

BRIEFING REPORT

GENDER AND SEXUALITY DIVERSITY FORUM PRE-MEETING

SOCIAL CARE SUPPORT FOR NON-BRITISH SPOUSES WITHOUT RECOURSE TO PUBLIC FUNDS

1 Background

The issue of support provided by the Council for non-British spouses without recourse to public funds was raised at a recent Forum meeting. The Forum member was concerned at the low level of support she believed is provided by the Council and drew the comparison with Derbyshire County Council who reportedly provide a higher level of support.

2 DCC Policy and legal position

A draft report by Robin Constable is attached for information and outlines the legal position in relation to non-British spouses without recourse to public funds.

As can be seen, it is important to understand how the legislative requirements are different for sole adults, as compared to adults with dependent children. A key point is that an adult with no recourse to public funds does not qualify for public assistance because s/he is destitute; there must be care and support needs in addition. A further key point is that a person who has suffered domestic violence is not automatically considered to have care and support needs. That said, there are clearly cases where adults do have care and support needs arising from domestic violence and in such cases we need to ensure that we provide a sensitive and suitable level of assistance.

The Derbyshire County Council guidance for staff document is also available for reference. It must be emphasised, however, that this is guidance for Children's social care staff and deals exclusively with non-British spouses without recourse to public funds who have children with them – there are different legislative requirements when children are involved.

The Derby City Council Policy is attached for information. This policy was finalised in February 2006 following consultation with stakeholders. The policy covers the responsibilities of both CYP and Adult Social Care and describes the referral routes with detailed practice guidance. (Unlike the Derbyshire policy, however, it does not stipulate the amount of financial support that will be made available, should circumstances require it).

3 Practice - the operational reality

The following description of what happens in practice relates only to adult social care, ie referrals of non-British spouses without recourse to public funds and who do not have children.

If a person in the above circumstances is referred to adult social care an assessment is completed in line with the principles and practice guidance outlined in our policy, and with reference to the legislative requirements. There are relatively few such referrals but each situation can be quite complex requiring a significant amount of time to address. Domestic violence is a feature in many of the cases which are referred.

As part of the assessment the worker will ensure that s/he has a full understanding of the circumstances of the person, the reasons leading up to their referral (particularly if the person has left their partner due to domestic violence). In addition the assessor will identify any other needs that the person has which otherwise make the person eligible for social care would support.

Every situation is different and is treated as such. Advice, information and, and support or services are provided as indicated by the assessment. If the person has family or friends willing to support them then we would not usually make any financial contribution or provide services, but may well assist the person to make contact and the necessary arrangements. In other circumstances, particularly where the person has suffered domestic violence, we may provide accommodation or refer to refuges. In some circumstances we will also provide a subsistence allowance of £20.00 pw. It is often the case that the person's need for support is relatively short term and family / friends do come forward and offer support.

4 The level of support offered

The legislation is clear that Local Authorities do not have a duty to support adults without children who have no recourse to public funds because they are destitute. This is the hard fact of being a non-British spouse in this position. However, we are sensitive to the needs of individuals and regularly provide at least some degree of support or services, particularly where the person has left the home due to domestic violence.

We do not give cash payments (except at the subsistence level). We do not have a policy of offering a prescribed level of support, as in Derbyshire, but decide each case based on the circumstances. We believe this is a fair and reasonable approach and meets the legislative requirements. We always look for other options first, but where there is no other option and there is a level of need over and above that of being destitute, then we can and do provide services to meet those needs.

We have examples of situations where we have put significant levels of time and services in place to support individuals. In our experience many people have friends or family who are able to support them and this is often the way forward.

THE LEGAL POSITION CONCERNING NON BRITISH SPOUSES WHO HAVE SUFFERED DOMESTIC VIOLENCE

1. The Problem

Non British spouses who suffer domestic violence may turn to social services for support and accommodation. Often the spouse fleeing domestic violence is the wife, who has not yet been granted indefinite leave to remain, or whose spouse visa has expired. (Once leave to remain has been granted the prohibition on receiving public funds is removed).

2. The Legal Position

2.1 A non British spouse in the UK on a spouse visa can work, but is not allowed to have recourse to public funds. Sometimes their marriage partner does not apply for their visa to be extended, so their spouse overstays the visa's duration, and is in the country unlawfully. Local authorities are not allowed to support 'overstayers', unless not supporting them will breach their human rights or European Community rights.

2.2 If the spouse has children with them the situation is a bit different. Services can be provided for children under section 17 Children Act ("children in need"), although the local authority can instead offer to return the spouse and children to the spouse's home country. Any accommodation provided under section 17 is done so on the basis that it is in the children's best interests to remain with their parents.

2.3 The position for spouses without children who are not 'overstayers' is more complicated. People who are not allowed recourse to public funds are viewed as being subject to immigration control. Those subject to immigration control cannot be supported under the National Assistance Act 1948 purely because they are destitute. (The National Assistance Act is the usual provision under

which social services support adults). They must have a need for a care and attention over and above destitution to be supported.

2.4 The case of R (Khan) v Oxfordshire in 2004 decided that, while domestic violence may cause destitution, it does not create a need for care and attention over and above destitution. In some circumstances domestic violence may make the need for care and attention more acute, for example if it causes physical or mental injury. This year the case of M v Slough clarified the law further. If someone's need for care and attention can be addressed by health services then they are not eligible for Social Services assistance. It is only a need either to be looked after physically or to be watched over to prevent harm that will qualify someone for such help.

2.5 I attended a conference on "Local Authority Support for People from Abroad" provided by the Local Government Group on 2 December. During it a barrister experienced in this area, Kelvin Rutledge, provided a table setting out the position for destitute people without recourse to public funds. So that it can be understood I need to set out the terms of section 21 (1) (a) and section 21 (1A) of the National Assistance Act 1948.

2.6 Section 21 (1)(a) of the National Assistance Act 1948 requires or empowers (as the Secretary of State shall direct) social services authorities to provide: "residential accommodation for persons who by reasons of age, infirmity or any other circumstances are in need of care and attention which is not otherwise available to them".

2.7 Section 21 (1A) of the same Act provides that: "a person to whom section 115 of the Immigration Asylum Act 1999 (exclusion from benefits) applies may not be provided with residential accommodation under sub-section 1(A) if his need for care and attention has arisen solely – (a) because he is destitute; or (b) because of the physical effects, or anticipated effects, of his being destitute.

2.8 The table is as follows:

Need to be looked after by social services?	Need arose solely as a result of destitution	Section 21 (1) (a) applies?	Section 21 (1A) applies?	Responsibility
No	N/A	No	N/A	NASS
Yes	Yes	Yes	Yes	NASS
Yes	No	Yes	No	Local Authority

3. Conclusion

Any policy dealing with support to non British spouses needs to take account of the legal position outlined above.

Robin Constable



DERBY CITY COUNCIL
Social Services

**Procedures for the assessment of, and
service provision to, men, women and
children referred to Derby Social Services
Department, who are:**

- **Claiming Asylum Status
and/or**
- **Have no recourse to public funds**

Version 2

February 2006

Version Control

Policy Lead	Hazel Lymbery	Children's Planning and Commissioning Manager
Policy Sponsor	Keith Woodthorpe	Assistant Director, Resources & Projects Children & Families
Policy Management	Simon Fogell	Project Manager – Policy Development

Document History

Issue	Date	Author	Reason
Draft	Feb 05	Hazel Lymbery	Draft for formatting by S Fogell
Version 1	Apl 05	Simon Fogell	Policy and Procedures formatted into House Style for version control
Approved at Children's and Adults Core Groups			
Circulated to Stakeholders			
Version 2	06 Feb 06	Simon Fogell	Minor amendments made to policy based on feedback of stakeholders as part of annual review process
Circulated to Stakeholders			

Contents

Section	Section Title	Page
1	Categories of claimant	Page 3
2	Legislation used by SSD for assessment and support purposes for each category of placement	Page 5
3	Referral route and practice guidance	Page 6
Appendix 1	Domestic Violence Concession	Page 10

Date agreed: Feb 2006

Version 2

Review date: Feb 2007

Director *Margaret McGlade*

Approval

page 2 of 10

Version Control and Document History

1. Categories of claimant

- **Asylum seekers**

For asylum seekers, support is provided by NASS (National Asylum Support Service), under the Asylum Support Regulations 2000 or Councils provide support under the Asylum Support (Interim Regulations) 1999. From April 2000 the Home Office is responsible for providing support and accommodation for asylum seekers who would otherwise be destitute, whilst their claim is considered.

Unaccompanied asylum seeker children become the responsibility of the Local Authority under the Children Act 1989 until their 18th birthday, and for leaving care services.

Principle

For Individuals who are eligible to claim asylum status but have chosen not to, Derby SSD will re-direct them to NASS and will not accept financial responsibility.

For children and families an initial assessment of need will be made and if SSD criteria met assistance will be offered during the referral process to NASS.

Through the assessment the family has to provide evidence that they are destitute with no access to public funds or resources

- **People with no recourse to public funds, who are lawfully in the United Kingdom**

- Where someone claims that they are lawfully in the UK, we need to see evidence of this. The service user may not have documents available as they have fled a domestic violence situation or had documents withheld by their partner. They may require your support to access evidence, such as:
- Immigration documents from their port of entry to the country and or official correspondence from the Home Office that describes their status.
- Home Office guidance requires the Council to notify them of people who are not lawfully in the UK.

Date agreed: Feb 2006

Version 2

Review date: Feb 2007

Director Approval *Margaret McGlade*

Section 1 page 3 of 10
Categories of claimant

People may have been granted exceptional leave to stay in the UK as a result of:

- long residence
- having caring responsibility
- being HIV positive or having AIDS
- being victims of domestic violence (see appendix 1)
- having a settled spouse
- being subject to recommendations by Immigration Appeal Adjudicators.

In all of these cases they should be able to show you the relevant paperwork or have reported its loss to the Police or Home Office.

- **European nationals, refugees with status abroad, failed asylum seekers and overstayers and other people unlawfully in the UK,**

It is illegal to provide support, apart from on a temporary basis pending removal, unless failing to do so would result in their human rights being breached.

Principle

Staff will demonstrate sensitivity and understanding of the risks that women and families face when fleeing domestic violence from violent partners and extended families. This will inform what support is offered both during and after the assessment process

Date agreed: Feb 2006

Version 2

Review date: Feb 2007

Director Approval *Margaret McGlade*

Section 1 page 4 of 10

Categories of claimant

2. Legislation used by SSD for assessment and support purposes for each category of placement

- **Adult services:** National Assistance Act 1948 (NAA) and National Health Service and Community Care Act 1990 and Human Rights Act, Article 14
There are two provisions under the NAA:
 - the local authority have a duty to assess needs in line with community care regulations and provide care and support where no other means are available to the individual (destitution test applies)
 - pregnant and nursing mothers do not have to satisfy the destitution test.
- **Children services:** Children Act 1989, section 17 and 20, Children Act 2004 and the Adoption and Children Act 2002

The criteria covers:

- Unaccompanied children
- Adults with children
- Duty of agencies/organisation to cooperate and work in partnership

Principle

Staff will work from the principle of ensuring that children remain with their families and if accommodation is sought for a service user this will also include their dependent children; unless safeguarding issues override this.

Date agreed: Feb 2006

Version 2

Review date: Feb 2007

Director *Margaret McGlade*
Approval

Section 2 page 5 of 10
Legislation

3. Referral route and practice guidance

Children's Services

Reception Team: Rosehill Street

- The Reception service based at Rosehill Street will receive all new referrals to SSD for the assessment and support of children and their families
- Services will be provided subject to an Initial Assessment (time-scale maximum 7 days)
- In the event of a family having no means to meet its personal needs (food/rent etc) the worker will investigate other forms of financial assistance. If necessary Social Services will agree to fund a food parcel or emergency cash to cover the initial assessment period.
- Referral to the Ashtree Asylum Seeker team will be made if appropriate (see below)
- Families moving to the Derby area who have a nominated social worker in another local authority will firstly be supported to return to the originating authority. If the assessment finds that this puts the family at risk an allocated worker will be identified. This will follow receipt of an assessment from the transferring authority which shows that eligibility criteria have been met
- Families moving to Derby whose child's name is on the Child Protection Register remain the responsibility of the originating local authority until a case transfer is agreed with Derby
- The initial assessment will need to establish eligibility for services as a child in need or in need of protection, and the sources of support the child or family have, or potentially have. This information will determine if financial support is to be offered
- The assessment will investigate sources of support from other relatives including ex-partners and fathers of children. Women will be encouraged to seek legal advice to access funds including child maintenance from their estranged partners. An assessment will need to ensure that it is safe for the service user and their children to do so.
- Attempts will also be made to determine support networks in the individuals country of origin
- Information on the Domestic Violence Concession is contained in appendix 1

Date agreed: Feb 2006

Version 2

Review date: Feb 2007

Director *Margaret McGlade*
Approval

Section 3 page 6 of 10
Referral route and practice guidance

Ashtree Family Support: (Asylum Seeker) Team
Supports:

- Young people. If aged 16yrs or under they can be accommodated in local authority care under section 20 CA1989, or section 17 funding can be used for support, including help with accommodation
- Asylum seekers who have had children
- Adults referred from NASS or Refugee Action with children who have no leave to remain and have no recourse to public funds
- Illegal Immigrants with children
- The assessment process will take account of what relationship the young person has with accompanying adults to ascertain if the minor is in a private fostering situation

Principle

Support must be refused when the person claiming support:

- Is an asylum seeker who is eligible for benefits
- Has applied to another local authority within the last 12 months
- Has deliberately made themselves and any dependents destitute
- Is not an asylum seeker
- Has friends or family willing and able to support them

Ashtree Asylum Seeker team holds further detailed practice guidance

Adult Services

Reception and Screening Team: St. Mary's Gate

- The adult reception team will receive all new referrals to SSD for the assessment and support of adults
- A needs assessment will be completed to establish the eligibility criteria of the applicant
- If the applicant is under the age of 18 years or an adult has dependent children a referral to either the Ashtree asylum seeker team or Rosehill reception team will be made as appropriate
- Pregnant women who are otherwise destitute, will be assessed for support by the reception and screening team

Date agreed: Feb 2006

Version 2

Review date: Feb 2007

Director *Margaret McGlade*
Approval

Section 3 page 7 of 10
Referral route and practice guidance

Assessing Support for Adult Asylum Seekers Quality Standards:

Adults seeking asylum in Derby can expect:

- To be welcomed to Derby, and provided with a Welcome Pack
- An interpreter service
- Their identity, documents and finances will be checked
- Housing that meets their requirements and wherever possible is culturally appropriate
- Financial support
- Assessment of their needs
- Information recorded about them will be accurate and shared with the persons consent

Practice Guidance

Staff will:

- Explore the need for interpreter services and make appropriate arrangements
- Request the applicant to provide all paperwork from the Home Office and Solicitor letters including their IND document, SAL 1 or SAL 2 documents
- If under 18 years old contact Asylum Seeker Team at Ashtree
- Check applicant's paperwork with CPC ACID Database and Immigration to ensure correct identity, date asylum claimed, asylum case remains undecided and duplicate support does not exist from other sources
- Take photocopies of the documents provided and keep on file
- If support from another source exists, liaise with the source accordingly
- If the applicant claimed support after 25th August 2000, refer them to N.A.S.S
- Interview the applicant to confirm they are destitute and have no other means of support e.g. family, eligible for benefits and the reason for their request for support.
- Ensure that the applicant is given the opportunity to have a supporter with them for the interview
- Carry out a Needs Assessment of the applicant to ascertain eligibility criteria of applicant - e.g. under the interim support scheme (claimed asylum before 25th August 2000) or disability/medical needs. If claimed asylum before 25th August 2000 enquire why they have not sought support before and how and where they have lived previously

Date agreed: Feb 2006

Version 2

Review date: Feb 2007

Director *Margaret McGlade*
Approval

Section 3 page 8 of 10
Referral route and practice guidance

- If support granted, give applicant welcome pack outlining the terms of their support, amount of personal allowance to be received each week etc
- Arrange health appointments for the applicant if required
- Arrange registration with educational outlets if required by the applicant
- Arrange clothing voucher if required
- Liase with the Housing department on the type of accommodation required for applicant
- Inform the applicant about their accommodation and transport to temporary accommodation if no permanent ones exist at the present time
- Provide information of community centres and religious places of worship relevant to the applicant
- Inform the Home Office that the applicant is now being supported by ourselves and where they will be permanently, living
- Update CPC ACID database of the new applicant
- Complete annual reviews with the applicant unless more frequent ones are needed
- Regularly check information provided by CPC ACID database in respect of the continuing eligibility of the applicant's support

Date agreed: Feb 2006

Version 2

Review date: Feb 2007

Director Approval *Margaret McGlade*

Section 3 page 9 of 10
Referral route and practice guidance

Appendix One

Domestic Violence Concession

The Domestic Violence Concession was introduced on 16 June 1999, to assist those subject to immigration control, whose marriage broke down during the probationary year as a result of domestic violence. It meant that those who left their partner during the probationary period and could prove, by way of court conviction or similar, that the relationship ended because of domestic violence, were allowed to remain in the country under Indefinite Leave to Remain (ILR).

From 18 December 2002, the types of evidence caseworkers at the Immigration and Nationality Directorate can consider as 'proof' of violence have been extended. Under the changes, if one of the above pieces of evidence is not available, at least two of the following is acceptable:

- A medical report from a hospital doctor confirming the applicant has injuries consistent with being the victim of domestic violence
- A letter from a GP who has examined the applicant and is satisfied they have injuries consistent with being the victim of domestic violence
- A police report confirming attendance at the home of the applicant as a result of domestic violence
- A letter from SSD confirming its involvement in connection with domestic violence
- A letter of support from a woman's refuge

Or one of the following:

- An injunction, non molestation order or other protection order against the sponsor, or
- A relevant court conviction against the sponsor, or
- Full details of a relevant police caution against the sponsor

An individual seeking to remain in this country on the basis of marriage must complete a one-year probationary period, during which the marriage is subsisting. Partners who are legally unable to marry must have been in a cohabitative relationship for two years in order to get leave to enter or remain.

Date agreed: Feb 2006

Version 2

Review date: Feb 2007

Director *Margaret McGlade*
Approvalpage 10 of 10
Appendix 1