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The August edition of the NRPF Network briefing will focus on Frequently Asked Questions. The NRPF Network secretariat has continued to receive high numbers of queries each month regarding practice. We have listed below some of the key issues that have arisen. Please note this is guidance only and does not constitute legal advice. Local authorities should seek their own legal advice on individual cases.

We have received a referral for a client who is of no fixed abode. He is registered with a GP in one Borough and occasionally stays with a friend in another Borough. Which Borough has the responsibility for undertaking an assessment?

The case of ***Shah v Barnet LBC [1983] 1 A11 ER 226*** defines ordinary residence as “regular, habitual mode of life in a particular place, continuity of which has persisted despite temporary absences ... ‘Ordinary residence’ is to be given its ‘ordinary and natural meaning’, namely a man’s abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration.”

Section 24 of the National Assistance Act 1949 (NAA) is the critical provision for determining upon which local authority has the primary obligation to provide residential accommodation to a person apparently qualifying under sec 21(1) NAA should fall.

In the event of the Secretary of State finding that an applicant was not “ordinarily resident” in any local authority area, paragraph 14 of LAC (93) 7 directs that the powers under section 24(3) are applicable.

Section 24 (3) NAA provides that:

“(3) Where a person in the area of a local authority –

(a) is a person with no settled residence, or

(b) not being ordinarily resident in the area of the local authority, is in urgent need of residential accommodation under this Part of this Act,

the authority shall have the like [power] to provide residential accommodation for him as if he were ordinarily resident in their area.”

*‘Ordinary residence’...
a man’s abode in a
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*In terms of section 24(3) NAA, three important conclusions can be drawn (taken from **R v Redbridge LBC and Camden LBC ex parte Mohammed N** [2003] EWHC 3419 (Admin)).*

- *Firstly, the relevant date for determining which “area” an applicant “is in” is the date at which the application for support is made.*
- *Secondly, the applicant is “in the area of” the local authority where, on the date of applying for support, the applicant has residential lodgings, including where such lodging is being provided on a temporary basis.*
- *Third, an applicant’s ties to a particular area beyond the one in which they are residing should not influence the decision as to which authority they are “in the area of”.*

Where local authorities are in dispute about which of them is the responsible authority interim support continues to be provided to the applicant on a without prejudice basis by one of the authorities.

If local authorities are unable to agree between themselves which of them is primarily obliged to provide such residential accommodation, the issue may be referred by them to the Secretary of State for Health under section 32(3) NAA. The Secretary of State is asked to determine the “ordinary residence” of the applicant, in order to identify which local authority is to be held responsible for providing residential accommodation for the applicant.

If someone is considered to be unlawfully present in the UK, are they still entitled to an assessment for services under section 21 NAA?

R v Wandsworth LBC ex parte O [2000] 4 A11ER 590, was a Court of Appeal case that considered the duty owed to illegal overstayers under section 21 NAA. It was found that a person's unlawful presence should not be used to deny an applicant the provision of support under section 21(1) NAA.

A person's "unlawful" presence should not be used to deny an applicant the provision of support under section 21 NAA

In the **AW v Croydon and the A, D and Y v Hackney** case it was found that a person who claimed asylum at port of entry is considered to be lawfully present in the UK. People who claimed asylum in country are caught by Schedule 3 and could only be accommodated on human rights or European treaties exceptions.

The Learned Judge found that a failed asylum seeker who is in the United Kingdom in breach of the immigration laws is, by virtue of paragraph 7, ineligible for the support or assistance set out in paragraph 1 of schedule 3, subject only to the above exceptions. The plain meaning of schedule 3 reinforced this conclusion. The decision in **R (Westminster City Council) v National Asylum Support Service** did not undermine this contention.

Therefore, a refused asylum seeker who claimed asylum in country is considered unlawfully present in the UK, but may still get section 21 support to avoid a breach of his/her human rights (Schedule 3, Sec 54 (3)).

We are supporting a HIV+ mother who is unable to breastfeed, as doing so would increase the risk of transmission of infection between mother and child. Should she be expected to purchase infant formula milk from the standard subsistence she receives for the child or should she get an extra allowance for infant formula?

Milk is an important part of a healthy diet for many pregnant women. The Asylum Support (Amendment) Regulations 2003 allows for additional payments to be made to support women who are pregnant and to children under the age of 3 years. This is to allow for the purchase of healthy food (and can include infant milk formula).

BIA provide expectant women and young children between 1 and 3 years receive an additional £3 per week and young children under 1 year receive an additional £5 per week.

The NHS provide free milk tokens for women who receive Income Support, income-based Jobseeker's Allowance, Pension Credit Guarantee Credit, or if they receive Child Tax credit only (which can also be exchanged for free fruit and vegetables).

The allocation of milk tokens varies across local authorities

Some local authorities provide a milk allowance or milk tokens for all expectant women and young children who are no recourse to public funds at NASS rates, but this varies across local authorities

My client requires dental treatment but he has been told that the dentist will charge him for treatment. Is he entitled to free dental care?

Entitlement to free NHS treatment is a complicated area but an effective way to deal with this particular problem is to support the client in completing a HC1 form. The HC1 form allows the applicant to apply for help with health costs from the NHS on the basis of low income. If the application is successful a HC2 certificate will be issued entitling the applicant to:

1. NHS prescriptions
2. NHS Dental treatment
3. NHS wigs and fabric supports
4. Sight tests, glasses and contact lenses
5. Travel to receive NHS treatment under the care of a consultant

A HC1 form allows the applicant to apply for help with health costs from the NHS on the basis of low income

If the client is an asylum seeker on NASS support, NASS should have already issued a HC2 certificate. In other cases, the supporting council should write a brief proof of support letter outlining under what legislation the person is being supported with details of the weekly subsistence provided. HC1 forms should be available at GP surgeries but if you are having difficulties finding the form the customer enquiry line is 0845 850 166.

How can I reclaim costs from NASS for NASS eligible dependants and partners of clients supported under section 21 NAA?

In the case of split households, whereby one applicant qualifies for support from the Local Authority under Section 21 (National Assistance Act 1948) and the other (whether a partner or dependant child) for Section 95 (Immigration and Asylum Act 1999) it is possible for NASS to contribute to the cost of a service.

To begin negotiations on invoicing, the Local Authority should draft a letter to:

Complex Cases Team (CCT)
Border and Immigration Agency (BIA)
Whitgift Centre, Block B, Wellesley Road,
Croydon, CR9 1AT.

NASS will contribute to the cost for each of the NASS eligible persons in the household

This letter must include the NASS reference number of the applicants concerned and the cost of the accommodation that the local authority has provided including details of utility and council tax costs (if not already included in the rent charge).

NASS can reimburse the Local Authority for up to 50% of the accommodation costs as well as the subsistence cost for each of the NASS eligible persons in the household. The CCT will advise the Local Authority of who to contact with regards to raising the monthly claim. Once the claim has been approved by NASS, the Local Authority will be able to invoice NASS for each individual case on a monthly basis.

What support can be given to a NRPF client who is All Rights Exhausted and who has no legal representation?

If the client has no solicitors involved in their case and are unsure about what previous claims were submitted or the reasons for the Home Office's refusal, it is possible to assist the person in requesting his/her immigration file from the Home Office. Having a copy of this file will be of assistance in obtaining up-to-date legal advice on whether or not there may be grounds for further representations to be made. Any new evidence or changes in circumstances since the Home Office's last decision to refuse asylum can also be highlighted on referral to the solicitors for immigration advice.

Having a copy of the Home Office file may provide details of HO decisions re the case

To make a request for a copy of a client's immigration file you will need to write to:

Home Office, Subject Access Bureau,
Information Management Directorate,
Lunar House, 40 Wellesley Road,
Croydon, CR9 2BY

You will need to provide the client's details (including Home Office Reference number, date of birth and nationality), obtain their consent by signature and state that the request is being made under the Freedom of Information 2000 and the Data Protection Act 1998. A cheque of £10 made payable to The Accounting Officer must be raised and sent with the written request.

7. Are clients who receive support under s21 of the National Assistance Act 1948, eligible for direct payments?

If a NRPF client (or an asylum seeker) is assessed as having care needs and is eligible for a service he/she is eligible for direct payments in lieu of those services in the same way as any other assessed client.

However, NRPF clients cannot employ anyone directly and local authorities must be aware of paragraph 360 of the Immigration Rules. Although this refers specifically to asylum seekers, it is taken as a reference point for considering payments to people with NRPF.

NRPF clients cannot employ anyone directly

Right to request permission to take up employment

“ An asylum seeker may apply to the Secretary of State for permission to take up employment which shall not include permission to become self employed or to engage in a business or professional activity if a decision at first instance has not been taken on the applicant's asylum application within one year of the date on which it was recorded. The Secretary of State shall only consider such an application, if, in his opinion, any delay in reaching a decision at first instance cannot be attributed to the applicant.”

As this is the case, asylum seekers or people with NRPF would need to directly purchase care from an agency rather than employing someone themselves. A further difficulty for NRPF clients in receiving direct payments is that it can be difficult for them to open up a bank account, as they may not have the necessary documentation required.

Can a local authority provide support to a pregnant woman who has no recourse to public funds and for what period?

If a pregnant woman is destitute and requires support and assistance she is able to approach the local authority for support. In the absence of any presenting needs for care and attention, local authorities may exercise a power to provide interim support to an expectant and nursing mother under s21 (1) (aa) of the National Assistance Act 1948.

Section 21 (1) (aa) does not define the term nursing mother(s) and this act is a power not a duty to provide support. Whether someone is a nursing mother is a question of fact. There has been no authoritative guidance on how long a nursing period should be allowed, although guidance can be found on the Food Agency website (<http://www.food.gov.uk/>.) The Food Agency advises that each case is different however states that cows milk is not a suitable drink for babies under one year. The alternative to breast milk in the first 6 months is infant formula. The National Childbirth Trust Q & A web page (<http://www.nct.org.uk/>) suggests that breast-feeding beyond a year is quite common for a lot of women.

In some circumstances, local authorities can provide interim support until the woman or child is able to travel and return home. It is recommended that women over 7 months pregnant or infants under 8 weeks old are unable to travel.

Local authorities may exercise a power to provide interim support until the woman or child is able to travel and return home

Other News:

We have received tremendous feedback regarding the July Briefing on supporting victims of domestic violence. Many thanks to everyone who contributed to the briefing and for those who provided positive feedback.

Amnesty International is undertaking research on domestic violence and NRPF and is interested in hearing your views.

Amnesty UK, as part of its work on **Stop Violence Against Women**, has decided to write a short report on the situation in the UK of women with uncertain immigration status who are fleeing violence. Although other areas will be discussed, the primary focus of the research will be on women with no recourse to public funding.

The report itself will place the issue of no recourse to public funding squarely within the international human rights framework. Amnesty will be reminding

the UK Government of its obligations under the international conventions it has signed and through analysis of policy and practice list recommendations to the UK Government on how it can meet those obligations. Amnesty is currently undertaking research and plans to launch the report in February 2008. Following the launch of the report, Amnesty will be campaigning on its recommendations with other partner organisations that work in this area.

Amnesty is speaking to service providers, victims of violence and councils across the UK trying to gather a nationwide understanding of the issue, including in Wales, Scotland and Northern Ireland, and is keen to hear from local authorities.

The kinds of issues Amnesty is interested to hear about are:

- Do you differentiate between women fleeing violence who have no recourse to public funding and other individuals affected by the same problem? If so which department within the council deals with these women? [For example in some councils it is the Social Work Asylum and Immigration team, whereas in others it is the Social Work Children's team as they only provide support to women with children under the Children's Act]
- Does your council have any guidance on how to deal with people who have no recourse to public funding? Do they have specific guidance on women fleeing violence with no recourse? If they do is it possible for you to provide a copy?
- How many women fleeing violence with no recourse does your council support? How many single women are amongst these? What level of support does your council provide? [For example are they provided housing in refuges, shared flats, B&Bs, etc... and is subsistence/maintenance calculated on the basis of income support]
- What, if any, are the problems caused for your team/council by the lack of central government action? [For example whether financial or otherwise. Indeed some councils have mentioned concerns with regard to the potential for an increase in community tensions.]
- Is there multi-agency cohesion in dealing with women with no recourse? How do you feel that this situation can best be resolved?

You can respond to these questions directly, or provide other information on domestic violence and NRPf by emailing Kerry at kerry.smith@amnesty.org.uk
Please respond by Friday 14th September.

For further information, please contact:

<http://www.islington.gov.uk/nrpfnetwork> or e-mail nrpf@islington.gov.uk or tel. 020 7527 7101

NRPF Network C/o Asylum Seeker and Refugee Service, Islington Council, 299 Hornsey Road, LONDON N19 4HN