

Guidance for local authorities: assessing and supporting destitute people from abroad with no recourse to public funds (NRPF)

1. Purpose

This paper provides guidance for local authorities in assessing whether they have a duty to support **destitute people who are subject to immigration control and have no recourse to public funds (NRPF)**.

This guidance uses the term “subject to immigration control” as defined by section 115(9) of the Immigration and Asylum Act 1999 in order to describe people who are excluded from various forms of welfare provision.

Local authorities will need to interpret the guidance to take account of the way that they structure their service to people with NRPF.

This document is intended only as background guidance to local authority duties and powers and how authorities might wish to respond to requests for service provision. It does not attempt to provide an exhaustive statement of the relevant law; nor is it a substitute for legal advice either generally or in relation to individual cases.

While every attempt will be made to keep this guidance up to date on the NRPF Network web pages (www.islington.gov.uk/nrpfnetwork), local authorities should check the issue date on this document against any recent case law or changes in statute or Government guidance.

2. Scope of the guidance

This guidance is for use when working with:

- adults aged 18 or older (who were not looked after as children or young people by the local authority) and
- adults who are responsible for children.

Different considerations apply to the support of unaccompanied children and young people from abroad.

3. Legislative context

The following legislation is relevant to this area of work:

- Immigration, Asylum and Nationality Act 2006;
- Asylum and Immigration (Treatment of Claimants, etc) Act 2004;
- Civil Partnership Act 2004;
- Nationality Immigration and Asylum Act 2002, (especially Schedule 3);
- Immigration & Asylum Act 1999 (Section 4);

- European Convention on Human Rights and Human Rights Act 1998 (Articles 3 and 8 of the Convention);
- NHS and Community Care Act 1990 (Section 47);
- Local Government Act 2000 (Sections 2 and 3);
- Children’s Act 1989 (Sections 17, 23, 24A and 24);
- Mental Health Act 1983;
- National Assistance Act 1948 (Sections 21 and 29).

4. Summary of key steps

There are two fundamental steps that an authority should undertake in assessing whether they have a duty to support an individual or family:

1. conducting an eligibility test; and
2. carrying out an assessment of need.

The eligibility test should be conducted first.

4.1 Eligibility test

In assessing eligibility a local authority should:

- establish whether it is “territorially responsible” (that is, whether the person is ordinarily resident in the borough);
- establish that the applicant is destitute;
- carry out an immigration check to establish eligibility under immigration legislation;
- check whether the authority is excluded from supporting the person under section 54 and schedule 3 of the Nationality, Immigration and Asylum Act 2002; and
- where the applicant falls within one of the excluded groups, carry out a human rights assessment to establish whether there is an obligation on the authority to provide support in order to prevent a breach of a person’s human rights.

4.2 Assessment of need

In order to assess needs, local authorities should carry out, as appropriate,

- a community care; or
- a community mental health; or
- a section 17 Children’s Act assessment

in order to establish whether the applicant is “destitute-plus”, that is whether they have needs over and above “mere” destitution. Details and outcomes should be recorded.

An overview of the process is provided at appendix A.

5. Good practice

All adults aged 18 or over, who are destitute, from abroad and have no recourse to public funds who present to an authority requesting support with

accommodation and subsistence should receive a humane and customer-focused response.

Authorities should ensure a consistent response to people who request a service, irrespective of the local authority service to which they present¹.

It is good practice for the authority to seek a solution to the destitution faced by the person presenting whilst keeping strictly to its legal duties.

In cases where there is no duty on the authority to provide support², it is good practice to provide advice and assistance to individuals in pursuing other options such as voluntary return or section 4 support³ provided by the Immigration and Nationality Directorate (IND). However, authorities should not propose other options when it is clear these will not work or when the authority has a duty to support the presenting person.

6. Establishing Eligibility for Services (detailed procedure)

6.1 Establishing ordinary residence

In order for the authority to be territorially responsible individuals must be:

- ordinarily resident in the local authority's area; or
- not ordinarily resident in any local authority area and presenting as homeless and in urgent need⁴, i.e. where a person has no settled residence and is in urgent need of services, it is the responsibility of the local authority where the person presents to provide services; or
- ordinarily resident elsewhere, but presenting in another local authority in urgent, i.e. critical, need.

In the latter situation, other than in extreme emergencies, discussions should normally take place with the relevant local authority on how support should be provided, and how this would be paid for. In such circumstances the existing inter-authority protocol applies. Examples of agreed practice will be made available at www.islington.gov.uk/nrpfnetwork

If there is a dispute between authorities as to where someone is ordinarily resident, the service user should not be left without provision whilst the

¹ In order to do this some authorities have established a specialist team to deal with NRPF, others have appointed an officer who have oversight of this area of work. Where client numbers are low, local authority teams need to be fully briefed in order to deal with the issue.

² Experience indicates that a local authority's duty to support people with NRPF can be as low as 10% of those who request support.

³ Regulations made under section 4 of the Immigration and Asylum Act 1999, as amended by the Nationality, Immigration and Asylum Act 2002 and the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, provide the Home Office with powers to support destitute failed asylum seekers who satisfy one or more of five conditions. These are that the individual is taking all reasonable steps to leave the UK, is unable to leave the UK due to physical impediment or because there is no safe route of return, that the courts have granted leave to appeal in an application for judicial review in relation to his or her asylum claim or that support is necessary to avoid a breach of his or her human rights.

⁴ For the purposes of establishing ordinary residence, an asylum seeker who was dispersed should not be deemed as ordinarily resident in the borough to which they were dispersed.

dispute is resolved. The authority in whose area the person is at the moment of the application should provide a service, whilst making it clear to the other authority that it does not accept that it is the responsible authority.

6.2 Checking Immigration status

In order to conduct immigration checks, local authorities should arrange for designated officers to be contacts for the Home Office through the Local Authorities Communication (LA Comms) service. LA Comms provide up to date information and can quickly confirm or clarify immigration status where an individual has made an asylum claim. LA Comms can be contacted on 020 8760 4527 but only provide information to designated officers.

Where individuals have never claimed asylum, i.e. they are or were general claims applicants, such as visa holders or overstayers, their solicitors may also assist with providing evidence of immigration status. In these circumstances, an authority may also seek information in writing by faxing GAPs (General Applications) at the Home Office on 020 8196 3048.

When considering refusing immediate service due to lack of clarification on immigration status, an authority needs to consider carefully the circumstances of the person presenting. Where there is an emergency or crisis, or the need is critical, services should not be refused at least in the very short term whilst the position is investigated.

6.3 Establishing destitution

A person is destitute if they do not have adequate accommodation or they are unable to meet essential living needs.

In order to establish destitution the individual needs to demonstrate that they have no other means of support available. This would include establishing whether they are homeless or cannot meet essential living needs, and exploring whether support could be provided through:

- friends or family;
- the voluntary or community sector;
- savings;
- a sponsor;
- eligibility for welfare benefits; or
- selling anything of value.

It is reasonable to request evidence, such as copies of bank statements and notices to quit a property, in order to establish whether or not a person is destitute. Local authorities can check with the Inland Revenue in order to establish that the individual requesting support is not working.

Where an individual might be eligible for support from IND⁵ under section 4 of the Immigration and Asylum Act 1999, this cannot be considered as support that is “otherwise available” when conducting a community care or mental

⁵ The National Asylum Support Service (NASS), which used to be responsible for the provision of section 4 support, no longer exists as a separate department of IND

health assessment. However, an authority can advise and assist a person to make an application for section 4, but should not use this in order to refuse to support a person it has a legal responsibility to support.

6.4 Establishing whether or not someone is “destitute-plus”

6.4.1 The test

An applicant is excluded from entitlement to social services if their claim is based solely on destitution.

The test for local authorities in assessing whether someone is destitute-plus is whether an individual's need is to any material extent made more acute by some circumstance other than the “mere” lack of accommodation and subsistence. Such circumstances would typically be ill health, disability and old age, but there may be others that bear on vulnerability, such as domestic violence and/or if an individual is an expectant or nursing mother.

The key issue is whether there is an imminent risk of significant harm if support is not provided, which would only be suffered as a result of the additional circumstance of ill health, disability or other vulnerability.

This may involve individuals being unable to fend for themselves as a result of a particular circumstance in a way a “merely” destitute person could or, if the circumstance is a physical or mental illness, because of the risk of deterioration caused by destitution.

The test is a matter of fact and degree. This can be considered in terms of how the individual would be likely to cope if they were living on the streets and having to beg for food or money. In considering this, control of a medical condition by medication can be taken into account.

The assessment should not take into account the fact that IND is providing or might provide support. Case law has established that, where it is requested, a council is legally obliged to undertake an assessment.

Good practice in assessment requires a single assessment approach, for example, a client's community care and mental health needs should be assessed as part of the assessment. It is also good practice for there to be an identified lead person.

6.4.2 Disability and ill health

Where an individual claims ill health or disability, the local authority should seek medical evidence from the applicant. A GP's report or letter may provide as much information as needed but if a consultant has been involved, ideally a report should be requested. In some cases, depending on the apparent quality of the medical evidence provided, it may be appropriate for the local authority to obtain its own opinion.

6.4.3 Mental Health

Similarly, where an individual claims a mental health need, the local authority should seek medical evidence from the applicant. The test is **not** whether an individual has a severe and enduring mental health need. The threshold for support under the National Assistance Act 1948 is much lower than the criteria local authorities generally use to determine eligibility for service (i.e. Fair Access to Community Services (FACS) criteria).

6.4.4 Section 3 and section 117 of the Mental Health Act 1983

People who have been sectioned under section 3 of the Mental Health Act 1983 (involuntary admission to hospital) and who are subsequently discharged back to the care of the community under section 117, are eligible for services.

Section 117 places a duty on local authorities to provide after care services. The responsibility lies jointly with the health authority and the local authority and support can include accommodation, treatment and support.

The responsibility for support under section 117 only ends when the individual is found to be no longer in need of such support. Such a decision can arise only following a full community care re-assessment.

Where a local authority places an individual entitled to section 117 support in another local authority area, the placing authority remains responsible for support because the individual was ordinarily resident in the placing local authority's area. If the individual has a relapse, the local authority that placed him retains responsibility where section 117 support has continued.

Where an individual ceases to receive section 117 after care support following a re-assessment, and the original local authority had not used the provisions of section 21 of the National Assistance Act 1948 to support the individual in another local authority area, then if an individual has a relapse it may be argued that they are not ordinarily resident in the original local authority and that they are the responsibility of the new local authority.

6.4.5 Domestic Violence

In cases involving domestic violence, the issue is the effect that domestic violence has had and continues to have on the individual or their children. Destitution alone is not sufficient. The applicant needs to demonstrate a need for care and attention arising not only from a lack of accommodation and funds, but also for the prevention of harm or violence or some other circumstance. The test of being in need of care and attention not solely due to destitution is capable of including the effects of domestic violence.

6.4.6 Needs of the child

Where the applicant is an adult with responsibility for a child, consideration must be given to undertaking a section 17 assessment to establish whether the child has needs over and above those that apply to the carer, for example the existence of special needs.

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In addition, where a section 17 assessment is required, consideration needs to be given to the child's right to family life under Article 8 of the European Convention on Human Rights (ECHR). The homeless child will be a child in need and should be accommodated in any event.

Expectant and nursing mothers may also qualify for support under section 21 (1)(a) and section 21 (1)(aa) of the National Assistance Act 1948.

6.5 Establishing whether an individual is ineligible for support under Schedule 3 of the Nationality, Immigration and Asylum Act 2002.

Local authorities need to establish whether someone falls into one of the classes ineligible for support.

The five classes of people ineligible for support are:

- a person granted refugee status by another EEA State (who is not an EEA national) and any dependants (see appendix B for list of EEA states);
- an EEA national and any dependants;
- a failed (former) asylum seeker who has failed to comply with removal directions, and any dependants;
- a person who is a failed asylum seekers with dependent children, who fails to take reasonable steps to leave the UK (an "ineligible person" [inserted by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004]; and
- a person unlawfully present in the UK (this includes people who have overstayed their visas).

The onus is on the applicant to produce evidence to prove that they do not come within one of the ineligible groups above. The person should produce a passport, birth certificate or original Home Office document confirming immigration status. Where a person claims they do not have original travel documents, it is reasonable to ask them to produce letters from their solicitors confirming their immigration status. Solicitors' letters to the Home Office should be stamped "recorded delivery" to confirm that an application has been made.

Where an individual is ineligible or unable to provide evidence of eligibility as defined above, the local authority can only provide support if the applicant demonstrates it is necessary in order to avoid a breach of their human rights (see below).

6.6 Human Rights Considerations

6.6.1 General points

Where cases do not meet all eligibility criteria outlined above, local authorities will need to carry out a human rights assessment.

In practice, the relevant articles of the European Convention on Human Rights (ECHR) are likely to be:

- Article 3 (prohibition on torture or inhuman or degrading treatment or punishment) and
- Article 8 (respect for private and family life).

Local authorities should request proof that an application to remain in the UK under Article 3 or 8 has been made in cases involving non-EEA nationals who are otherwise ineligible for services, but who claim that a failure of the local authority to provide support will result in a breach of Article 3 or Article 8.

6.6.2 Article 3 claims

Article 3 of the European Convention on Human rights is as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Article 3 is an absolute right, i.e. if proved, there is no defence.

Degrading treatment occurs where a person reasonably feels fear and anguish, that is humiliating and debasing, where this is caused by the action or inaction of national or local government.

If an individual has made an application to the Home Office under Article 3, they effectively become an asylum seeker and the issue to be considered then will be whether a service should be provided by local or central Government (IND)⁶. The authority should decide this issue by applying the “destitute- plus” test as set out above.

If the Home Office has refused an individual’s claim under Article 3 and/or 8, then a local authority can withhold or withdraw support as case law has established⁷ that such a person, who can and should return to his country of origin but refuses to do so, would suffer degradation as a result of his decision to stay in the country and not as a result of any breach of human rights by the authority. If an Article 3 claim has been rejected by the Home Office, it follows that the service user could avoid reaching the level of degradation described in Article 3 by returning to his country of origin. There may sometimes be a need for short term provision of sufficient length to allow arrangements to be made.

Local authorities need to satisfy themselves that the information they have is up to date and accurate before making any decision.

⁶ In the case of fresh (new) human rights and asylum applications the Home Office must record the application before the question of whether central Government should provide a service; local authorities can provide support if there is evidence that a fresh claim has been submitted e.g. a recorded delivery number.

⁷ see *R (Kimani) v Lambeth LBC* [2003] EWCA Civ 1150; *Grant v Lambeth LBC* [2004] EWCA Civ 1711 (CA)

6.6.3 Article 8 claims

Article 8 of the European Convention on Human Rights is as follows:

“(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 8 is a qualified right, i.e. once it is established that the right exists (under Article 8(1)), it is necessary to consider whether any interference with the right is justified (under Article 8(2)).

If an individual makes a claim to the Home Office under Article 8, they do not become an asylum seeker and a local authority does not have to await the outcome of an Article 8 claim before deciding whether there would be a breach of human rights if it were to refuse support. Local Authorities should undertake a Human Rights Assessment in order to determine whether to withhold or withdraw support.

In Article 8 cases the applicant needs to demonstrate what effect failure to provide support would have on them, and the local authority determines whether or not support should be provided.

If support is to be refused, an authority must be able to demonstrate that this is a fair and proportionate response, balancing the need to conserve resources and the impact the refusal will have on the applicant. Legal advice should be sought when a potential breach under Article 8 is claimed, as current case law in this area will affect the response.

6.6.4 Failed asylum-seekers

Where an applicant is a failed asylum seeker and they have no need other than for accommodation and support to meet essential living needs, there is no duty on local authorities to support under section 21 of the National Assistance Act 1948.

In these circumstances a referral to IND should be made for support under section 4 of the Immigration and Asylum Act 1999 (also known as “hard cases support”).

IND will normally provide support on condition that the applicant agrees to return voluntarily to their home country or if they meet one of the other section 4 criteria. If an individual applies to IND but is refused support because they will not agree to voluntary return, then the authority is entitled to conclude that the support is “otherwise available”.

If the provision of accommodation and subsistence alone would be insufficient because of an applicant's individual circumstances, then the local authority should provide support and refer the person to the International Organisation for Migration (IOM) to support the applicant in returning home.

Under Section 2 of the Local Government Act 2000, local authorities have the power to purchase travel tickets to enable an individual to return to their country of origin when it would be an effective response to avoid a breach of a person's human rights. (Section 2 of the 2000 Act gives local authorities have power to do anything which they consider is likely to promote the social well-being of their area; section 3(1) of the 2000 Act states that section 2 powers do not enable a local authority to do anything that is prohibited by other legislation).

6.6.5 People who are ineligible for support

All assessment decisions should be recorded in writing, and the outcome clearly communicated to the applicant in appropriate language and format. The assessment outcome should clearly state why the applicant is not eligible, or no longer eligible, for support in relation to the eligibility criteria listed above. If support is to be withdrawn, at least 21 days notice should be given.

Local authorities have a duty to inform the Home Office of any person they suspect or know to be unlawfully present in the UK or a failed asylum seeker (paragraph 14 of Schedule 3 to the Nationality, Immigration and Asylum Act 2002).

Information should be given to people ineligible or refused support on voluntary organisations that might be able to provide support (see Appendix C).

Appendix A

⁸No Recourse to Public Funds (NRPF) flowchart

