operating Officer, thus reinforcing the LA Corporate Parenting responsibility.

A whole system approach has been applied to the identification of children and young people who are potentially eligible for EU resettlement, to include children in need and children and families identified through the duty and advice referral system. Advice on the EUSS is provided to parents and carers where their nationality indicates that they are eligible to apply.

A campaign of awareness-raising of the EUSS was undertaken across the childcare workforce which included emails, posters and team briefings. Individual social workers and personal advisors are also proactively contacted to monitor progress of applications.

The LA undertook a review of all looked after children and care leavers' recorded nationality on the childcare database to identify that their nationality status was correctly recorded. This was done in order to identify the numbers of children eligible for EU settlement.

Following the identification of eligible children and young people, individual social workers and personal advisors are contacted to raise awareness of the child's status and offered advice on the resettlement application process.

It is vital that local authorities design and implement a system for identifying all children and young people who may need to apply to the EUSS. A keen eye will be needed to oversee how it is completed. Data on which children and young people need support should be held in an accessible format and location (though data protection rules should be adhered to as a priority), as it is essential

as a bench marking tool for local authorities to monitor the progress of applications and adjust strategy accordingly.

Local authorities should ask their children's services if they know how many children need to apply for the EUSS and how they came to this figure. Did it come from a top-level search through records, from databases or from a

detailed review of case notes? How complete were databases and how comprehensive were the searches? A more involved approach may be required to ensure no child or young person is missed off. If they do not hold this information, it is vital to ask them what measures they have in place to find it out, and when they can expect to have a full picture.

Raising awareness across all local authority staff who interact with children on what the EUSS involves and which children need to apply is also an efficient way of increasing outreach capacity. Ensuring that staff across children's services, as well as foster carers, schools, children's centres, local health settings and youth services all have knowledge of the EUSS and can refer young people who may need to make applications will support the work of children's services in identifying those eligible to apply.



Third Country Nationals

Case Study 1: The Children's Society

A is a Nigerian national who we interviewed about their experience with the settlement scheme. A, who now has status, was in care with their sibling and living in the UK through their father's European citizenship. They wanted to attend university and therefore needed to re-obtain their Biometric Residency Card, but no longer had contact with their father.

The process of obtaining their Biometric Residence Card took more than a year, even while working closely with a solicitor. It took longer still for A to receive settled status after obtaining the card, due to back and forth with the Home Office, and further delays in the Home Office making a decision.

A had to proactively seek support in resolving their immigration status, and two consecutive social workers were unable to help until A was referred to a charity that was able to offer legal support. The whole process and uncertainty had a profound impact on their sense of security and stability, and A lived in fear of being forced to return to Nigeria. Having status has created a greater sense of stability and safety.

'We were both scared, we didn't know what was going to happen...we could be thrown back to Nigeria, which was the last thing we wanted. We wanted to stay here, we wanted to go to school here, we wanted to graduate and stay here...but that was always at the back of our mind "oh my god, we might need to go back soon, what's going to happen, is someone going to come". We were always scared of that.'

Within all cohorts covered in this report, there will be children and young people who do not hold an EU, EEA or Swiss citizenship, but who are eligible to apply to the EUSS through a family member.

Where children and young people have irregular or no contact with their EU/EEA/Swiss family member, applying to the settlement scheme can be difficult. Their underlying immigration status may also be complex, meaning expert advice must be sought urgently. These children will also be harder to identify, as their nationality alone will not flag them up as eligible to the EUSS. As such, more proactive methods are needed to identify these children and young people. It is vital that this group is fully considered when local authorities plan and implement strategy to support looked after children, children in need and care leavers to access the EU settlement scheme.



What needs to happen in your local authority?

Children for whom your authority has parental responsibility

Home Office guidance advises social workers to make applications for children in care. Social workers are not usually allowed to give immigration advice, but this has been waived in relation to the EUSS, meaning they can make applications to the EUSS on behalf of children for whom the local authority has parental responsibility. However, as they are not immigration specialists, **we would strongly recommend social workers seek specialist legal advice as a first priority to help with EUSS applications, rather than completing applications themselves. Where possible, local authorities should commission specialist legal advice on EUSS cases to help social workers with their duties.**

Social workers and independent reviewing officers are well placed to support young people throughout the application process and monitor a looked after child's progress. However, they are unlikely to have the necessary expertise or capacity to deal with complex cases. **Social workers should support their children to make applications, and play a key role in monitoring and tracking their progress status to ensure the process is completed. Local authorities should have a robust protocol for referring children and young people to specialist legal advisors.**

The immigration and nationality issues of all separated and unaccompanied children in care are in the scope of legal aid. This means any EU/EEA/Swiss or third country national child in care is in the scope of legal aid and can be immediately referred to a solicitor or law centre to get legal advice at no cost to local authorities.

In cases where the child should apply for citizenship, the application should be immediately passed onto legal advice, and the local authority will only need to cover the cost of the citizenship fee (currently £1,330) which is payable to the Home Office. British citizenship is the most secure form of status a child can have in the UK. Citizenship is also a matter of identity; many children born in the UK will have an entitlement to register as British which expires when they turn 18. For those children for whom it is appropriate to apply, a citizenship registration application will provide them with a far more stable and long term resolution to their immigration issues.

Good quality legal support is not always available in every region of the UK. However, there are (for a limited period) a number of organisations across the country, funded by the Home Office, who support vulnerable groups in making EU settlement scheme applications.⁵ Local authorities are encouraged to make full use of these services, and again no charge will be incurred for accessing them. If no legal aid providers are available in an area, for complex cases or children/young people for whom the local authority does not hold parental responsibility it will be necessary to seek legal advice elsewhere. This is a necessary investment in a young person's long-term well-being.

It is important to highlight the need to refer looked after children for specialist legal advice immediately. A child who is in care will be in the scope of legal aid until they turn 18, and will have access to certain support services that will not offer the same coverage once they leave care. Opportunities for resolution of status also change and become more restricted once the child turns 18, highlighting the need for local authorities to act sooner rather than later. As previously mentioned, the application process can also take a long time – especially if a young person needs to obtain documents – highlighting the importance of starting the process immediately.

Furthermore, the Local Government Ombudsman has issued multiple rulings and fines against local authorities who fail to secure a resolution to the immigration issues of their looked after children while they are still in care.⁶ **We therefore recommend local authorities prioritise referrals for specialist legal advice and begin application processes well before the 30 June 2021 deadline, particularly for young people turning 18 before June 2021, to avoid such complications.**

Children and young people whose applications have not been submitted before this deadline will risk becoming undocumented as free movement ends, denying them access to benefits, the ability to open a bank account, or access a student loan. Working as an undocumented person is a criminal offence, while the Home Office can also decide to take action to remove that person from the UK.

Once a child's status has been settled, local authorities should keep copies of all immigration status documents, so that they can easily and effectively monitor the status of looked after children's applications, and as a safeguard in case their original documents get lost. This is especially important as children age out of care.



Case Study 2: Law Centres Network

B was an Italian minor who presented to Law Centres Network with their social worker and who was seeking to apply to the EUSS. The court in Italy had ordered that they be placed into foster care due to a very complex family situation. In contravention of the court order, B father took them and brought them to the UK to stay with one of their aunts. Unfortunately the living situation with B's aunt was not much better and B voluntarily went into care.

Because of B's circumstances, they did not have a passport and the identification with which they arrived to the UK had long expired. The social worker had already been in touch with the Italian Consulate who had informed her that there were only two ways to renew B's expired ID:

- Appear in person at the Government office in Italy.
- Register as an Italian citizen with the Italian Consulate in London who could then assist with the renewal.

B could not return to Italy so had to first register as an Italian citizen in London, renew their ID and then submit their application to the EUSS.

Children for whom your authority does not hold parental responsibility

Where the state has 'shared' care arrangements, previous Government guidance stated that the local authority only has a responsibility to signpost children and their carers to the EUSS:

1. You must ensure that the child, and their carers, are aware of the need to make an application to the Scheme, signposting the Scheme, why it is important to apply and pointing them to practical support where needed.⁷

However, we would recommend that local authorities take a more active role where possible to secure the stability of these vulnerable young people. Regardless of the care status of the child, local authorities have a duty to act in a child's best interests. Also, there could be little qualitative difference between the family and personal lives of those young people who are being accommodated and those under a full care order.

Children may be accommodated by a local authority because of abandonment, or because their parents lack the ability or capacity to provide adequate accommodation. The parent could have severe or persistent health issues, reduced capacity or could be

struggling with substance abuse or addiction. Signposting a parent who has been deemed unable to adequately accommodate and care for their child to the EUSS does not ensure the child is able to make an application. This risks that young person becoming undocumented, which is never in their best interest. Where a child is accommodated and where they have an entitlement to citizenship, local authorities still have a duty to act in that child's best interests and should consider covering the Home Office application fee.

Furthermore, local authorities are uniquely placed to support children and families who are on the edge of the care system. As we saw in the example of Leicester City Council's whole system approach, to include children in need and children and families identified through the duty and advice referral system, is best practice and should (where possible) be adopted as standard.

The lives of vulnerable families can be incredibly challenging, unsupportive and chaotic, and often not conducive to navigating complex immigration issues. Where possible, local authorities should reach out to these families and support children and young people in these circumstances to ensure they can make timely and thorough applications to the EUSS.

These children will not be in the scope of legal aid, but can be referred to any of the organisations across the country funded by the Home Office, who will support vulnerable groups in making EU settlement scheme applications.

Case Study 3: Refugee and Migrant Children's Consortium

L is a Spanish 18 year old who was born in the UK and came into care when they were 16. L's parents are not together; L is not in contact with their father and L's mother is not well enough to care for them. L wants to remain in the UK in the long-term and wants to become British. L can apply for settled status under the EUSS but may have some difficulty providing evidence of residence for five years without assistance. In addition, L might be British by automatic acquisition if evidence of their father's status and work at the time of L's birth can be acquired, or L might be able to make a nationality application under the 10 year route in the British Nationality Act 1981 – this will require detailed nationality advice from a suitably experienced solicitor lawyer.



Young people in your area who have left care

Good practice: Manchester City Council

Manchester City Council's leaving care team have co-produced guidance with Greater Manchester Immigration Aid Unit. The guidance is aimed at personal advisers supporting young people affected by Brexit immigration change and provides clear step-by-step advice and methods for supporting care leavers to resolve their immigration issues. This guidance can be found in Appendix B.

They have also developed a 'Brexit Tracker' which allows for a corporate overview of progress toward resolving the status of all the individual young people who are affected.

Furthermore, Manchester City Council signed the Greater Manchester Immigration Aid Unit pledge, which includes a commitment to supporting care leavers and funding the costs of citizenship application fees.

Young people who have left care are of particular concern. The Home Office has encouraged local authorities to support and signpost care leavers to make applications to the EUSS. But many care leavers will need far more proactive and technical support to make successful applications to the scheme and/or to register as a British citizen.

Like children still in the care system, care leavers are likely to present with complex cases and have difficulties evidencing their applications or providing their identity documents. They may lead lives that, without the requisite support when specialists or family networks, do not allow time for the complex processes that are often involved in regularising an immigration status. However, unlike children who are still in the care system, they cannot have applications made on their behalf by a social worker and do not exist within the same support system.

Many of the issues highlighted run deeper than this application window, however local authorities who are in touch with care leavers in their areas can still play a crucial role in helping these vulnerable young people to submit their EUSS application. This is understandably challenging for local authorities where a young person is no longer presenting to the authority, has moved out of the area or contact has been lost with their personal adviser.

The first step is identification or re-establishing contact. Once identified, care leavers should be referred to access specialist

legal advice immediately. While there is no legal aid for care leavers, there are local civil society organisations and grant funded organisations all over the country that can help them make EUSS applications.

Monitoring, communication and following up with care leavers is essential. Personal advisers can play a key role in this, as they are well-placed to monitor and check in on the young person and their progress once they have been referred to legal advice. Personal advisers will also have a key role to play in helping care leavers secure the documents they need to prove their residence in the UK (for example letters from schools and colleges).

Immigration complications for EU/EEA/Swiss care leavers may continue beyond the EUSS deadline. Children and young people who receive pre-settled status will need to reapply for settled status in the future to secure and safeguard their right to live in the UK. Leaving care teams should anticipate this and plan a strategy for keeping track of these young people's immigration statuses now, even if they appear to have been temporarily resolved. Immigration status should be included in the young person's pathway plan. Where appropriate, the local authority should keep copies of the immigration status documents received and tracked in a system that can warn personal advisers six months prior to meeting the five year residency date. Early intervention and implementation of tracking systems now will prevent these young people slipping through the net in the future.



What you can do

Identification

We recommend local authorities ensure children's services and leaving care teams have a full and proper plan in place to proactively uncover and identify all looked after children, children in need, and care leavers whose immigration status Brexit may have affected. This includes:

- Adopting a whole systems approach that enables local authorities to identify all looked after children, children in need, care leavers and vulnerable families that may need to apply, utilising duty and advice referral records.
- Ensuring that information on individuals whose immigration status is likely to be affected is accessible, so those who have responsibility for monitoring and scrutiny of children's services can access it, while ensuring privacy and data security of those young people.
- Ensuring that the data is used for the purposes of acting in the best interests of looked after children and care leavers, and not immigration enforcement.

Awareness raising

We recommend local authorities implement a campaign to raise awareness of the EUSS and the need to start the application process as soon as possible. This should be included in team briefings, and shared via posters and emails across the whole children's workforce.

Publicity campaigns such as Manchester City Council's EU Settlement Scheme Pledge are examples of good practice.

Local authorities should convene local civil society organisations supporting looked after children and care leavers, and those funded by the Home Office, to maximise awareness and outreach in their area. Building working relationships with organisations providing specialist legal advice can help improve in-house knowledge, whilst local organisations or charities who support care leavers might be able to harness their networks to raise awareness about the EUSS in cases where young people have lost touch with the authority whose care they were in.

Making applications

It is crucial that local authorities **act quickly and begin the application process for looked after children in their area urgently.**

The process of gathering nationality and evidence of residence documents can take months, especially if the case is complex. The current Covid-19 health crisis is also likely to lead to delays in young people acquiring nationality and evidence of residence documents. The crisis has caused closures or reduced services of embassies, GPs, schools and other community services, again highlighting the need for long lead times for applications. Furthermore, COVID-19 means most face-to-face EUSS outreach services and immigration legal advice services are no longer running and have switched to phone or online – **this is likely to cause further delays**

to applications, so we urge local authorities to begin the process as quickly as possible.

Social workers – who are not immigration specialists and are likely to be faced with limited capacity – should not feel burdened to make and complete individual applications.

Rather, **children in care can and should be immediately referred to access (free) specialist legal advice.** Local authorities should ensure there is an active and robust referral protocol for all children identified, whether on the edges of care or under a care order, to access immigration and nationality advice. Local authorities should already have solicitors or law centres with immigration expertise that are known to them, and should engage them to design a referral process for children whose immigration status has been affected by Brexit. There are a number of organisations available to help all other children and young people, without incurring a fee. **Otherwise local authorities should commission specialist legal advice on EUSS cases to help social workers with their duties.**

Local authorities should, where possible, **commit to paying the cost of citizenship applications,** as this will provide a more stable long term resolution to children and young people's immigration status, which is likely to be in their best interests. (Though this should be on the basis of nationality advice from a legal expert, as outlined above).

Independent reviewing offices, social workers and personal advisors will be best placed to support and monitor the process of some looked after children's and care leavers' statuses. Local authorities should ensure they are included in the design and implementation of any strategy, and have adequate information and resources to do this.

Steps should also be taken to follow up on applications, including:

- Incorporating the EUSS (and where appropriate, citizenship applications) into care plans, looked after children's reviews and pathway plans.
- Tracking the progress of applications, and keeping copies of all documents relating to status for looked after children and care leavers.
- Having a clear strategy for young people who have left care, how they can be reached, supported and their progress monitored.
- If the young person has pre-settled status, ensuring there are mechanisms in place to support their application for settled status at the earliest opportunity.



Monitoring and scrutiny

Local authorities can also work to make the immigration needs of looked after children and care leavers a corporate responsibility, and not solely the responsibilities of social workers and personal advisors. They can achieve this by including it as a standing item in children's services leadership meetings and children and young people scrutiny meetings.

Corporate Parenting Panels

The Local Government Association states that corporate parenting boards must, among other duties:

- Act in the best interests of children and young people, and promote their physical and mental health and well-being.
- Make sure they have access to services.
- Make sure that they are safe, with stable home lives, relationships and education or work.
- Prepare them for adulthood and independent living.

Ensuring a child has a stable immigration status is absolutely fundamental to all of these duties. Were a child to become undocumented, none of these duties could be fulfilled.

Corporate parenting boards therefore need to adequately scrutinise, monitor and review the immigration status of all looked after children in their care.

Scrutiny functions

Scrutiny committees are in place to influence the policies and decisions made by councils and other organisations involved in delivering public services. As such they are well placed to provide the oversight and accountability needed to ensure local authorities fulfil their duty to support looked after children and care leavers, and regularise their status through the EUSS. The scrutiny committee gathers evidence on issues affecting local people and makes recommendations based on its findings.⁸ To support this work, please see the sample questions below that can be used by local authority children's services scrutiny and monitoring functions.

Scrutiny questions

Identification

- How many EU, EEA and Swiss Nationals are in contact with your children's services and leaving care teams?
- How many children and young people supported by children's services are eligible to make applications to the EU Settlement Scheme?
 - Does the local authority know this number, who has knowledge of it?
- What measures were taken to reach the number above, if one was provided?
 - Does your local authority have a strategy for reaching every child and young person in need?
 - How broad is it, does it account for vulnerable children and families on the edges of care, eg children in need?
 - Who is taking responsibility for planning and implementing this?
 - Are the measures able to identify third country nationals or young people who were born in the UK or have lived here since childhood?

Awareness raising

- How is the EUSS being publicised to all staff in the local authority who have interactions with children?
- Is there a process so all staff who interact with children can refer those who need to make applications to the appropriate teams?
- Do relevant teams know about the deadline and the need to apply or be referred for specialist legal advice?
- Do the relevant teams know of the relevant local or national civil society or legal advice organisations who could help a young person's application?

Making applications:

- Does the strategy have a follow-through plan for children and young people whose nationality or immigration status is not known?
 - If so, does this strategy include prompt access to legal advice?
 - Where are children for whom the local authority has parental responsibility being referred?
 - Where are other looked after children and care leavers being referred?
- How is information pertaining to the nationality and immigration status of EEA national children in the care of the local authority being recorded/stored/updated/monitored?
 - Who has access to this information?
 - How is it being used to monitor the rate and progress of applications?
- How many applications have been made to the EUSS on behalf of the local authority's looked after children and care leavers?
- How many applications to register as a British Citizen have been made for looked after children and care leavers?
 - Are children who need to apply being referred directly to legal advice?
 - What organisations are they being referred to?
 - What is the process for making referrals?
- Are care leavers and children for whom the local authority does not hold parental responsibility being referred to access legal immigration and nationality advice?
 - What organisations are they being referred to?
- How are local authority staff monitoring the progress of individual applications?
- Are independent reviewing officers being utilised in this process?
 - If so, how?

- Are personal advisors for care leavers being utilised in this process?
 - If so, how?
- Who has responsibility for tracking and supporting the progress of individual applications?
 - Where is this information being recorded and who has access to it?
 - How is this information being reported to those responsible for monitoring and scrutinising children's services and leaving care teams?
- What is the plan for children who are refused status, or who have had contact with the British Criminal Justice System?
- Following an application, is the local authority following up with these young people's cases?
 - Is the local authority keeping copies of their looked after children and care leavers status?
 - How are those with pre-settled status being monitored so they can be supported to make applications for settled status?
 - Are children who have not yet settled their status, but who age out of care, having this included in their leaving care Pathway Plan?
 - Are children who age out of care with pre-settled status having this recorded in their leaving care Pathway Plan?

References

¹ Interview conducted by TCS in November 2019. See full write up in case study below.

² Immigration: EU Nationals: Written question – 222791 Answered on: 26 February 2019: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-questions-answers/?page=1&max=20&questiontype=AllQuestions&house=commons%2clords&uin=222791>

³ Brandon Lewis in response to written Parliamentary Question: 22/01/2020 <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-questions-answers/?page=1&max=20&questiontype=AllQuestions&house=commons%2clords&uin=3314>

⁴ A number of applications may have been made for non-EU/EEA/Swiss looked after children through an EU/EEA/Swiss family member. Many Authorities gave responses in ranges, as low numbers meant there was a fear individuals could be identified by the data. For the statistics provided within this briefing, we took the mid-point of the range for our calculations.

⁵ www.gov.uk/government/publications/eu-settlement-scheme-community-support-for-vulnerable-citizens/list-of-organisations

⁶ as with the Royal Borough of Greenwich and Dudley Metropolitan Borough Council

⁷ Home Office, EU Settlement Scheme – Looked after children and care-leavers, local authority and health and social care trusts guidance, April 2019, p 9. Retracted 2019 in advance of a new version of guidance being published. New guidance still pending at date of publication.

⁸ https://www.local.gov.uk/sites/default/files/documents/11%2064_Scrutiny%20for%20councillors_03_1.pdf

The Children's Society and our supporters have been there for vulnerable children and young people for more than 130 years.

We believe that every young person should have the support they need in order to enjoy a safe, happy childhood.

That's why we run services and campaigns to make children's lives better and change the systems that are placing them in danger.

Together with our supporters, we're improving the lives of children today and long into the future.

