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**Protecting the rights of looked after European Union national children in Birmingham post-Brexit: A discussion paper.**

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1. Introduction.

There are an estimated 727,000 EU national children under the age of 18 living in the UK, and an additional 239,000 UK born children of EU national parents [<https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-which-eu-citizens-are-at-risk-of-failing-to-secure-their-rights-after-brexit/> ]. Children represent around one third of the estimated 3.8 million people who may need to acquire ‘Settled Status’ in order to continue to enjoy rights of residence in the UK- including access to healthcare, employment, housing and welfare benefits once the UK leaves the European Union- an event presently set for October 31st 2019. This is the largest scale registration programme in British history, and presents a huge challenge to statutory services. The foundation of this paper is the fear, based on the available evidence that statutory services in Birmingham have not yet even begun to grapple with the enormity of that challenge for one particularly vulnerable group of people- children in local authority care.

1. Statutory Guidance.

On March 15th 2019, the British Government published the statutory guidance document **Brexit: No deal preparations for local authority children’s services in England [**<https://www.gov.uk/guidance/eu-exit-no-deal-preparations-for-local-authority-childrens-services-in-england> ]**.** This guidance, amongst other things, set out statutory duties to looked after children and care leavers who are EU nationals, stipulating that local authorities ‘should ensure that all looked after children or care leavers who are EU nationals have applied for EU settled status.

The guidance stipulated that, to do this, local authorities should:

* identify which children will need to apply, and offer support to any anyone who needs help with identity documentation or other paperwork
* raise awareness, and provide support, to parents and carers of EU citizen children accommodated under Section 20 of the Children Act 1989, where needed, or signpost to relevant community support where it is deemed more appropriate
* share information with personal advisors supporting care leavers to make their own applications

The guidance further recommended that local authorities should put in place procedures to check for the existence of passports or identity cards for each child looked after by the authority, and the identification of a named member of staff to lead on EUSS matters for children in care and care leavers.

Any failure on local authorities’ part to help ensure settled status for vulnerable EU citizens to whom they have a statutory responsibility increases the likelihood that these citizens will become ‘undocumented’ post-Brexit- which is to say they will be left in a legal limbo, stripped of employment, healthcare, employment and social security rights.

The deadline for submission of applications for EU settled status, in the event of a ‘No Deal’ Brexit, is in less than 18 months’ time, December 31st 2020.

1. Birmingham Context.

On March 20th 2019, ASIRT submitted a Freedom of Information request to Birmingham Children’s Trust , asking:

*‘How many separated and unaccompanied children and young people have been identified as looked after under section 20 of the Children Act by Birmingham Children’s Trust who are EU nationals, and so whose immigration status will be directly affected by Brexit?*

*What provision is the Trust putting in place to ensure that such children are in receipt of appropriately regulated immigration advice in order to access EU Settled Status, or to explore other immigration options in their best interests?*

*If this information is not presently known to the Trust, what action is being taken to identify these children?’*

On May 29th, we received a response from the Trust- reference 5536166- advising thus:

*‘How many separated and unaccompanied children and young people have been identified as looked after under section 20 of the Children Act by Birmingham Children’s Trust who are EU nationals, and so whose immigration status will be directly affected by Brexit?’*

**‘There are zero separated or unaccompanied children have been identified as looked after under section 20 of the Children Act who are EU nationals.’**

*‘What provision is the Trust putting in place to ensure that such children are in receipt of appropriately regulated immigration advice in order to access EU Settled Status, or to explore other immigration options in their best interests?’*

**‘Not applicable.’**

*‘If this information is not presently known to the Trust, what action is being taken to identify these children?’*

**‘Not applicable.’**

On June 19th, ASIRT supplemented this FOI request with a further set of essentially identical questions, relating to children identified by the Trust as EU nationals, or the dependents of EU nationals, and looked after under section31 of the Children Act, a Care Order having granted the Trust parental responsibility.

While an initial response from the Trust indicated that we could expect a response by July 17th, no such information has yet been forthcoming.

However, we consider that the information with which we have provided to date presents cause for concern.

1. Discussion.

The Trust’s stated position that ‘zero separated and unaccompanied children and young people have identified as looked after under section 20 of the Children Act who are EU nationals’, and that the question of what action is being taken to identify any such children might suggest that such an identification process has been undertaken, and that the Trust has satisfied itself that it presently has parental responsibility for precisely zero EU children whose immigration status will be directly affected by Brexit.

While this is of course possible, the statistics would suggest that it is improbable. Government data records that 1,922 children were looked after by the Trust in the period March 31st 2017- March 31st 2018. [<https://www.gov.uk/government/statistics/children-looked-after-in-england-including-adoption-2017-to-2018> ]

Reliable data on EU national children in care has not, until now, been collated, since data relating to children in care has been co-ordinated by ethnicity, rather than nationality. [<https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-which-eu-citizens-are-at-risk-of-failing-to-secure-their-rights-after-brexit/> ]. Prior to March 2019, therefore, the Trust would have been under no obligation to identify which, if any, of the children then in its care were EU citizens.

While it is, again, possible that not a single one of this cohort of almost 2000 children and young people were EU migrants, this appears unlikely in the context of EU migration into the city: Birmingham City Council’s own data indicates that in excess of 6940 National Insurance numbers were issued to new arrivals from Romania, Italy, Poland, Spain, France and Portugal alone in the year to June 2018, and that similarly substantial numbers of new EU migrants have made homes in the city every year for the previous decade. [ Birmingham City Council, Transport and Community, International Migration in Birmingham/2018 ].

We know, therefore, that there are substantial numbers of EU migrants and their dependents in the city, and that there is also a considerable number of children in the care of the Children’s Trust: that there could be no overlap at all between these two populations appears highly unlikely. It is yet more unlikely still that the Trust could have established definitively that this were not the case in the interim between Match 15th, when the Government’s statutory guidance to local authorities was published, and May 29th, when the Trust’s response to ASIIRT’s Freedom of Information request indicated that zero EU migrant children had been identified as in the care of the Trust under section 20 of the Children Act, and that no further action was being taken to identify any such children.

It is, moreover, far from clear that the Trust has put any mechanism in place by which to identify and address the needs of any such children who might come into its care between now and December 2020- the cut-off date for submission of EU Settled Status applications.

Data tells us that children living in poverty are at least ten times more likely to be taken into care that more affluent children, [<https://www.bbc.co.uk/news/education-39113411> ], and that EU migrants in work in the UK are over-represented in elementary occupations, and in sectors such as agriculture and hospitality, where wage rate are lower than average. [<http://www.cpag.org.uk/sites/default/files/CPAG-Poverty138-Migrants-Child-Pov.pdf> ].

We know, too, that EU migrant poverty and precariousness is exacerbated by welfare benefits rules around habitual residence, which frequently make it difficult for EU migrants exercising treaty rights in the UK to access public funds to which they are actually entitled [<http://eprints.whiterose.ac.uk/130473/3/p_p_ft_dwyer_uploaded_110718_1531295339986.pdf> ]

The profile of many EU migrant families, therefore, closely fits the profile of families with children at a heightened risk of spending time in local authority care. The balance of probability, therefore, is that a cohort of EU migrant children *must* be represented amongst the 2000 or so young people presently in the Trust’s care. Yet the Trust to date appears to have paid scant attention to the significance of this, or to the enormity of the task of ensuring settled status for the children and young people who are either in, or who have recently left, its care.

1. The concerns.

Our concerns, then, are that the Trust appears to date to have failed to identify any EU migrant children it is presently looking after under section 20 of the Children Act, not because it has identified, after an appropriate scoping exercise, that there are no such children in its care, but rather because it has not sought to identify any such children, in breach of the statutory guidance. Moreover , there is cause for concern that in actual fact a number of separated migrant children to whom the Trust might owe a section 20 duty have already been left effectively to their own devices, with no organisation or individual having been identified as having parental responsibility for them . These children are therefore exposed to the risks of exposure to the ‘hostile environment’ which has been created for people subject to immigration control as a consequence of this inaction on the Trust’s part.

This concern is borne not from pure speculation, but from our ongoing experience of the Trust’s approach to working with separated migrant children, around which the Trust appears to have defined no clear practice guidelines. Our fears are further compounded by empirical research, such as that published in November 2018 by Coram Children’s Centre, which identified that local authorities are, as a matter of routine, letting down children in their care by failing to recognise and address immigration status difficulties, leaving them at risk of multiple injustices. [<https://www.theguardian.com/uk-news/2018/nov/01/children-care-irregular-immigration-statuses-councils-accused> ]

By way of illustration, ASIRT has recently been working to support one separated migrant child- not in this instance an EU citizen- who has been in the care of her Zambian aunt since December 2018. The Children’s Trust, in conducting a section 17 Children Act assessment, determined that the aunt, herself having irregular immigration status, could not be regarded as having parental responsibility for her niece- and that therefore the young person was not considered to be a child in need, and should seek to return to her country of origin.

The consideration that the young person was therefore a separated migrant child, to whom the Trust therefore had responsibility as corporate parent, in line with statutory guidance [<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/656429/UASC_Statutory_Guidance_2017.pdf> ] simply appeared not to occur to the person responsible for conducting the assessment of need, or to her management.

Similarly, we are working with a 19 year old Czech woman, resident in the UK since the age of 5, who became orphaned at the age of 16 when her mother, and sole carer, died. While Children’s Services had been involved prior to the mother’s death, since the family had presented as ‘in need’ on account of her illness and inability to meet her daughter’s care needs, that involvement ceased immediately following the mother’s death, at which point the child was left in the care of her friend’s father, no clarity around parental responsibility having been identified. Recent enquiries to the Trust have revealed that there had previously been concerns relating to the child sexual exploitation of this young person, making the Trust’s subsequent inaction all the more baffling.

The young person has recently left college, and now finds herself undocumented, without even a copy of her long-expired Czech passport. She is presently unable to access welfare benefits, employment, or even to open a bank account.

That local authorities have a legal responsibility to assist with the regularisation of children in their care is an established legal precedent. In January 2016, the London Borough of Greenwich was held to be at fault by the Local Government Ombudsmam [ LGO Report 13 019 106 ] for failing to act in a timely manner to help a young Nigerian woman in the authority’s care to obtain British citizenship, and instructed to pay the complainant £5000 in compensation costs.

The Ombudsman further recommended that the local authority should:

* Provide specialist advice and guidance to its social work staff on the different requirements of the immigration rules, as they apply to those seeking asylum and those seeking leave to remain, and on the Council’s statutory duties in this area, and:
* Devise an action plan to ensure it gives full and proper consideration to its duties to all of its ‘looked after children’ who may be in need of legal advice, to meet its obligations as their corporate parent to safeguard and promote their welfare- in particular to those ‘looked after children’ with complex immigration problems who may need suitable and timely legal advice relating to their immigration status. It should clearly record the reasons if it had decided *not* to arrange legal advice in such cases.

Recommendations.

* There is an urgent need for the Trust to identify all EEA nationals either in its care, or about to leave its care, and to ensure that they are in possession of valid nation identification documents, and evidence to demonstrate their length of residence in the UK.
* There is a need to ensure that all EEA nationals- and any non-EEA dependents presently in the UK with derivative residence rights- classified as ‘looked after’ within the meaning of the Children Act, are able to access appropriate immigration legal advice, in line with *Greenwich*.
* There is a need for the Trust to ensure that its social work professionals are adequately trained about the risks of the non-registration of Settled Status applications for EU migrants, including children, already in the UK, and about their responsibilities as corporate parents to ensure that timely applications are registered in respect of children to whom a section 20 duty is owed, again in line with *Greenwich*.
* There is a need for the local authority to actively promote a ‘take-up’ scheme, promoting Settled Status registration for all EU nationals presently in Birmingham.