

Supporting Adults and Children with No Recourse to Public Funds

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Who has no recourse to public funds?

- No recourse to public funds (“NRPF”) applies to migrants subject to immigration control and have no entitlement to certain welfare benefits, local authority housing and homelessness assistance
- Person “subject to immigration control” defined by s.115(9) Immigration and Asylum Act 1999 (“IAA 1999”):
 - Require leave to enter or remain in the UK but do not have it;
 - Have leave to enter or remain but subject to condition of NRPF
 - Have leave to enter or remain in the UK given as a result of a maintenance undertaking (e.g. adult dependent relatives)
- Criminal offence to claim public funds if NRPF
- Adverse impact on immigration application



What are “public funds”?

S.115 IAA 1999 / para 6 of Immigration Rules – list of excluded welfare benefits

S.118 IAA 1999 excludes “person subject to immigration control” from being entitled to access local authority housing and homelessness assistance

Exceptions: Modernised Guidance on Public Funds (Home Office Guidance)

Many publicly funded services not “public funds”. E.g.

- Work related welfare benefits
- Housing Association tenancy
- Education and student finance
- Free and concessionary travel
- NHS treatment
- Child maintenance
- Free school meals
- Government funded child care

Sch.3 Nationality, Immigration and Asylum Act 2002

- Sch.3 NIAA 2002 – five classes of person ineligible for support:
 1. Refugee status by another EEA state and dependants
 2. EEA Nationals and their dependants
 3. Failed asylum seekers (and dependants) who have not complied with removal directions
 4. Persons unlawfully present in the UK
 5. Failed asylum seekers with dependant children certified as having failed to take steps to leave the UK voluntarily
- Excludes receipt of certain types of support or assistance
- Duty to notify Home Office if suspect person unlawfully present in UK / refused asylum and not complied with removal directions (para 14, Sch.3)

Sch.3 NIAA 2002 and the Care Act 2014

Sch.3 NIAA 2002 excludes groups from receiving “care and support” from local authorities under Care Act 2014

BUT! Para 3, Sch.3 NIAA 2002 – requires local authority to provide care and support if necessary to avoid:

- Breach of rights under ECHR
- Breach of rights under EU Treaties (if EEA National)

Home Office has confirmed:

- Local authorities may still undertake needs assessments for adults requiring care and support (s.9 CA 2014) and carers (s.10 CA 2014)
- No prohibition regarding providing information and advice (s.4 CA 2014) or preventative duties (s.2 CA 2014)
- Power to meet urgent needs under s.19(3) CA 2014



Care Act 2014: interim support

- S.19(3) Care Act 2014 - power to meet urgent need for care and support
- Power available even if ordinary residence cannot be easily established
- If adult excluded by Sch.3 NIAA 2002 is destitute, LA must consider using power to meet urgent needs while assessments undertaken
- Limbuela v SSHD [2005] UKHL 66 – Art.3 ECHR engaged
- Definition of “destitution” – s.95 Immigration and Asylum Act 1999
 - *Evidence of no other means of support to provide accommodation and / or to meet essential living needs*

S.21 Care Act 2014 – “destitute plus”

- S.21 Care Act 2014 – LA prohibited from providing care and support if needs have arisen solely because:
 - Adult is destitute;
 - physical effects (actual or anticipated) of being destitute
- This exclusion not applicable to EEA nationals (and family)
- Exclusion unlikely to be significant due to eligibility criteria of Care Act 2014
- *SL v Westminster CC* [2013] UKSC 27 – remains good law
- *SG v LB Haringey* [2015] EWHC 2579 (Admin) – old case law upheld
- *SG v LB Haringey & Ors* [2017] EWCA Civ 322 - duty or power to provide accommodation?

S.117 Mental Health Act 1983

- Aftercare under s.117 MHA 1983 must be provided free of charge and is not subject to any immigration exclusions
- Broad discretion to CCGs / LAs about type of services provided (*Ch. 33.4 MHA 1983: Code of Practice*)
- LA may discharge duty under s.117 MHA 1983 by making direct payments (s.75(7) Care Act 2014)
- When preparing to discharge person from s.117 support regard given to immigration status and entitlement to public funds

Asylum seekers and Home Office support

- Destitute asylum seekers with pending applications / appeals – normally qualify for Home Office support (s.95 IAA 1999)
 - Accommodation and/or weekly cash support
- Refused, destitute asylum seekers may qualify for “hard cases” support under s.4 IAA 1999
- LA must still undertake needs assessment and meet eligible needs of asylum seeker / refused asylum seeker. Must not take into account availability of Home Office support (*SG v LB Haringey* [2015] EWHC 2579 (Admin))

Adults fleeing domestic violence

- An adult with care needs fleeing domestic violence needs to be assessed for care and support
- Home Office: “Domestic violence destitution concession”
 - Adult with limited LTR as spouse, civil partner, unmarried or same-sex partner of settled person
 - Relationship breakdown due to domestic violence
 - May apply for indefinite LTR

Children and families with NRPF

- S.17 of the Children Act 1989 – assistance where child in need – LA power to provide accommodation and/or financial support
- Essential safety net to protect vulnerable children and families from destitution
- Parent may be excluded from receiving ‘support and assistance’ by Sch.3 NIAA 2002 unless where necessary to avoid breach of ECHR /EC rights

Families not excluded from support

- Not all families with NRPF are excluded from assistance under s.17 CA 1989:
 - Parent has limited LTR / LTE with NRPF
 - Derivative right to reside under European law
 - Asylum seeker
 - Refused asylum seeker who claimed asylum at port of entry
 - *Zambrano* carer: Government policy of restricting access to mainstream benefits and housing lawful due to “safety net” of s.17 of Children Act 1989: *Sanneh & Ors v SSWP* [2015] EWCA Civ 49)

Emergency interim support

- Power under s.17 Children Act 1989 to provide emergency housing and / or financial support while assessment conducted
- Refusing to provide support to family who would otherwise be homeless and destitute – breach of Art.3 ECHR (*Limbuela v SSHD*)

Assessment of children in need

- Assessment under s.17 Children Act 1989 must follow statutory guidance: “*Working together to safeguard children*” (March 2015)
- Legitimate refusal to provide support if failure to cooperated / refuse to provide relevant information – *MN and KN v LB Hackney* [2013] EWHC 1205 (Admin); *N v LB Newham & Essex Council* [2013] EWHC 2475
- Need to consider whether child would be “in need” in country of origin as well as in UK

Assessment of children in need

C, T, M & U v LB Southwark [2016] EWCA Civ 707

- S.17 Children Act 1989 - target duty for LA
- Assessment must comply with statutory guidance
- May cross check with internal guidance or other statutory support schemes as long as does not constrain LA's obligation to have regard to the impact of the decision on the child's welfare;
- LA's must consider impact of the decision on the best interests of child and may take into account the needs of other children and own resources.
- Support for families with NRPF should not be fixed to other forms of statutory support without any scope for flexibility to ensure needs of individual child met

Human Rights / EC Rights Assessments

- Para 3, Sch.3 NIAA 2002 exception – HR assessment must be undertaken either with or after statutory assessment
- HR Assessment must determine:
 1. Whether adult / family can freely return to country of origin
 2. Whether return to country of origin would cause breach of ECHR for adult / family;
 3. Whether return to country of origin would cause breach of rights under EC treaties for adult / family;

HR Assessments: Can adult / family return to country of origin?

- If no legal or practical barrier to return - no duty to provide support (*Kimani v LB Lambeth* [2003] EWCA Civ 1150)
- Legal barriers – pending asylum /ECHR application with Home Office:
 - If immigration application pending (and not “obviously hopeless or abusive”) – breach of ECHR to refuse support (*Clue v Birmingham CC* [2010] EWCA Civ 460)
 - What if person refused LTR but no removal directions made?
 - *KA v Essex County Council* [2013] EWHC 43 **vs** *MN & KN v LB Hackney* [2013] EWHC 1205 (Admin)
- Practical barriers?
 - Inability to obtain identity or travel documents
 - Inability to travel due to ill health / medical condition / late pregnancy / new born baby

HR Assessments: Would return to country of origin breach ECHR?

Most relevant articles: Art. 3, 8 and 6 ECHR

Art.3 (torture, inhuman or degrading treatment or punishment):

- Absolute right
- Exception on medical grounds – extremely high threshold (i.e. deathbed cases) – (*N v SSHD* [2005] UKHL 31; *GS (India) v SSHD* [2015] EWCA Civ 40)
- Possibly lower exceptionality threshold for medical treatment of children? *SQ (Pakistan) v Upper Tribunal & Anor* [2013] EWCA Civ 1251

HR Assessments: Would return to country of origin breach ECHR?

Art.8 (right to respect for private and family life):

- Qualified right – interference permitted if lawful basis, legitimate public end and proportionate
- Medical condition/treatment relevant to family and private life
 - *MM v SSHD* [2012] EWCA Civ 279 at [23]
 - *De Almeida v LB Kensington & Chelsea* [2012] EWHC 1082 (Admin)
- Consider Art.8 rights of all family members – in UK and country of origin
- Best interests of child – primary concern: *ZH (Tanzania) v SSHD* [2011] UKSC 4
- Consider length of residence, social, cultural, educational ties

HR Assessments: Would return to country of origin breach ECHR?

Art.6 (right to fair hearing):

- Relevant where adult is defendant in criminal proceedings or party in civil proceedings
- Example: parent who requires care and support and whose children are subject to care proceedings
 - failure to accommodate parent in care proceedings – breach of Art.8 ECHR – no need to consider Art.6 ECHR – *PB v Haringey* [2008] EWHC 2255 (Admin)

EC Rights Assessment

- Establish whether person is EEA national exercising treaty rights and is a “qualified person” or family member of qualified person – Regs. 6 and 7 - Immigration (EEA) Regulations 2016
- Obtain full history to determine whether worked in past or acquired permanent right of residence
- Can person support themselves through employment?
- Able to obtain welfare benefits / local authority housing?
- Ability to seek work in UK while based in country of origin?
- LA can purchase tickets to return to country of origin - *Withholding and Withdrawal of Support* (Travel Assistance and Temporary Accommodation) Regs 2002

Concluding HR assessments

- If adult / family unable to travel but otherwise eligible for “support and assistance” - must be provided
- If no breach of human rights to return, LA can offer practical assistance to help adult / family to return (e.g. fund travel / refer to “Choices” AVR scheme)
 - Short term support or assistance may be necessary to enable travel arrangements to be made
- If return to country of origin is viable but adult / family refuses – hardship or degradation in UK will be as a result of own decision and not breach of HR
- If support or assistance going to be withdrawn – 21 days normally reasonable period

Immigration Act 2016

- Relevant provisions not yet in force
- Government aim: “reduce illegal immigration and take a tougher approach to those who should no longer be here”
- Home Office asylum support – will stop for refused asylum seeking families – except for v.limited circumstances
- New statutory scheme for LA support to:
 - Destitute families with no immigration status or single parents with British child (Zambrano families)
 - Care leavers with no immigration status
- These groups can no longer be provided with accommodation / financial support under Children Act 1989.)

Immigration Act 2016 cont.

- LA only able to provide accommodation / financial support when eligible under new scheme under para 10A/10B, Sch. 3 NIAA 2002
- Eligibility criteria = destitution + immigration status *or* 'safety net' provision – will not require LA to support when family / young person can return to country of origin
- Children still able to receive support under s.17 Children Act 1989 for additional needs (e.g. disability)
- Young person can be referred to Home Office if eligible for support for refused asylum seekers

Useful resources

No Recourse to Public Funds Network:

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

Human Rights assessment template:

<http://www.nrpfnetwork.org.uk/guidance/Pages/default.aspx#hra>

QUESTIONS?

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