



Practice Guidance for Local Authorities
Assessing and Supporting Adults with No Recourse to Public Funds (NRPF)
Updated April 2009

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1. Introduction

This paper provides guidance for local authorities in assessing whether they have a duty to support destitute adults who are subject to immigration control and have no recourse to public funds (NRPF). NRPF applies to a person who is subject to immigration control, does not have the right to work,¹ and has no entitlement to welfare benefits, public housing or UKBA asylum support.²

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.

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. Local authorities may wish to interpret the guidance to take account of the way that they provide a service to people with NRPF.

While every attempt will be made to keep this guidance up to date on the NRPF Network web pages,³ local authorities should check the issue date on this document against any recent case law or changes in statute or Government guidance.

1.1 Scope of this guidance

This guidance focuses on requests for accommodation and subsistence by adults with NRPF.

Different considerations apply to the support of children and families from abroad. For more detailed guidance on assessing and supporting children and families with NRPF, please see our guidance [Assessing and Supporting Children and Families with No Recourse to Public Funds](#).

1.2 Relevant legislation

The following legislation is relevant to this area of work:

- National Assistance Act 1948
- [Children Act 1989](#)
- [Children \(Leaving Care\) Act 2000](#)
- [Immigration and Asylum Act 1999](#)

¹ People granted leave as spouses or civil partners, and those on valid work visas are permitted to take up employment.

² Asylum seekers may be entitled to local authority support, despite having access to UKBA asylum support, if they have an assessed community care need (NASS v Westminster 2001)

³ www.islington.gov.uk/nrpfnetwork

- [Nationality, Immigration and Asylum Act 2002](#)
- [Asylum and Immigration \(Treatment of Claimants, etc\) Act 2004](#)
- [Immigration, Asylum and Nationality Act 2006](#)
- [Local Government Act 2000](#)
- [Human Rights Act 1998](#)
- [NHS and Community Care Act 1990](#)
- Mental Health Act 1983

2. Key points

- The duty to assess a person with NRPF arises where there is an appearance of need, not on the likelihood of entitlement to services.⁴
- Local authorities have the power to provide emergency accommodation pending the outcome of an assessment.⁵
- In determining eligibility for local authority accommodation support under Section 21 National Assistance Act 1948 (NAA), support provided by the UK Border Agency (UKBA) cannot be considered as ‘support otherwise available’ where there is an assessed community care need.⁶
- Fair Access to Care Services (FACs) criteria cannot be applied when assessing whether residential accommodation under Section 21 NAA should or must be provided for people with NRPF.⁷ The test is one of an unmet need for ‘care and attention’, framed by the ruling in *M v Slough* (2008)⁸. ‘Care and attention’ under Section 21 National Assistance Act 1948 means a need for ‘looking after’ (*M v Slough* (2008)).
- Persons caught by Schedule 3 of the Nationality, Immigration and Asylum Act 2002 (NIAA), which gives effect to Section 52 of that Act are barred from local authority support. Support and assistance for adults under Section 21 NAA and Section 17 Children Act 1989, among other legislative provisions, can only be provided if it would be a breach of their human rights or their rights under the European Community Treaties to withhold or withdraw support. In such cases a human rights assessment is the lead assessment.⁹ In the case of persons from European Economic Area (“EEA”) states other than the UK, an assessment in respect of breaches of the Community Treaties will also be needed.

⁴ *R v Bristol cc ex p Penfold* 1998

⁵ Section 47 (5) NHSCCA 1990

⁶ *AW v LB Croydon and A, D and Y v Hackney* (2005)

⁷ *R (N) v Lambeth LBC* (2006)

⁸ *M v Slough* [2008] UKHL 52

⁹ *R (on the application of N) v Coventry City Council* [2008] EWHC 2786 (Admin)

3. Good practice

All adults with NRPF who present to an authority requesting support with accommodation and subsistence should receive a humane and customer-focused response.

Local authorities should ensure a consistent response to people who request a service.¹⁰ 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 local authority to provide support, it is good practice to provide advice and assistance to individuals in pursuing other options such as voluntary return or section 4 support¹¹ provided by the UK Border Agency (UKBA). However, local authorities should not propose other options when it is clear these will not work or when the local authority has a duty to support the presenting person.

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 officer.

4. Summary of key steps

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

1. Conducting an eligibility test; and
2. Carrying out an assessment of need.

Persons with NRPF presenting as destitute will commonly seek provision of residential accommodation under Section 21 NAA. Much of this guidance relates particularly to support and assistance under this section. Prior to the ruling in the *M v Slough* case (2008) the key question in assessing need under Section 21 NAA for persons subject to immigration control was whether an adult's need for care and attention was made 'materially more acute' because of their condition or

¹⁰ 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.

¹¹ 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.

circumstances, not related to their destitution. Following the *M v Slough* judgment, local authorities must assess needs under Section 21 NAA irrespective of the person's means; that is they would still have a need for care and attention *even if they were wealthy*.

5. Establishing Eligibility for Services

In assessing eligibility a local authority should:

- i) establish whether it is "territorially responsible" (that is, whether the person is ordinarily resident in the borough);
- ii) carry out an immigration check to establish eligibility under immigration legislation;
- iii) 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
- iv) establish eligibility for emergency accommodation.

5.1 Establishing ordinary residence

The National Assistance Act 1948 does not define 'ordinary residence'. The courts however have considered that ordinary residence should be given its 'ordinary and natural' meaning. In simple terms, this means that a person will meet the 'ordinary residence' criteria so long as the place where s/he eats and sleeps has been voluntarily accepted by him/her as their home for settled purpose, whether for short/long duration.¹² The leading guidance on ordinary residence remains that contained in Local Authority Circular (LAC) (93) 7.¹³

If a person has not adopted their current residence voluntarily because they lack capacity to do so then matters such as where they are physically present, and the nature, purpose and duration of their residing in the particular place will be relevant in determining ordinary residence.¹⁴

There are some situations expressly covered by the NAA which deem a person to be ordinarily resident in a particular area as follows:

- Section 24 (6) NAA – a patient in an NHS hospital will be deemed to be ordinarily resident in the area, if any, in which s/he was ordinarily resident before s/he was admitted as a patient to the hospital. It is important to note that if a person is of no settled residence and their needs present in hospital, the local authority in whose area the person is in has the power

¹² *Shah v London Borough of Barnet* (1983)

¹³

http://www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/LocalAuthorityCirculars/AllLocalAuthority/DH_4004144

¹⁴ See *R v Waltham Forest London Borough Council, ex p. Vale* (1985) and, determinations of OR by the Secretary of State e.g. 8 of 2007:

http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/Ordinaryresidence/DH_079349

- to provide residential accommodation under Section 24 (3) NAA.¹⁵ This means that it is the authority in which the hospital is situated that must assess.
- Section 24 (4) NAA – Where a local authority provides residential accommodation to a client in another authority's area under Section 21 NAA, the person is deemed to be ordinarily resident in the placing authority's area. This means that the placing authority retains responsibility while the person continues to be placed under Section 21.

Persons with NRPF will often be of no settled residence and/or presenting as being in urgent need. Under Section 24 (3) NAA, the local authority in whose area a person is present has the power to provide residential accommodation where the person is of no settled residence or is not ordinarily resident in the area but in urgent need. This means that:

- in cases where a person is of no settled residence and/or presents as being in urgent need for residential accommodation, the local authority in whose area the person is will have responsibility for assessing and determining whether the person is in need of residential accommodation under Section 21 NAA and providing the service; and
- where such a person presents to a local authority, their physical presence in the authority's area at that time is enough to establish responsibility. This is so even if the person has entered that local authority's area only to present themselves to social services.¹⁶

Authorities should not delay in the provision of services for individuals because of uncertainty over which authority is responsible. Local Authority Circular (93)7 (Department of Health) provides further information on resolving disputes.¹⁷

5.2 Checking Immigration status

It is important to check the immigration status of persons with NRPF in order to apply the correct considerations and assessments. In particular it must be established whether they are excluded from Section 21 NAA support under Schedule 3 of the NIAA (see 5.3) below, and whether they have any claims pending with the Home Office.

In order to conduct immigration checks on those who have at some stage applied for asylum, local authorities should arrange for designated officers to be contacts for the Home Office through the Local Authorities Communication (LA Comms) service. LA Comms provides up-to-date information and can quickly confirm or clarify immigration status where an individual has made an asylum claim. LA

¹⁵ LAC (93) 7, paragraph 14

¹⁶ R (on the application of S) v Lewisham, Hackney and Lambeth (2008). See also paragraph 3 of LAC (93) 7 on Section 24(3).

¹⁷

http://www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/LocalAuthorityCirculars/AllLocalAuthority/DH_4004144

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 emailing GAPs (General Applications) at the Home Office on LA@ind.homeoffice.gsi.gov.uk, but again information can only be provided to designated officers.

In all cases, the presenting individual must be asked to provide evidence of their identity and of their immigration status in the UK. This can be provided in the form of solicitors' letters, immigration documents from the UKBA, visas or passports. If the applicant is unable to provide such documentation, s/he must be able to explain why this is the case.

In cases where there is continuing difficulty in ascertaining immigration status, your local immigration team can be contacted for further assistance.¹⁸

5.3 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 of person ineligible for support under Schedule 3 NIAA.

The four classes of person ineligible for support are:

- 1) Persons granted refugee status by another EEA State and any dependants;
- 2) EEA nationals and any dependants;
- 3) Failed asylum seekers who are failing to comply with removal directions, and any dependants;
- 4) Persons unlawfully present in the UK. This includes people who have overstayed their visas and failed asylum seekers who made their initial application for asylum in-country, rather than at the port of entry.¹⁹

None of the exclusions under Schedule 3 NIAA apply to children or UK nationals.

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.

¹⁸ Local immigration teams are being introduced across the UK. For more information about your local immigration team, contact your regional UKBA office.

¹⁹ Someone who applies for asylum at an airport, seaport or trainport when they first arrive is considered to be a 'port of entry' asylum applicant. Someone who applies after passing through immigration control at the UKBA offices in Croydon or Liverpool are considered to be 'in country' asylum applicants.

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 caught by the restrictions to support under Schedule 3 NIAA, the local authority can only provide support if the applicant demonstrates it is necessary in order to avoid a breach of their human rights, and, in the case of EEA Nationals, if it is necessary to prevent a breach of their rights under the Community Treaties. The recent case of *N v Coventry City Council*²⁰ held that the human rights assessment should be completed as the lead assessment, to determine whether there would be a breach of human rights if no support is provided. The local authority should only go on to assess community care needs if the conclusion is that there would be a breach of human rights without any support. Human Rights assessments are dealt with generally under Part 8 of this guidance, but should be considered as part of the 'eligibility for services' process.

5.4 Establishing eligibility for temporary accommodation

Where an adult presents to the local authority as destitute, the authority can exercise its power to provide temporary accommodation pending the outcome of relevant assessments

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.

It is important to remember that in exercising powers, all relevant factors must be considered and irrelevant ones ignored and the local authority cannot fetter its discretion by strictly applying a blanket policy.

²⁰ R (on the application of N) v Coventry City Council [2008] EWHC 2786 (Admin)

6. Assessment of need

The duty to assess a person's community care needs arises under Section 47 of the National Health Service and Community Care Act (NHSCCA) 1990. The duty to assess depends on the appearance of need, not on the likelihood of services being provided.²¹ This means that where there is evidence of a possible health and/or social care need, the responsible authority will be required to undertake a Section 47 NHSCCA assessment even if it is suspected that the individual may not be eligible for support under Section 21 NAA.

In almost all situations where an adult requests a community care assessment, such an assessment should be completed, because the threshold to trigger the assessment is very low.

If the adult is presenting as in need of residential accommodation, the assessment must address whether a duty is owed to provide the adult with residential accommodation under Section 21 (1)(a) NAA. In the case of expectant or nursing mothers, the assessment must consider whether the power under Section 21(1)(aa) to provide residential accommodation arises.

6.1 Section 21(1)(a) – Need of Care and Attention Due to Age, Illness, Disability or Any Other Circumstance.

Section 21 (1)(a) outlines the duty of local authorities to provide *“residential accommodation to persons aged 18 or over, who by reason of age, illness, disability or any other circumstance, are in need of care and attention which is not otherwise available to them.”*

As previously mentioned, the key case in assessing whether the duty under Section 21(1)(a) NAA arises is *M v Slough Borough Council* (2008). In assessing whether an individual is owed a duty under Section 21(1)(a) NAA, the key question is not one of destitution, but whether the person has a need for care and attention that is *not otherwise available*.

In her judgement in *M v Slough*, Baroness Hale held that care and attention means “looking after”, as follows:

“The natural and ordinary meaning of the words ‘care and attention’ in this context is ‘looking after’. Looking after means doing something for the person being cared for which he cannot or should not be expected to do for himself: it might be household tasks which an old person can no longer perform or can only perform with great difficulty; it might be protection from risks which a mentally disabled person cannot perceive; it might be personal care, such as feeding, washing or toileting. This is not an exhaustive list. The provision of

²¹ R V Bristol CC ex p Penfold (1998) 1 CCLR 315

medical care is expressly excluded... This definition draws a reasonable line between the 'able bodied' and the 'infirm'..." [para 34]²²

In assessing the need for 'looking after', regard should be given to the person's current care needs. 'Looking after' can also include preventative measures to ensure a person's care needs do not become worse.

The assessment of a person's health and/or social care needs must establish whether the person has a need for 'looking after' and that the provision of accommodation under Section 21 (1)(a) NAA by the local authority is the only way to meet that need.

When considering 'support otherwise available', this does not refer to accommodation provided by the UKBA, but rather to other 'treatments' that are available, such as those provided by the NHS. If a person's needs are being met by 'treatments' provided by non-statutory services (such as counselling provided by the voluntary sector) or by medical treatment under the NHS (including medication) that enables them to function as an able-bodied person, they do not have a need to be 'looked after' for the purposes of Section 21 (1)(a) NAA. In such circumstances, their only 'need' would be for accommodation and subsistence which does not have to be provided by the local authority.

Where an adult is assessed as having a need for 'looking after' (e.g. a need for assistance with shopping or personal care due to age, illness or disability), a duty to provide accommodation under Section 21 (1)(a) NAA is likely to arise because:

- the services they require to meet their need for care and attention can only be given in a home environment; and
- accommodation is needed in order to facilitate the provision of services; and
- the person is not able to access ordinary accommodation in other ways (such as by working, through benefits or social housing) because they have NRPF; *therefore* the need for care and attention can only be met by provision of residential accommodation under Section 21 NAA.

Fair Access to Care Services (FACs) criteria cannot be applied when assessing whether residential accommodation under Section 21 NAA should or must be provided for people with NRPF.²³

Some key questions that may form part of a Section 47 NHSCCA assessment are:

- What is involved in the service provided? Does it assist the service user with personal care or other life skills, or is it a counselling service?

²² <http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080730/rmfc-1.htm>

²³ R (N) v Lambeth LBC (2006)

- Is the Care Programme Approach (CPA) being used for the service user? Do you continue to monitor him/her, however infrequently? Are there any reviews set up? Does the service provide a monitoring function (i.e. keeping him/her safe from harming him/herself or others)?
- Are the services being funded/provided completely outside of the local authority? Are they provided as a result of the Section 47 NHSCCA assessment or are they distinct, health services?
- Is there involvement with other statutory or non-statutory services which could constitute 'looking after' that can only be accessed by the service user through the provision of Section 21 NAA accommodation?
- What is the extent of involvement from friends or family in the person's care?

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 medical evidence provided, it may be appropriate for the local authority to obtain its own opinion.

M v Slough has clarified the terms 'care and attention'. Prior to this judgement, a need for 'care and attention' could be in the 'shape of shelter and warmth' (i.e. accommodation) for someone whose need for such services was 'materially more acute' due to their illness. This was a low threshold, as an underlying illness (such as HIV or PTSD) would lead to provision of accommodation services. The test was commonly known as the 'destitution plus test'. *M v Slough* significantly altered the test for determining whether there is a need for care and attention and has raised the threshold for support.²⁴

6.2 Section 21 (1)(aa) of the National Assistance Act 1948

There is a *power* for local authorities to provide support to expectant or nursing mothers under Section 21 (1)(aa) of the NAA who are in need of care and attention which is not otherwise available to them.

The case of *R (Gnezele) v Leeds City Council*; *R (Dayina) v Leeds City Council*²⁵ has clarified that expectant and nursing mother's who are in need of residential

²⁴ If a person is assessed as being in need of care and attention that is not otherwise available in applying the *M v Slough*, it is very likely that their need for care and attention arises from something more than destitution alone, thus satisfying what used to be the "destitution plus" test. One example of where this might not be evident is where a person has a serious mental health condition (e.g. depression) which gives rise to a need for care and attention but where medical opinion is that the condition arises solely as a result of their destitution. It is important to note, however, that in the cases that have dealt with applying the destitution plus test the courts have strictly interpreted the term "solely" such that the test will be met as long as there is no other basis for the need for care and attention to arise.²⁴

²⁵ [2007] EWHC 3275 (Admin)

accommodation are dealt with exclusively under Section 21(1)(aa), in the absence of any other needs for care and attention not associated with pregnancy or nursing a baby. The case held that destitute expectant or nursing mothers are not in need of care and attention by reason of their being pregnant or nursing a child meaning that the duty under Section 21(1)(a) does not arise. If the expectant or nursing mother had a separate need for care and attention (i.e. 'looking after') of the kind outlined in 6.1 above then the duty under Section 21(1)(a) may arise.

It is important to remember that consideration of exercise of the power must be reasonable and rational, all relevant factors must be considered and irrelevant ones ignored. Where support is otherwise available e.g. UKBA support, this will be relevant to the assessment of need under Section 21 (1)(aa) NAA. In the case of a pregnant woman on a spousal visa fleeing domestic violence, the situation is different as UKBA support is not available. It would therefore be expected that the local authority would use its powers under Section 21 (1)(aa) to avoid the woman becoming homeless.

If the woman is a national of a European Economic Area (EEA) country, or unlawfully in the UK, support under Section 21 (1)(aa) will be excluded by Schedule 3 NIAA.

7. Section 3 and section 117 of the Mental Health Act 1983

Section 117 of the Mental Health Act 1983 (MHA) imposes a duty on the health authority and social services to provide aftercare services to certain patients who have been compulsorily detained under the MHA.

Section 117 MHA states that aftercare services must be provided to patients who have been detained in hospital:

- for treatment under Section 3 MHA
- under a hospital order pursuant to Section 37 MHA (with or without a restriction order)
- following transfer from prison under Section 47 or 48 MHA.

Persons with NRPF who have been compulsorily detained in hospital under the MHA sections outlined above, will be owed a duty for provision of Section 117 aftercare services like any other person subject to the MHA. Unlike Section 21 NAA or Section 17 CA, aftercare services under Section 117 are not excluded services under Schedule 3 NIAA. It may be the case that a person who has NRPF and is destitute will require accommodation as part of their aftercare support. Any services provided under Section 117 MHA, including accommodation, take precedence over services provided under Section 21 NAA and would be funded by the relevant health authority and/or social services authority, depending on the person's needs. The duty to provide aftercare services continues until the person is assessed as no longer having a need for aftercare.

The decision to cease Section 117 MHA aftercare provisions is the joint responsibility of the mental health authority and the local authority. A full community mental health assessment will be undertaken and the decision to discharge will be made at a review meeting, when the responsible clinician and the multi-disciplinary team has recommended that aftercare under Section 117 MHA is no longer required.

When preparing to discharge an individual from Section 117 MHA support, regard should be given to the individual's immigration status and entitlement to support in the UK. It may be that upon discharge a person will seek assistance under Section 21 NAA. Section 21 NAA is excluded for the purpose of Schedule 3 NIAA. If the individual is caught by the restrictions to support under Schedule 3 NIAA, a Human Rights Assessment should also be completed in order to determine whether any support or assistance is necessary to prevent a breach of the person's human rights, including whether the person can in fact return home. If no further services can be provided in the UK, it is best practice for the local authority and health authority to work with the individual to secure their safe return to their country of origin through the International Organisation for Migration (IOM) or direct them to other appropriate agencies, the Home Office or to suggest that they seek legal advice from a solicitor.

8. Human Rights Assessments

Schedule 3 NIAA bars local authorities from providing assistance to the four categories of person subject to immigration control, as referred to in Part 5.3 above.²⁶ In such cases, local authorities must consider whether it is necessary to provide support and assistance in order to prevent a breach of their human rights. Local authorities are entitled to look at whether the person is able to return to their country of origin in order to prevent a breach of human rights. Where return would prevent a breach, it would be lawful for a local authority to offer assistance in returning clients to their country of origin.

When looking at whether return to country of origin is a viable option, it is necessary to look at whether return is impeded for legal or practical reasons, or whether the client is unable to travel due to illness.

The relevant articles of the Human Rights Act 1998 (HRA) 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).

²⁶ EEA nationals and any dependents; persons granted refugee status by another EEA state and any dependents; refused asylum seekers who have failed to comply with removal directions, and any dependents; persons unlawfully present in the UK (this includes people who have overstayed their visas or failed asylum seekers who made their initial asylum claim in-country).

- In cases where the person is involved in court proceedings in the UK, Article 6 (right to a fair and public hearing).

Where persons with NRPF and who are caught by Schedule 3 NIAA claim that a failure of the local authority to provide support will result in a breach of Article 3 or Article 8, local authorities should request proof that an application for leave to remain in the UK has been made pursuant to either Article 3 or 8 HRA.

The NRPF Network has developed a template [Human Rights Assessment](#) that local authorities can use in assessing people with NRPF under the Human Rights Act.

8.1 Article 3 HRA

Article 3 of the HRA is as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”²⁷

If someone has submitted an application to the UKBA based on Article 3 HRA (within the immigration rules), they are *not* caught by the restrictions under Schedule 3 NIAA. In such cases the local authority must consider whether services should be provided under Section 21 NAA or Section 17 CA, as the case may be, and whether they should be provided to avoid a breach of human rights.²⁸

For those who do not have an asylum claim however, the situation is very different. Case law has established that there is no duty under the ECHR to support foreign nationals who are freely able to return to their country of origin.²⁹ If it is a viable option for the person to return home, but they refuse to do so, any hardship or degradation suffered will be a result of their decision to stay in the country and not as a result of any breach of human rights by the local authority.

The threshold for engaging Article 3 HRA is extremely high. A breach of Article 3 HRA will often be argued on the basis that a person cannot return to their country of origin because they will be deprived of the type or level of medical treatment that they are receiving in the UK. The leading case is *N v Secretary of State for the Home Department*,³⁰ in which the House of Lords held that the Secretary of

²⁷ 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.

²⁸ 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.

²⁹ see *R (Kimani) v Lambeth LBC [2003] EWCA Civ 1150; Grant v Lambeth LBC [2004] EWCA Civ 1711 (CA)*

³⁰ (2005) UKHL 31

State's decision to return a Ugandan woman with HIV and AIDS did not breach her Article 3 rights, even though she could live for decades on treatment in the UK but would most likely die within a matter of months if returned to Uganda. It was stated that:

"The test in this sort of case, is whether the applicant's illness has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity."³¹

Key matters to assess in considering Article 3 HRA rights are:

- Will the person be destitute in their country of origin?
- Does the person have support networks in their country of origin?
- Will they be able to obtain accommodation (either on their own or with family/friends)?
- Are they able to work in their country of origin?
- Are there any Social Services systems or Social Housing systems in their country of origin?
- Where there are health issues, are there any health services/treatments/medication available in their country of origin?
- Has the person's health reached a critical stage?
- Are the person's circumstances exceptional?

8.2 Article 8 HRA

Under Article 8 of the HRA:

"(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."³²

Article 8 HRA claims are most relevant to local authorities in family cases, where support or assistance is sought under Section 17 CA. More detailed information about Article 8 applications and assessments in respect of families can be found in the NRPF Network's guidance on [Assessing and Supporting Children and Families with No Recourse to Public Funds](#) (pages 9-10).

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

³¹ (2005) UKHL 31 (para. 69)

³² http://www.opsi.gov.uk/ACTS/acts1998/ukpga_19980042_en_1

outcome of an Article 8 claim before deciding whether there would be a breach of human rights if it were to refuse support.

8.3 Article 6 HRA

In cases where the person is a defendant in criminal proceedings or a party in civil proceedings, it may be relevant to consider whether return to country of origin would infringe the person's right to a fair and public hearing under Article 6 HRA.

In the case public law Children Act proceedings, it is likely that Article 8 would also arise. In the case of *PB v Haringey*,³³ the court held that the decision that it was a viable option for a mother in care proceedings to return to their country of origin was unlawful because it would result in a breach of her Article 8 rights. This was because she would not be able to participate in the proceedings, including assessments which would have an effect on the Court's determination of the care proceedings. Because the Court considered that Article 8 would be breached, it did not go on to consider whether Article 6 would also be breached in the circumstances.

8.4 Outstanding Fresh Representations to the Home Office

It is important to note that where a person has made a fresh application for asylum or fresh representations to the Home Office based on human rights, this will be relevant to the human rights assessment. This will include where someone has made fresh representations under Article 3 HRA that have not yet been recorded by the Secretary of State, and representations made under Article 8 HRA. Case law holds that a local authority cannot effectively step into the shoes of the Immigration Authorities to determine the validity of a person's human rights claim.³⁴ Rather than making a detailed assessment of the human rights arguments, the local authority should only look at whether the person's outstanding claim or representations are "manifestly unfounded". The claim/representations will be manifestly unfounded where the claim/representations merely repeat the grounds previously cited which were not accepted by the immigration authorities, or where no human rights claim is made out on the facts at all. In only the clearest of these sorts of cases will the local authority be able to conclude that there would be no breach of human rights for the family to return home, before the Home Office has determined the claim.

³³ [2007] EWHC 3275 (Admin)

³⁴ *Binomugisha v Southwark LBC* [2006] EWHC 2254(Admin) and *R (on the application of AW)(Claimant) v Croydon LBC (Defendent) : R (on the application of (1) A (2) D (3) Y) (CLAIMANTS) V Hackney LBC (DEFENDANT) & Secretary of State for the Home Department (Interested Party)* [2005] EWHC 2950 (Admin)

8.5 Conclusions on Human Rights Assessments

If it is found that assistance is needed to prevent an unlawful breach of a person's human rights for any of the issues raised above i.e. Article 3 HRA, Article 8 HRA, inability to travel or practical obstacles to return, the local authority must move on to their Section 47 NHSCCA assessment to determine whether it is the local authority that is obliged to provide services to prevent that breach. In other words, does this person have a need for 'looking after' for the purposes of Section 21 (1)(a) NAA. If it is found that assistance is not needed to prevent an unlawful breach of human rights, the local authority can attempt to resolve the case by either offering tickets to country of origin or referring the person to the IOM for assistance in returning voluntarily.

There may sometimes be a need for short term provision of sufficient length to allow arrangements to be made. Such services may need to be provided by the local authority and not by the UKBA if the person has a need for 'looking after' which prevents them from accessing UKBA asylum support as an able bodied person.

9. Parents with NRPF

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

In addition, where a Section 17 CA 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.

Detailed guidance on assessing and supporting children and families with NRPF can be found in the NRPF Network's guidance on [*Assessing and Supporting Children and Families with No Recourse to Public Funds*](#).

10. EEA nationals

EEA nationals³⁵ do not require leave to enter or to remain in the UK, however their right to reside is subject to some restrictions. The 'Community Treaty rights' that EEA nationals enjoy in other Member States are, broadly, rights to economic free movement. EEA nationals who are exercising their treaty rights come within the definition of 'qualified persons' under the Immigration (European Economic

³⁵ The European Economic Area (EEA) is made up of the 27 European Union (EU) member states plus Iceland, Liechtenstein and Norway. The member states of the EU are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, UK.

Area) Regulations 2006,³⁶ and are persons who are in the UK as jobseekers, workers (including some former workers), self-employed, self-sufficient or students. EEA migrants may apply for permanent residence after five years of residing as a qualified person.

EEA nationals from the accession states (A8 nationals),³⁷ whose countries joined the EU in 2004, face some additional restrictions to residing and working in the UK. A8 nationals are required to register their first 12 months of employment with an authorised employer under the [workers registration scheme](#). After 12 months employment in the UK, A8 nationals have the same rights as other EEA migrants. While working A8 nationals are eligible for some work related benefits. On the 9th of April 2008 the UKBA decided to extend these transitional arrangements for a further two years.

Bulgarians and Romanians (A2 nationals) face further restrictions to residing and working in the UK. A2 nationals must apply for [accession worker cards](#). Self-employed or self-sufficient A2 nationals are not required to apply for the accession worker card.

Schedule 3 NIAA prohibits local authorities from providing accommodation to those from EEA countries under Section 21 NAA and section 17 CA, unless it is necessary to prevent a breach of human rights or their rights under the EEA Community Treaties.

A Human Rights Assessment should be completed in respect of EEA nationals who have NRPF and are seeking support or assistance under Section 21 NAA and/or Section 17 CA. The assessment will also need to consider whether offering tickets to the country of origin would be a breach of 'Community Treaties rights'. The first step in determining whether support or assistance is necessary to prevent a breach of rights under the Community Treaties is to establish whether the person is exercising treaty rights so that they can be classified as a 'qualified person'.

In the case of someone who has been a worker, it is possible for a person to retain their status as a worker even if they are not currently working. Regulation 6(2) states that a person will continue to be a worker if they are/have:

- a) temporarily unable to work as a result of illness or accident;
- b) duly recorded involuntary unemployment after having been employed in the United Kingdom, provided that he has registered as a jobseeker with the relevant employment office and-

³⁶ These regulations have the purpose of determining whether an EEA national is exercising their treaty rights in order to determine eligibility for benefits in the UK

³⁷ The A8 countries are Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia. These countries joined the European Union in 2004 at the same time as Cyprus and Malta. Nationals of all ten countries are commonly referred to as A10 nationals, however the restrictions in place for A8 nationals do not apply to nationals of Cyprus or Malta.

- i. was employed for one year or more before becoming unemployed;
 - ii. has been unemployed for no more than six months; or
 - iii. can provide evidence that he is seeking employment in the United Kingdom and has a genuine chance of being engaged;
- c) involuntarily unemployed and has embarked on vocational training; or
d) voluntarily ceased working and embarked on vocational training that is related to his previous employment.

The courts have determined that the test for retention of worker status under the Regulations is whether the person has “retained a sufficiently close connection with the UK labour market”.³⁸

If the person is exercising any of their treaty rights, local authorities will then need to consider whether provision of assistance under Section 21 NAA or Section 17 CA is *necessary* to prevent a breach of those rights. Matters to consider include:

- Can the person support themselves as a worker?
- Are they able to obtain benefits or are they eligible for social housing?
- Can the person seek work in the UK from the country of origin?
- Could you assist the person in becoming a registered worker if they are an A8 national?

Local authorities can use their power under the Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002 to purchase tickets home for EEA nationals. Please see Part 13.2 for more details.

EEA migrants that are habitually resident in the UK may be eligible for non-contributory benefits and in such cases they should be referred to the relevant local authority department or the Jobcentre. For more information on the Habitual Residency Test, please see the web pages of the Department of Work and Pensions: <http://www.dwp.gov.uk>

11. Domestic Violence

If an adult has been in the UK on a spousal visa for less than two years and they and/or their dependents become victims of domestic violence, they can apply for indefinite leave to remain (ILR) under the Domestic Violence Rule (DVR). The local authority should advise the person to seek appropriate advice for an application under this rule. The application costs £750, however this fee can be waived if the applicant is destitute and provides evidence of the destitution. Local authority staff may be asked to provide evidence in support of any aspect of the application and with the agreement of the person concerned may do so in relation to reports of domestic violence.

³⁸ R(Maryam Mohamed) v LB Harrow [2005] EWHC 3194

In order to qualify for local authority support under Section 21 NAA pending the outcome of this application the M v Slough (2008) test of 'need for care and attention' still applies. Being a victim of domestic violence alone does not constitute a need for 'care and attention' under Section 21 NAA.

People on spousal visas are entitled to work in the UK. Although exercising this entitlement may not always be possible, it is good practice to explore options for individuals to self-support.

In some cases where people fear returning home because of the stigma associated with domestic violence or the breakdown of a marriage for example, an application can be made under Article 3 of the Human Rights Act 1998. If an application under Article 3 HRA is submitted, the person would be entitled to UKBA support as an asylum seeker.

In cases involving children and families, detailed guidance can be found in the NRPF Network's guidance on [Assessing and Supporting Children and Families with No Recourse to Public Funds](#).

For more information on assessing and supporting victims of domestic violence with no recourse to public funds, please see:
http://www.islington.gov.uk/DownloadableDocuments/HealthandSocialCare/Pdf/nrpf_domestic_violence_guidance.pdf

12. Accommodation and subsistence support for those eligible for assistance

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

There is no guidance on how much subsistence should be given to those supported nor on the type of accommodation that should be provided. In all cases however, the local authority must be able to account for how they have arrived at the weekly amount of subsistence and demonstrate that it will meet the basic living needs of the individual.

13. People who are ineligible for support after assessment

All assessment decisions should be recorded in writing and the outcome clearly communicated to the person in appropriate language and format. The assessment outcome should clearly state why the applicant is not eligible, or no longer eligible for support. Any adverse findings (e.g. that a person's account is not truthful) must be put to the person so that they may have a chance to

respond. Any new information provided by the person after the decision, or any alternative explanations must be considered by the local authority.

If the person has been receiving support and this is to be withdrawn, reasonable notice must be given to allow the person to make alternative arrangements and what constitutes reasonable notice will depend on the person's circumstances. Usually 'reasonable notice' will be at least 21 days.

13.1 Refused asylum seekers

Where the local authority has taken a lawful decision that a refused asylum seeker is ineligible for support, a referral to UKBA should be made for support under Section 4 of the Immigration and Asylum Act 1999 (also known as 'hard case support').

UKBA 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.³⁹

Where it has been assessed that the person is ineligible for support because they are caught by Schedule 3 NIAA and it is a viable option for them to return to their country of origin (i.e. support is not necessary to prevent a breach of human rights), the local authority should usually provide interim support and refer the person to the International Organization 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.⁴⁰

13.2 Voluntary return and tickets home

For adults to whom the local authority owes no duty to support because return to country of origin is a viable option, they should be referred on to organisations that can help them return home or arrangements should be made by the local authority for travel to the country of origin.

Visa overstayers who are not eligible for support should be referred to the International Organization for Migration (IOM)⁴¹ who may assist people to return to their country of origin and in some circumstances may provide reintegration

³⁹ <http://www.ukba.homeoffice.gov.uk/asylum/support/apply/section4/>

⁴⁰ Section 2 of the LGA gives local authorities the power to do anything which they consider is likely to promote the social wellbeing of their area; section 3(1) LGA states that section 2 powers do not enable a local authority to do anything that is prohibited by other legislation

⁴¹ A list of IOM offices is provided in the Useful Contacts section

packages. The local authority may also purchase tickets home for visa overstayers by exercising powers under Section 2 of the Local Government Act 2000.

In regards to EEA migrants (or people who gained refugee status in another EEA state), 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 (under Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002). Embassies may also be able to purchase travel tickets for their nationals. Pending their return to the relevant EEA state, the local authority can provide time-bound interim accommodation, but has no power to provide cash payments.

If an adult refuses to return to their country of origin in situations where the local authority has no duty to support, the courts have held that any hardship that follows will not be caused by a failing on the part of the authority. This is because the individual is making a choice not to return to the country of origin when it is open to them to do so. It is important to remember that duties local authorities have to children under the Children Act 1989 will remain, irrespective of the decisions of the parents.⁴²

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 refused asylum seeker (paragraph 14 of Schedule 3 NIAA). This duty should be explained to clients upon presentation to the local authority. Information should be given to people ineligible or refused support of voluntary organisations that might be able to provide support.

14. Clients who are granted indefinite leave to remain in the UK

When clients supported under community care legislation are granted indefinite leave to remain in the UK, they no longer have NRPF and are entitled to work or access mainstream benefits.

If support is to be withdrawn, a reasonable notice period must be given to enable clients to make the transition onto mainstream support.

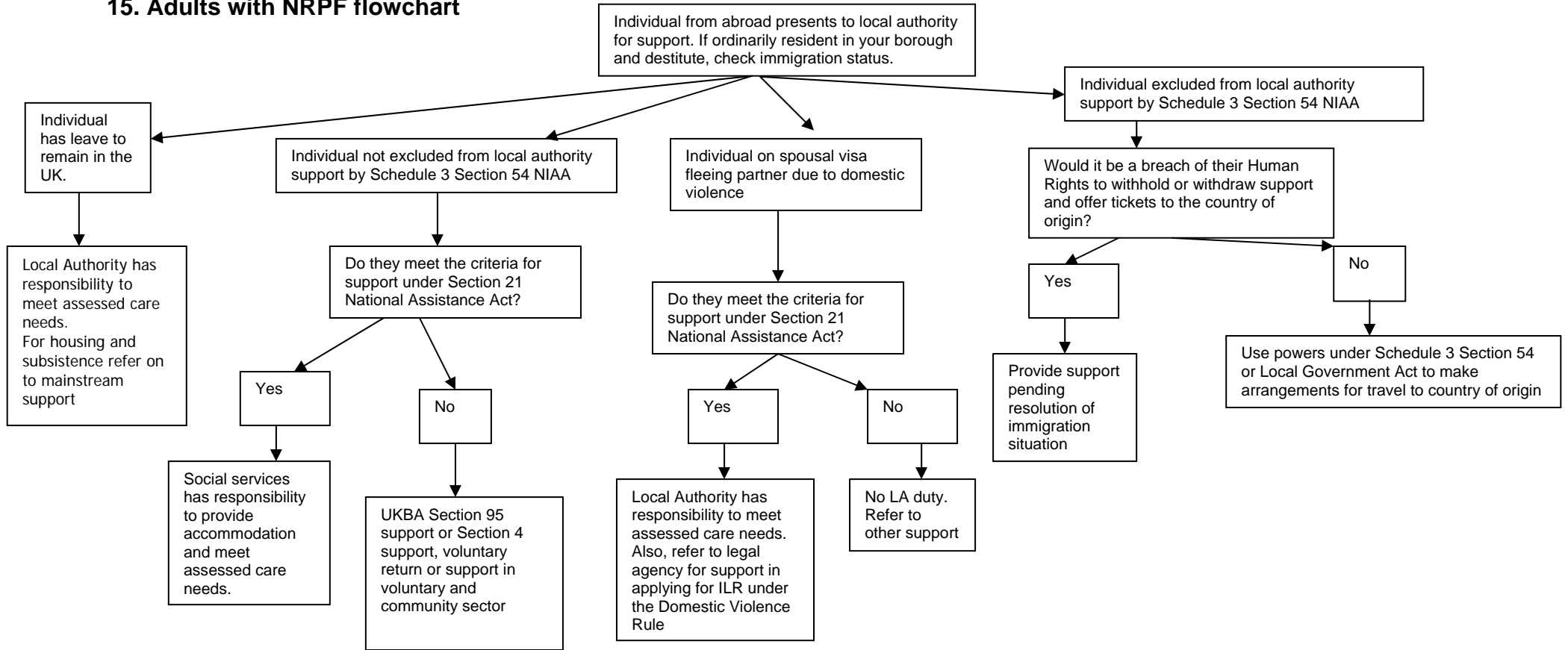
This may be a difficult period for clients, particularly single adults, who may not necessarily be deemed in priority need for social housing. Further, adults supported under Section 21 NAA are unlikely to have the funds to afford a rent deposit in order to enter the private rented sector and their additional needs associated with their particular conditions may prevent them from entering into full-time employment.

⁴² For more information, see [Assessing and Supporting Children and Families with No Recourse to Public Funds](#)

In referring clients for assistance under the Housing Act 1996 it is good practice to make referrals early and to provide the case background, any recent medical information and any assessments of relevance. Explain why the person may not be able to obtain accommodation for themselves and why a rent deposit scheme may be needed.

It may also be necessary to refer clients on to the job centre and ensure they have a National Insurance number or know how to obtain one.

15. Adults with NRPF flowchart



16. Glossary

ARE – All rights exhausted

BIA – Borders and Immigration Agency

CA – Children's Act 1989

DVR – Domestic Violence Rule

ECHR – European Convention on Human Rights

EEA – European Economic Area

HRA – Human Rights Act

IAA – Immigration and Asylum Act 1999

ILR – Indefinite Leave to Remain

LGA – Local Government Act 2000

MHA – Mental Health Act 1983

NAA – National Assistance Act 1948

NIA – Nationality, Immigration and Asylum Act 2002

NRPF – No Recourse to Public Funds

UASC – Unaccompanied Asylum Seeking Child

UKBA – United Kingdom Borders Agency

17. Further information

17.1 Resources

Chartered Institute of Housing/HACT (2008) *England Housing Rights Information*, <http://www.housing-rights.info>

Child Poverty Action Group (2007) *Migration and Social Security Handbook: A Rights Guide for People Entering and Leaving the UK* (4th edition), London: Child Poverty Action Group

Family Rights Group (2008), *Family Support Services for Asylum Seekers*
<http://www.frg.org.uk/pdfs/11A%20MASTER.pdf>

Home Office *Country of Origin Information*
http://www.homeoffice.gov.uk/rds/country_reports.html

NRPF Network (2008) *Assessing and supporting children and families with no recourse to public funds*
http://www.islington.gov.uk/DownloadableDocuments/HealthandSocialCare/Pdf/nrpf_assessment_guidance.pdf

NRPF Network (2007) *Human Rights Assessment*
http://www.islington.gov.uk/DownloadableDocuments/HealthandSocialCare/Rtf/human_rights_assessment.rtf

NRPF Network (2007) *Guidance on assessing and supporting victims of domestic violence with NRPF*

http://www.islington.gov.uk/DownloadableDocuments/HealthandSocialCare/Pdf/nrf_domestic_violence_guidance.pdf

17.2 Useful contacts

UK Borders Agency (UKBA)

<http://www.bia.homeoffice.gov.uk/>

Local Authority Communications (LA Comms) – You must be registered to use this information service

Tel: 0208 760 4527

Croydon Office: Lunar House, 40 Wellesley Road, Croydon, Surrey, CR9 2BY

Liverpool office: Reliance House, 20 Water Street, Liverpool, L2 8XU

International Organization for Migration (IOM)

www.iom.int or www.iomlondon.org

London Office: 21 Westminster Palace Gardens, Artillery Row, London, SW1P 1RR

Tel: 020 7233 0001; Fax: 020 7233 3001

Free Phone number: 0800 783 2332

Birmingham Sub-Office: Ground Floor, Norfolk House, Smallbrook Queensway, Birmingham, B5 4LJ

Tel: 0121 6335074; Mob: 07810 824997; Fax: 0121 633 5015

Bristol Sub-Office: Park House Business Centre, 10 Park Street, Bristol, BS1 5HX

Tel: 0117 907 4777

Glasgow Sub-Office: Centrum Offices, 38 Queen Street, Glasgow, G1 3DX

Tel: 0141 548 8116

Liverpool Sub-Office: 5th Floor, DBH Reception The Corn Exchange Fenwick Street, Liverpool, L2 7QL

Tel: 0151 225 0142

Manchester – every Wednesday morning, 9 am – 12 noon, Friends Meeting House, 6 Mount Street, Manchester M2 5NS

Bolton – 1st Wednesday of each month, 1 – 3.30 pm, BRASS office, Bolton Methodist Mission, Victoria Hall, Knowsley St, Bolton BL1 2AS

Blackburn – 1st Friday of each month, 10 am – 12 noon, Town Hall, King William St, Blackburn BB1 7DY

Contact the Liverpool office for more details or to book an appointment.

Refugee Council (<http://www.refugeecouncil.org.uk/>)

Details of Refugee Council regional offices can be found at:

<http://www.refugeecouncil.org.uk/contactus/offices.htm>

Details of Refugee Council advice lines can be found at:

http://www.refugeecouncil.org.uk/contactus/advice_lines.htm

Family Rights Group

<http://www.frg.org.uk/>

Children's Society

<http://www.childrensociety.org.uk/>

Rights of Women

<http://www.rightsofwomen.org.uk/>

Southall Black Sisters

<http://www.southallblacksisters.org.uk/>

Asylum Support Appeals Project

<http://www.asaproject.org/web/index.php>

British Red Cross Refugee Services

<http://www.redcross.org.uk/TLC.asp?id=81617>

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