



**Families with No Recourse to Public Funds**

**Policy and Procedure – November 2016**

## Contents

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- **Who are Families with No Recourse to Public Funds**
- **Legal duties**
- **Procedures**
- **Provision of support**
- **Useful links**

The Immigration Act 2016 received royal assent on 12<sup>th</sup> May 2016. The Act contains significant changes to local authority support for certain destitute migrant families and care leavers with no recourse to public funds (NRPF), including changes to the duty to conduct human rights assessments in some circumstances. This policy will be updated to reflect those changes upon the enactment of the relevant sections of the Act.

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## **1. Who are Families with No Recourse to Public Funds**

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People who have no recourse to public funds are those who have no legal entitlement to financial support or assistance from the state because of restrictions to their immigration status in the UK. They may self-refer for support or are referred from other agencies.

Children's Social Care Services are likely to be approached by families with children or by children or young people who are unaccompanied or separated from their parent or legal/customary caregiver.

These families may be:

- a. People with refugee status from another European Economic Area (EEA) country other than the UK or are dependents of people in the UK who have refugee status from a EEA country other than the UK;
- b. People who are citizens of an EEA country other than the UK or are the dependents of people who are citizens of an EEA country other than the UK;
- c. Failed asylum seekers who have exhausted their appeal rights and who have failed to co-operate with removal directions;
- d. Persons who are unlawfully present in the UK who are not asylum-seekers, for example, people who have overstayed their leave to remain, people who have been trafficked into the country, people who entered the country illegally;
- e. People who have been granted limited leave to remain on the condition that they have no recourse to public funds, for example, people who are spouses/unmarried partners of persons with British citizenship or indefinite leave to remain, or people who have successfully applied to the Home Office under the Zambrano rule;
- f. People who have been granted discretionary leave to remain, for example, 'separated' children or young people from non-suspensive appeal countries whom the Home Office does not grant either refugee status or humanitarian protection, and are given 30 months' leave to remain or until they turn 17.5 years old, whichever is shorter.
- g. People on student visas who are unable to work and have no recourse to public funds.

(This list is by no means exhaustive and provides examples of the categories of people who may present to Children's Social Care Services as destitute and have no recourse to public funds).

## **2. Legal duties**

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The local authority is restricted by legislation in what it can provide in terms of assistance and support for all the categories of people outlined in the previous section. Social workers will also need to have regard to case law in this area in addition to this policy and related practice guidance from the NRPF Network.

Under Section 54 of the Nationality, Immigration and Asylum Act 2002, families who fall under categories a. to d. are not eligible for support from the local authority under Sections 17, 23C, 23CA, 24A or 24B of the Children Act 1989. They are also not eligible for adult social care support under the Care Act 2014. Local authorities are only obliged to provide such support if to withhold it would lead to a breach of the family's human rights under the European Convention on Human Rights or the European Community treaties (in the case of EEA nationals).

The law allows for local authorities to give limited forms of assistance to some families. This could be in the form of:

- Travel assistance to leave the UK to people with dependents under 18 years;
- Temporary accommodation to people with dependents under 18 years awaiting the implementation of their travel arrangements;
- Temporary accommodation to people with dependents under 18 who are awaiting instructions for removal from the Home Office.

However, the local authority still has the following duties towards **all children, young people and families regardless of their status**:

- To carry out a Children and Families Assessment for all children under 18 years old who are in families, and for whom Kent has territorial responsibility, where there may be concerns about a child/children's welfare and/or safety under the Children Act 1989; (including any issues that may indicate that the child is or has been trafficked or a victim of compulsory labour, servitude and slavery);
- To carry out a Child in Need Assessment for all 'separated' children under the age of 18, and for whom Kent has territorial responsibility, and to provide them with services in line with needs identified under the Children Act 1989;
- To carry out a needs assessment of an adult parent for care and support where it appears that the individual is ordinarily resident in Kent and may be in need of such services under Part 1 of the Care Act 2014. Dependent on the adult's immigration status, the local authority may also at the same time be required to undertake a human rights assessment to determine whether they are eligible to receive any care and support services.

### 3. Procedures

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Families with no recourse to public funds usually present in one of two different ways:

- Self-referral without an appointment;
- Self-referral or referral by an external agency, by appointment.

At the point of referral, the social worker should establish as far as possible which local authority has territorial authority for the child/children. In some circumstances, families will have come from another local authority and there may already be ongoing child protection investigations, or they may have been assessed in relation to their destitution. If that is the case, the social worker should explore whether the family should be referred back to that local authority before accepting a referral.

Once a referral has been accepted, social workers need to consider if there is a possibility or evidence to suggest that the child is in need or in need of protection.

If there is a strong possibility of such needs as outlined above, a Child and Family Assessment should be undertaken.

If the adult parent appears to have care and support needs of their own, then they should be referred to Adult Services for a needs assessment in their own right. Adult Services would determine whether it is necessary to conduct a human rights assessment in addition to a needs assessment to determine their eligibility to receive services.

When interviewing members of the family, social workers should explore, as fully as possible, existing sources of help and support in the community, voluntary groups, religious groups, social networks etc.

#### **Immigration status**

Social workers should attempt to establish the family's immigration status as part of the assessment process by contacting the Home Office. Local authorities have a duty to inform the Home Office of anyone who is unlawfully present in the UK or is a failed asylum seeker and has approached the local authority for assistance. This can be done via the same enquiry process.

The Home Office will confirm whether the family are British citizens, or whether they are persons subject to immigration control and with no recourse to public funds, and whether they have outstanding asylum or human rights claims, applications or appeals pending at the Home Office.

If the applicant comes within categories A to D mentioned on pages 1-2 of this policy, then the local authority should conduct a human rights assessment in order to determine whether the failure to provide support would lead to a breach of the family's human rights under the European Convention on Human Rights or their European Community treaty rights (if they are an EEA national – see the

link at the back of this document). This human rights assessment must be done alongside a Child and Family assessment. A link to a template human rights assessment used by Kent County Council is provided at the back of this document.

Any decision to provide accommodation/financial support on the grounds of NRPF needs to be ratified at Assistant Director level and subject to scrutiny at the earliest opportunity by Access to Resource Panel. Consultation with Legal Services and the Home Office should routinely be sought where necessary and in all cases where continuing support is being considered. KCC counter-fraud officers should be involved where appropriate.

Where an applicant has informed a social worker during assessment that he/she has an immigration application pending, the social worker must obtain the applicant's consent to request progress on their application to ascertain the ground upon which the application was made.

### **Territorial responsibility**

Social workers should investigate whether the family can be said to be resident in Kent or another local authority. Each family's circumstances should be assessed on a case by case basis, however where a family has not lived in Kent or only lived in Kent for a very short period, efforts should be made to refer the family back to the local authority in which they live.

### **Destitution**

Families with no recourse to public funds will normally be ineligible for support under the Children Act 1989 unless they are destitute. Destitution is defined in section 95 Immigration and Asylum Act 1999 as a person who either (a) does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or (b) has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.

Where an applicant has sent an asylum claim (based on Article 3 of the European Convention on Human Rights) to the Home Office and is waiting for it to be determined, they may be eligible for accommodation and financial support from the Home Office under section 95 Immigration and Asylum Act 1999. If this is the case, the local authority has no power to provide support.

The onus is on the applicant to prove their destitution. Social workers should therefore request the family to provide documentary evidence that shows they cannot secure anywhere adequate to live, or that they can't meet their essential day to day living costs despite being able to secure somewhere to live. Kent County Council counter-fraud officers are able to assist if there are concerns regarding financial information provided.

Social workers need to assess if the family have any means of supporting themselves, or any friends or family in the UK or outside whom they can rely on for support with accommodation or money.

Social workers must consider if the information given both verbally and in documentary form is credible. If it is not considered to be credible, social workers should record the evidence of this in the Child and Family Assessment and the human rights assessment. It is important that social workers properly record issues of credibility.

There is case law to suggest that where an applicant appears to lack credibility in the account of their destitution, due to factual inconsistencies, or refuses to provide important information when requested, a local authority may lawfully discharge any duty to support such an applicant and their family. Advice can be sought from Legal Services where social workers require it.

## **Key Documents**

**As part of any assessment, social workers will need to request key documents that will assist them in completing the assessment:**

- a. The person seeking a service must have sufficient identification although this may not be possible if, for example, the person is fleeing domestic abuse. In such cases evidence should be established at a later date via the assistance of a solicitor or the police;
- b. If they do not bring the necessary documentation on first presentation, the assessment can still go ahead but the social worker must inform them that any decisions regarding provision of support can only be made when they have provided the appropriate documents, and they should have all the required documents before another interview is arranged;
- c. If an interpreter is required, arrangements should be made with the interpreter to inform the person concerned of the documentation required;
- d. Those seeking a service should be asked to verify their identity and immigration status with the production of the following forms of identification:
  - Passports and birth certificates for all members of the family;
  - Marriage certificate, or divorce documents including court orders;
  - If available, travel documents e.g. return air tickets;
  - Home Officer papers (Application Registration Card (ARC), application letters or refusal letters) and solicitors' letters;
  - If available, bank account statements from each bank account (from the last 3 months);
  - Signed letters from family / friends / community groups who have been supporting the family;
  - Proof of GP details, schools or nursery settings being attended;
  - Documents relating to residence e.g. any notices of eviction, possession orders.
- e. All identification documents supplied must be original documents, which should be photocopied or scanned and the copy/scanned documents retained on the relevant file;
- f. If the applicant or any dependents have health needs, they must provide any documented evidence of ill health or disability for any member of the family, e.g. OT reports, mental health/psychiatric reports.



### **Completion of Assessment**

If the family appears to be destitute, the local authority does in certain circumstances as described above have the power to provide temporary accommodation and financial support pending completion of the Child and Family Assessment and the human rights assessment. Any decision to provide urgent temporary accommodation or financial subsistence pending assessment must be agreed at the Access to Resource Panel (ARP) or Assistant Director level in an emergency.

Social workers must write to the applicant informing them that accommodation/subsistence is being provided on a temporary basis only, and on a without prejudice basis, pending completion of assessments. The letter should also state that this support is subject to review and may be withdrawn at any time. Any accommodation provided should be sufficient to ensure the child/children's safety.

The amount of any financial support will be determined on a case by case basis dependent on the presenting financial circumstances of each family.

When the assessment is completed, the social worker should discuss the outcome of the assessment with their line manager. The potential outcomes could be:

- To accept the family's application for support or agree to continue support pending a decision from the Home Office in relation to their immigration status
- To reject the family's application for support or terminate any existing support
- To request further evidence before making a decision.

### **4. Provision of Support**

#### **Accommodation**

Where the conclusion is that a family require support with accommodation in order to avoid a breach of their human rights, the social worker must support the family in obtaining adequate accommodation. This includes exploring with the family whether there are any family/friends/voluntary, religious and community groups that may be able to assist with the provision of accommodation. The level of support will vary on a case by case basis according to the particular circumstances of each family.

Accommodation should be adequate to ensure the safety and well-being of the child or children. The local authority is not able to guarantee that any accommodation will be in Kent or meet specific requirements that may be requested by the individual parent or young person.

The duration of support with the provision of accommodation will be determined by the outcome of the Home Office decision, or until the family's circumstances change. The family's circumstances should be reviewed every 3 months if possible to determine whether the family remains destitute without support from the local authority.

Social workers should seek the approval of the Access to Resources Panel for any continuation of support. The Panel will review each case at a minimum of every 12 weeks.

### **Financial Support**

Financial support can be agreed, if a need is indicated by the Child in Need Assessment. Subsistence payments are paid weekly. The figure payable will be determined on a case by case basis considering the individual situation of the family, taking into account the availability of local provisions (for example community or voluntary support). In determining the figure payable, KCC may cross-check with amounts paid under other statutory schemes.

Where a person states in writing that he or she is not satisfied that the amount paid meets the subsistence needs of the family and that a further sum is required to meet those subsistence needs, KCC will conduct an internal review within 21 days of receipt of that written request in order to determine whether further support is required and in what form. Any such assessed request can only be agreed by the Access to Resources Panel at the next available panel meeting. The panel decision will be communicated to the family in writing.

Where it is assessed that support or assistance must be provided, this should be kept under regular review and the responsible social worker must keep themselves informed of any change in the person's circumstances. This includes changes in a person's immigration status, which may affect KCC's obligation to provide support or assistance.

Support with the provision of financial support is to be provided only until determination of any pending Home Office decision, or until the family's circumstances change. The family's circumstances should be reviewed every 3 months to determine whether the family remains destitute without financial support from the local authority.

Whilst support with accommodation and/or financial support is ongoing, social workers will work with families to ensure the families seek resolution to their destitution via the Home Office and/or employment.

## **Terminating Support**

The decision to terminate support for an ongoing case should be made by the Assistant Director. This needs to be informed with an up-to-date assessment.

The social worker will need to inform the parents if their support is to be terminated. This should be done in an interview, with the use of an interpreter if necessary.

Support could be terminated in a variety of different scenarios, including where the applicant is granted indefinite leave to remain and is granted access to state benefits and social housing. Or where an applicant with limited leave to remain has their no recourse to public funds condition lifted by the Home Office, or finds employment. In these instances, social workers will support applicants with signposting to Housing and accessing state benefits and Jobcentre.

The social worker should arrange for a letter to be sent to the persons setting out the reasons for termination of support and giving a reasonable notice period from when support will terminate. This will range from 14 to 28 days depending on the family's individual circumstances. They should be informed they can seek legal advice if they disagree with the decision.

Where support is refused at the outset, this should also be recorded in writing and provided in a letter to the family setting out the reasons why they are not eligible.

## **Assistance in returning to country of origin**

A family may wish at any time to return to their country of origin voluntarily. The human rights assessment may conclude that there would be no breach of the family's human rights should they be forced to return to their country of origin. In such circumstances, the local authority should refer the applicant to the Home Office Voluntary Departures team, who may be able to assist with the cost of flights. Contact details are available at the back of this document.

If the applicant is not available for this support, the local authority does have the power to provide the cost of travel home and minimal relocation costs.

## **5. Useful links**

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Human rights assessment template

Link to NRPf Network practice guidance

Home Office Assisted Voluntary Departures team contact details

Information about applications under the Zambrano rule, or the Domestic Violence concession

Information about EEA nationals

Information about in-country reports of use in completing human rights assessments