

Access to social services and other care and support for destitute asylum seekers with no recourse to public funds

This note highlights some of the common issues regarding eligibility for local authority support in Wales for individuals who are destitute asylum seekers with no recourse to public funds¹ (NRPF). It has been drafted by members of the Welsh Refugee Coalition and approved and issued by the Welsh Government. It aims to explain the current legal position in respect of some common misperceptions in this complex area, building on related advice elsewhere in the UK. It is intended to support social workers in their practice by providing clear factual advice on what can be done in terms of the Social Services and Well-being (Wales) Act 2014 ('the 2014 Act') to support destitute asylum seekers and relevant local authority duties and powers.

Set out below are a series of common misperceptions (in the top blue sections) about the 2014 Act and responses (in the green sections beneath) which take a positive view of action which can and should be taken.

People cannot be assisted by social services when they have no recourse to public funds (NRPF).

The NRPF condition is only a restriction on access to mainstream social security, homelessness assistance and a local authority allocation of social housing². Social services' support is not a public fund for immigration purposes and assistance should not be refused for this reason alone. *Section 35 - Duty to meet care and support needs of an adult* states that a local authority must meet an adult's needs for care and support if it is satisfied that they meet certain conditions; they are ordinarily resident in the local authority's area or of no settled residence and within the authority's area; their needs meet the eligibility criteria or the local authority considers it necessary to meet the needs in order to protect the adult from abuse or neglect or a risk of abuse or neglect. The Section 35 duty therefore applies to all residents regardless of immigration status and is only limited by the Exclusions to social services support set out under Schedule 3 of the Nationality, Immigration and Asylum Act 2002. However, whether a local authority can meet the needs for care and support is subject to section 46.³

¹ Destitution is defined under Section 95 of the Immigration and Asylum Act 1999. A person is destitute if –(a) he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or (b) he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.

² In accordance with section 115 of the Immigration and Asylum Act 1999 and paragraph 6 of the Immigration Rules."

³ Under section 46 of the Social Services and Well-being (Wales) Act 2014 a local authority may not meet the needs for care and support of an adult to whom section 115 of the Immigration and Asylum Act 1999 applies whose needs for care and support have arisen solely because the adult is destitute or because of the physical

Social services only have a duty to assist a child in an NRPF family, so can only accommodate the child and not the parent.

Section 39 - Duty to maintain family contact states that if a local authority considers it necessary in order to promote the well-being of the child, they must take such steps as are reasonably practicable to enable the child to live with the child's family. Offering to accommodate the child alone or taking the child into care is not an appropriate response in the absence of any safeguarding concerns additional to the risk to the child arising from the parent's lack of housing and income, and is likely to give rise to a breach of *Article 8 European Convention Human Rights (ECHR) - the right to respect for family life*.

Social services cannot help because the local authority does not get funding to provide support to adults, young people and children with NRPF.

Although the local authority is not under a duty to meet all formally assessed needs⁴ and may take into account its resources in determining which needs are to be met, it is under an obligation to ensure that an individual's human rights are not breached by a failure to provide support, or the provision of inadequate support. A decision to meet some – but not all – assessed needs must therefore be reached rationally and the local authority must act reasonably in the circumstances.

Social services cannot help a person who is without leave because they have not made an application for leave to remain to the Home Office.

A local authority's obligation to conduct an assessment under the Social Services and Well-being (Wales) Act 2014 arises independently from any consideration of the type of immigration status a person or family may have. A person's immigration status does not prevent an urgent assessment from being undertaken with respect to a child or young person, or adult, respectively. The absence of a pending immigration application must not prevent an assessment being carried out or interim support being provided when this is necessary. Local authorities should ensure that vulnerable individuals are signposted to immigration advice and not make assumptions about entitlements on first contact. However, the adult or parent's immigration status, and whether any applications have been made, will become relevant factors when determining whether the *Section 46 - Exception for persons*

effects or anticipated physical effects of being destitute. ³ Destitution is defined under Section 95 of the Immigration and Asylum Act 1999. A person is destitute if –(a) he does not have adequate accommodation or

³ In accordance with section 115 of the Immigration and Asylum Act 1999 and paragraph 6 of the Immigration Rules.”

⁴ Under the Care and Support (Eligibility) (Wales) Regulations 2015 a local authority must apply the eligibility test in determining whether or not an individual (this includes both adults and children) with needs identified in an assessment is entitled to have those needs met by a local authority.

subject to immigration control exclusion to social services' support apply. See also the exclusions to social services support listed in Schedule 3 of the Nationality, Immigration and Asylum Act 2002.

A pregnant woman with NRPF who has no other children in her care cannot be provided with support until her child is born.

A local authority may need to consider whether a pregnant woman with NRPF is in need of care and support and therefore can be provided with accommodation and support under the 2014 Act.

In families where the parent has leave to remain with NRPF, the local authority does not have to provide support because the parent can work.

Subject to section 46, there are provisions under the Social Services and Well-being (Wales) Act 2014 which require local authorities to provide those who have care and support needs and NRPF with housing and/or financial support in order to prevent homelessness or destitution. Although this local authority support is not funded by central government it would be unlawful for the local authority not to provide support solely on the basis that the parent 'could work' and in the absence of an assessment outlining how the full needs of the child can be met independent of this assistance. Where a parent has NRPF and has permission to work, one aspect of an assessment will involve considering whether employment is a viable option for them. Parents with NRPF are often prevented from working due to unaffordable childcare and housing costs. A local authority can only refuse to provide support when either a child is not to be found in need following an assessment, or if a need has been identified that does not meet the eligibility criteria.

Annex

The No Recourse to Public Funds Network has published resources relating to social services provision here:

<http://www.nrpfnetwork.org.uk/information/Pages/Social-Services.aspx>

Below are the full texts of the sections of the Social Services and Well-being (Wales) Act 2014 referred to above and the relevant Codes of Practice and statutory guidance can be found here:

<https://socialcare.wales/hub/sswbact>

Part 1

Section 2 Meaning of ‘well-being’

- (1) This section applies for the purpose of this Act.
- (2) “Well-being”, in relation to a person, means well-being in relation to any of the following—
 - (a) physical and mental health and emotional well-being;
 - (b) protection from abuse and neglect;
 - (c) education, training and recreation;
 - (d) domestic, family and personal relationships;
 - (e) contribution made to society;
 - (f) securing rights and entitlements;
 - (g) social and economic well-being;
 - (h) suitability of living accommodation.
- (3) In relation to a child, “well-being” also includes—
 - (a) physical, intellectual, emotional, social and behavioural development;
 - (b) “welfare” as that word is interpreted for the purposes of the Children Act 1989.
- (4) In relation to an adult, “well-being” also includes—
 - (a) control over day to day life;
 - (b) participation in work.

Part 2

Section 5 Well-being duty

A person exercising functions under this Act must seek to promote the well-being of—

- (a) people who need care and support, and
- (b) carers who need support.

Section 7 Other overarching duties: UN Principles and Convention

- (1) A person exercising functions under this Act in relation to an adult falling within section 6(1)(a) or (b) must have due regard to the United Nations Principles for Older Persons adopted by the General Assembly of the United Nations on 16 December 1991.
- (2) A person exercising functions under this Act in relation to a child falling within section 6(1)(a), (b) or (c) must have due regard to Part 1 of the United Nations Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 (“the Convention”).
- (3) For the purposes of subsection (2), Part 1 of the Convention is to be treated as having effect—
 - (a) as set out for the time being in Part 1 of the Schedule to the Rights of Children and Young Persons (Wales) Measure 2011, but
 - (b) subject to any declaration or reservation as set out for the time being in Part 3 of that Schedule.

(4) Subsection (2) does not apply to the Welsh Ministers (see, instead, the Rights of Children and Young Persons (Wales) Measure 2011).

Part 3

Section 19 Duty to assess the needs of an adult for care and support

(1) Where it appears to a local authority that an adult may have needs for care and support, the authority must assess—

- (a) whether the adult does have needs for care and support, and
- (b) if the adult does, what those needs are.

(2) The duty under subsection (1) applies in relation to—

- (a) an adult who is ordinarily resident in the authority's area, and
- (b) any other adult who is within the authority's area.

(3) The duty under subsection (1) applies regardless of the local authority's view of—

- (a) the level of the adult's needs for care and support, or
- (b) the level of the adult's financial resources.

(4) In carrying out a needs assessment under this section, the local authority must—

- (a) seek to identify the outcomes that the adult wishes to achieve in day to day life,
- (b) assess whether, and if so, to what extent, the provision of—

- (i) care and support,
- (ii) preventative services, or
- (iii) information, advice or assistance,

could contribute to the achievement of those outcomes or otherwise meet needs identified by the assessment, and

- (c) assess whether, and if so, to what extent, other matters could contribute to the achievement of those outcomes or otherwise meet those needs.

(5) A local authority, in carrying out a needs assessment under this section, must involve—

- (a) the adult, an
- (b) where feasible, any carer that the adult has.

(6) The nature of the needs assessment required by this section is one that the local authority considers proportionate in the circumstances, subject to any requirement in regulations under section 30.

Section 21 Duty to assess the needs of a child for care and support⁵

(1) Where it appears to a local authority that a child may need care and support in addition to, or instead of, the care and support provided by the child's family, the authority must assess—

- (a) whether the child does need care and support of that kind, and
- (b) if the child does, what those needs are.

(2) The duty under subsection (1) applies in relation to—

- (a) a child who is ordinarily resident in the authority's area, and
- (b) any other child who is within the authority's area.

(3) The duty under subsection (1) applies regardless of the local authority's view of—

- (a) the level of the child's needs for care and support, or
- (b) the level of the financial resources of the child or any person with parental responsibility for the child.

(4) In carrying out a needs assessment under this section, the local authority must—

- (a) assess the developmental needs of the child,
- (b) seek to identify the outcomes that—
 - (i) the child wishes to achieve, to the extent it considers appropriate having regard to the child's age and understanding,

⁵ The eligibility criteria for Section 21 support are set out in **Regulation 4**.

- (ii) the persons with parental responsibility for the child wish to achieve in relation to the child, to the extent it considers appropriate having regard to the need to promote the child's well-being, and
 - (iii) persons specified in regulations (if any) wish to achieve in relation to the child,
- (c) assess whether, and if so, to what extent, the provision of—
 - (i) care and support,
 - (ii) preventative services, or
 - (iii) information, advice or assistance,
 could contribute to the achievement of those outcomes or otherwise meet needs identified by the assessment,
- (d) assess whether, and if so, to what extent, other matters could contribute to the achievement of those outcomes or otherwise meet those needs, and
- (e) take account of any other circumstances affecting the child's well-being.
- (5) A local authority, in carrying out a needs assessment under this section, must involve—
 - (a) the child, and
 - (b) any person with parental responsibility for the child.
- (6) The nature of the needs assessment required by this section is one that the local authority considers proportionate in the circumstances, subject to any requirement in regulations under section 30.
- (7) For the purposes of subsection (1) a disabled child is presumed to need care and support in addition to, or instead of, the care and support provided by the child's family.
- (8) This section does not apply to a child looked after by—
 - (a) a local authority,
 - (b) a local authority in England,
 - (c) a local authority in Scotland, or
 - (d) a Health and Social Care trust.

Part 4

Section 35 Duty to meet care and support needs of an adult

- (1) A local authority must meet an adult's needs for care and support if it is satisfied that conditions 1, 2 and 3 are met (but see subsection (6)).
- (2) Condition 1 is that the adult is—
 - (a) ordinarily resident in the local authority's area, or
 - (b) of no settled residence and within the authority's area.
- (3) Condition 2 is that—
 - (a) the needs meet the eligibility criteria, or
 - (b) the local authority considers it necessary to meet the needs in order to protect the adult from abuse or neglect or a risk of abuse or neglect.
- (4) Condition 3 is that—
 - (a) there is no charge for the care and support needed to meet those needs, or
 - (b) there is a charge for that care and support but—
 - (i) the local authority is satisfied on the basis of a financial assessment that the adult's financial resources are at or below the financial limit,
 - (ii) the local authority is satisfied on the basis of a financial assessment that the adult's financial resources are above the financial limit but the adult nonetheless asks the authority to meet his or her needs, or
 - (iii) the local authority is satisfied that the adult lacks capacity to arrange for the provision of care and support and there is no person authorised to make such arrangements under the Mental Capacity Act 2005 or otherwise in a position to do so on the adult's behalf.
- (5) For the meaning of "financial assessment" and "financial limit" see Part 5.

(6) The duty under subsection (1) does not apply to an adult's needs to the extent that the local authority is satisfied that those needs are being met by a carer.

Section 37 Duty to meet care and support needs of a child

(1) A local authority must meet a child's needs for care and support if it is satisfied that conditions 1 and 2, and any conditions specified in regulations, are met (but see subsections (5) and (6)).

(2) Condition 1 is that the child is within the local authority's area.

(3) Condition 2 is that—

(a) the needs meet the eligibility criteria, or

(b) the local authority considers it necessary to meet the needs in order to protect the child from—

(i) abuse or neglect or a risk of abuse or neglect, or

(ii) other harm or a risk of such harm.

(4) If the local authority has been notified about a child under section 120(2)(a) or under section 85(1) of the Children Act 1989 (children accommodated by health authorities and local education authorities), it must treat the child as being within its area for the purposes of this section.

(5) The duty under subsection (1) does not apply to a child's needs to the extent that the local authority is satisfied that those needs are being met by the child's family or a carer.

(6) This section does not apply to a child who is looked after by—

(a) a local authority,

(b) a local authority in England,

(c) a local authority in Scotland, or

(d) a Health and Social Care trust.

Section 39 Duty to maintain family contact

(1) This section applies to a child—

(a) who is within the area of a local authority,

(b) whom the local authority considers has needs for care and support in addition to the care and support provided by the child's family,

(c) who is living apart from the child's family, and

(d) who is not looked after by the local authority.

(2) If the local authority considers it necessary in order to promote the well-being of the child, it must take such steps as are reasonably practicable to—

(a) enable the child to live with the child's family, or

(b) promote contact between the child and the child's family.

Section 46 Exception for persons subject to immigration control

(1) A local authority may not meet the needs for care and support of an adult to whom section 115 of the Immigration and Asylum Act 1999 ("the 1999 Act") (exclusion from benefits) applies and whose needs for care and support have arisen solely—

(a) because the adult is destitute, or

(b) because of the physical effects, or anticipated physical effects, of being destitute.

(2) For the purposes of subsection (1), section 95(2) to (7) of the 1999 Act applies but with the references in section 95(4) and (5) of that Act to the Secretary of State being read as references to the local authority in question.

(3) But, until the commencement of section 44(6) of the Nationality, Immigration and Asylum Act 2002, subsection (2) is to have effect as if it read as follows—

"(2) For the purposes of subsection (1), section 95(3) and (5) to (8) of, and paragraph 2 of Schedule 8 to, the 1999 Act apply but with references in section 95(5) and (7) and that paragraph to the Secretary of State being read as references to the local authority in question."

(4) The reference in subsection (1) to meeting an adult's needs for care and support includes a reference to doing so in order to meet a carer's needs for support.

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Welsh Refugee Coalition

The Welsh Refugee Coalition is a coalition of 47 organisations working with asylum seekers and refugees at all stages of their journey, and with the communities in which they live. Members work together to ensure that our resources are used to best effect and aim to speak with a coherent and strong voice on policies and practices affecting people seeking sanctuary in Wales.

The Third sector together with public authorities, identified the care and support needs of asylum seekers, as a priority for action. This paper builds on this work and was initially drafted by Coalition members closely involved with the area.

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<http://www.migrationscotland.org.uk/uploads/Migrants%20Rights%20and%20Entitlements%20Guidance.pdf>

The Convention of Scottish Local Authorities (COSLA) and the Scottish Government have recently published guidance on *Migrants' Rights and Entitlements to Local Authority Services and Support* and says: "*The UK immigration system is very complex as people can be issued with many different types of immigration status and documents. Misunderstandings can often arise about how the law applies to different migrant groups and what their entitlements are, for example, what assistance social services can provide to people with no recourse to public funds (NRPF).*"