

NRPF Network Briefing July 2007 Focus on domestic violence

In this Briefing:

- Background
- Establishing eligibility and assessing need
- Establishing ordinary residence
- Establishing if someone destitute plus
- Case studies
- Further information
- News

About this briefing

The NRPF Network, working with Southall Black Sisters, has developed specific guidance for local authorities on assessing and supporting victims of domestic violence, to supplement its guidance on assessing and supporting destitute people from abroad who have no recourse to public funds. This Briefing summarises the key points from the guidance, and provides some case studies and further information. There is a short section of news

Background

Local authorities are reporting that they are increasingly contacted by people seeking their support who are experiencing domestic violence and who have no recourse to public funds. The legal position regarding the assessment and support for victims of domestic violence who are from abroad can be particularly unclear.

The legal position can be unclear. There are particular immigration rules relating to victims of domestic violence

Victims of domestic violence who are from abroad and have NRPF will usually have been granted limited leave to enter the United Kingdom as a spouse or a fiancé of a person present and settled in the UK. Under the Immigration rules such people may apply for indefinite leave to remain, as long as they can provide evidence that the relationship broke down as a result of domestic violence before the end of their limited leave. However, whilst this application is pending, people in this situation have no recourse to public funds.

As with all people who have no recourse to public funds, local authorities must establish eligibility and assess need

Establishing eligibility and assessing need

As with all people who have no recourse to public funds who seek support, the local authority must conduct an eligibility test and carry out an assessment of need (See NRPF Network Guidance). These two assessments should establish that a person is 'destitute plus' – i.e. they have needs over and above mere destitution. However, there are additional aspects to these assessments for victims of domestic violence.

Rules regarding ordinary residence for victims of domestic violence are different for individuals who also have NRPF.

Establishing ordinary residence

Establishing ordinary residence is complicated by the fact that:

- Victims of domestic violence may flee to another local authority area;
- People who are NRPF are excluded from social housing, unless and until they are provided with indefinite leave to remain;
- Refugees may find it difficult to support such people, for whom they do not receive funding.

Good practice is for the two authorities to work in partnership in meeting the individual's needs and those of any dependent children.

Domestic violence may be relevant to establishing an individual is 'destitute plus'.

Establishing if someone is 'destitute – plus'

In assessing whether an individual is 'destitute-plus', domestic violence may be relevant.

Single women

The case of *Khan v Oxfordshire* indicated that there may be instances where a victim of domestic violence does have a need for care and attention which arises from domestic violence itself and not solely because of destitution. This will depend on the circumstances of each case.

Cases involving the needs of children

Where the applicant is an adult with parental responsibility for a child in their care, there should be an assessment of whether the adult is 'destitute plus'.

- 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.
- If the child is found to be destitute then the local authority has a duty to provide services including accommodation to that child.
- Expectant and nursing mothers may also qualify for support.
- Where the child or their carer is ineligible for support under Schedule 3 of the Nationality, Immigration and Asylum Act 2002, it is advisable for the local authority to seek legal advice for each individual case due to potential conflict between this and the requirements of the Children Act 89.

If an adult with responsibility for a child is not accepted as 'destitute plus' a section 17 assessment under the Children Act 1989 must be carried out.

Case study: A person accepted for local authority support

Referral received from Metropolitan Police re: Mary, a Moroccan national who entered the UK in June 2006 on a spousal visa; her husband is a British National. The Spousal visa entitles her to employment but no recourse to public funds. Mary is 5 months pregnant and the police report that in October 2006 her husband was arrested and charged with rape against her, he is currently on bail.

The questions raised are as follows: Can Mary find employment to support herself financially? Can she make an Occupational Order against her husband in order to gain access to housing? If Mary does not intend to return to Morocco, what steps have been taken to regularise her stay in the UK? Are there any friends or family who can be expected to support her?

From October 2006 to February 2007, Mary was able to survive with the help of her friends and some financial assistance from the police because her husband continued to pay the rent for her accommodation. Mary has two friends in the UK, however both are married with children and cannot accommodate her. Mary says that she has not been able to gain access to English classes and believes that her language barrier, pregnancy and lack of knowledge of the employment system would prevent her from earning the necessary money to support her and her child.

Her legal representatives state that 'Mary is unable to return to Morocco as she is pregnant with the child of a foreign national.

As such her child would have no right to Moroccan citizenship and she would face serious societal and familial prejudice'. Following the completion of reports from the Police and Victim Support Mary's legal representatives made an application for leave to remain under the Domestic Violence Rule.

Given her individual circumstances, the local authority has a duty to provide support under section 21 of the National Assistance Act (1948).

21 (1) Subject to and in accordance with the provisions of this Part of this Act, a local authority may with the approval of the Secretary of State, and to such an extent as he may direct shall, make arrangements for providing:

(a) residential accommodation for persons aged eighteen or over who by reason of age, illness, disability or any other circumstances are in need of care and attention which is not otherwise available to them.

As Mary is also pregnant the local authority could exercise its powers under section 21 (1) (aa) to provide support:

(aa) Residential accommodation for expectant and nursing mothers who are in need of care and attention which is not otherwise available to them.

Good practice entails that the local authority maintains contact with Mary's legal representative regarding her immigration status; linking Mary in with counselling support; and assisting Mary to access ESOL classes and gaining work experiences when she is ready to work.

Case study: A person not accepted for local authority support

Samira came to the UK from the Sierra Leone on a 2-year spousal visa. The spousal visa entitles Samira to work but no recourse to public funds. Samira's English is poor and as she had a newborn baby when she arrived, she has been unable to obtain work.

She lived with her husband and 2-year-old daughter in a two-bedroom accommodation. The tenancy was in the sole name of her husband. The domestic abuse started when her husband rekindled his relationship with a previous partner and began to sleep over only coming home to change his clothes and to see his daughter. He continued to support Samira and the baby financially. Samira was frequently raped and subjected to abuse by him. For safety, Samira left the family home and went to live with friends.

Samira's legal representatives made the referral to Social Services to provide support, as she had no recourse to public funds. The police were also aware of the abuse and with the assistance of legal representative, Samira sought a **non-molestation order** and an **occupation order**. Both were granted and Samira was able to move back into the home with her child.

Samira did not require a service from the local authority as she had accommodation and financial assistance and was able to support herself and her child.

Samira was referred to a local women's group to provide her with emotional support and counselling.

A non-molestation order aims to protect the victim from violence or harassment. An occupation order aims to regulate who lives in the home.¹

About Southall Black Sisters

Southall Black Sisters, a not-for-profit organisation, was established in 1979 to meet the needs of black (Asian and African-Caribbean) women. It aims to highlight and challenge violence against women; empower them to gain more control over their lives; live without fear of violence; and assert their human rights to justice, equality and freedom.

Southall Black Sisters manage a resource centre in West London that provides a comprehensive service to women experiencing violence and abuse. The Centre offers specialist advice, information, casework, advocacy, counselling and self-help support services in several community languages.

¹ Rights of Women, Domestic Violence Injunction Handbook Second Edition, 2006

THE LAW: Criminal and civil remedies - a new regime

The latest phase of the Domestic Violence Crime and Victims Act 2004 (DVCVA 2004) came into force on 1 July 2007 and makes amendments to the way in which the courts deal with a breach of non-molestation.

- Effective as of the 1 July 2007 a breach of a non-molestation order is now a criminal offence;
- Where there is a breach of a non-molestation order the woman can still seek remedy through the county court for a warrant of arrest and begin committal proceedings via the civil courts;
- A power of arrest can no longer be attached to a non-molestation order but it still can be attached to an occupation order;
- The Introduction of new a category of associated person - intimate personal relationship of significant duration. A person who can apply for a non-molestation order now includes: non-cohabiting couples, same sex couples and first cousins.
- Changes to undertakings – a breach remains only a contempt of court but the court may now issue a warrant for arrest in the event of an alleged breach.

*Phased
implementation
of legislation
provides greater
protection from
molestation*

Transitional Provisions will apply for orders granted before 1 July 2007 (DVCVA 2004 Commencement No.9 and Transitional Provisions Order 2007)

Where a power of arrest has been attached to a non-molestation order and made before 1 July 2007 any breach of the terms of the order would not be a criminal offence unless the power of arrest has expired.

A non-molestation order and Power of Arrest made before 1 July 2007 can be extended if new order is granted before the Power of Arrest expires.

If there is no power arrest attached to the non-molestation order or the Power of Arrest has expired a breach will be a criminal offence.

Resources

Guidance on Assessing and Supporting Victims of Domestic Violence is available on the NRPF Network website at www.islington.gov.uk/nrpfnetwork. Also available on the website is the Network's **Guidance on Assessing and Supporting Destitute People from Abroad who have No Recourse to Public Funds**.

How Can I Support Her? Domestic Violence, immigration and women with no recourse to public funds' Resource Pack. This resource pack for voluntary and community organisations gives comprehensive information for voluntary and community organisations supporting women with insecure immigration status who are experiencing domestic violence. It covers how to make applications under the Domestic Violence Rule, information on other immigration and asylum procedures, and details of financial support that women may be eligible for.

'Campaign to abolish no recourse to public funds' leaflet. This campaign brings together key women's organisations to highlight the devastating impact of the 'no recourse' requirement on the lives of minority women without secure immigration status who are subject to domestic violence.

Other organisations and sources of information

Further information on domestic violence can be obtained from:

- www.crimereduction.gov.uk
- www.info4local.gov.uk
- www.southallblacksisters.org.uk
- www.wrc.org.uk
- www.ashiana.org.uk

Other News

Home Office abandons threat to take failed asylum seekers' children into care

Immigration Minister Liam Byrne MP has announced that there will be no blanket implementation of Section 9, the policy that can result in support being removed from families, with the potential consequence that children are taken into care.

Minister announces no blanket implementation of Section 9

A Home Office study reported that "The evidence from the pilot ... indicates that there was no significant increase in the number of voluntary returns or removals of unsuccessful asylum-seeking families."

A Home Office review of family removals also recommends that very young children should not be separated from their mothers, and families with school-age children about to take exams should not be detained.

Extra support promised for pregnant women and mothers on Section 4

Immigration Minister Liam Byrne has said he will be making concessions over section 4 support for failed asylum seekers who are unable to leave Britain because of circumstances beyond their control. He said that extra support would be given later this year to pregnant women and mothers with children in this category, including access to basic clothing and travel as well as food and toiletries with vouchers.

BIA publishes review of family removals

The BIA has stated that the removal of families who have no right to stay in the United Kingdom remains a very important part of the Government's immigration policy. It has undertaken a review of the removal process, from the point at which families are informed that they have no right to remain in the United Kingdom, and has made recommendations. Download the executive summary at: <http://www.bia.homeoffice.gov.uk/6353/aboutus/childsafety>

Red Cross and NRPF Network host first national conference on no recourse to public funds

On 4th July 2007, the British Red Cross and the NRPF Network hosted the first national conference looking at the issue of destitute people from abroad who have no recourse to public funds. The Conference was attended by over 100 delegates from the voluntary sector, local authorities and central government.

Having representatives from different sectors was considered helpful, and many people commented that the conference provided useful networking.

Delegates identified a number of areas of consensus where further development work is needed. Delegates also identified some key areas where support is needed, these were: further events; lobbying / campaigning; support to network, collaborate and share information; and guidance. The Red Cross and NRPF Network are now working together to take these forward.

A copy of the report from the conference and presentations given will be available shortly on the NRPF Network website at www.islington.gov.uk/nrpfnetwork.

WE WANT TO HEAR FROM YOU

The NRPF Network is starting work to develop guidance on children and families. To support the development process, we would like to understand current practice, learn about any existing models of good practice and hear about your key issues and challenges.

Please help us by:

- Sending us copies of any guidelines, protocols or other frameworks that you have relating to children and families.
- Letting us know the key issues that you believe need to be addressed in the guidance.

About the NRPF Network

The NRPF Network is a network of local authorities focusing on the statutory response to destitute people from abroad who have no recourse to public funds.

If you would like to find out more about the issue of NRPF, or to join the network, you can:

- Visit our website at <http://www.islington.gov.uk/nrpfnetwork>
- E-mail nrpf@islington.gov.uk
- Call 020 7527 7101

