



ISLINGTON

Local Authority obligations to people with No Recourse to Public Funds (NRPF)

**Olvia Fellas
Team Manager**

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Definition:

No Recourse to Public Funds is defined as:

- A person who is subject to **immigration control**; and
- Has **no entitlement** to welfare benefits, public housing or HO asylum support; and
- Most often does not have the right to work*.

* *People granted leave as spouses or civil partners are permitted to take up employment.*



Good Practice:

- All adults aged 18 or over, who are destitute, from abroad and have no recourse to public funds who present to an authority requesting support with accommodation and subsistence, should receive a **humane** and **customer focused** response.
- It is good practice for the authority to seek a **solution** to the destitution faced by the person presenting whilst keeping to its legal duties.
- Where there is no duty on the authority to provide support, it is good practice to provide **advice** and **assistance** to individuals in exploring other options such as voluntary return or s.4.



Key Steps:

- The two fundamental steps that an authority should undertake in assessing whether they have a duty to support an individual or a family are:
 1. Conducting an **eligibility** test; and
 2. Carrying out an **assessment** of need.



Eligibility Test:

In assessing eligibility a local authority should:

- (a) Establish **ordinary residence**;
- (b) Establish that the applicant is **destitute**;
- (c) Carry out an **immigration** check to establish eligibility under immigration legislation;
- (d) Check whether the authority is **excluded** from supporting the person under s.54 and schedule 3 of the Nationality, Immigration and Asylum Act 2002; and
- (e) Where the applicant falls within one of the excluded groups, carry out a **human rights** assessment to establish whether there is an obligation on the authority to provide support in order to prevent a breach of a person's human rights.



Eligibility test – ineligible under schedule 3 of Nationality, Immigration and Asylum Act 2002:

The 4 classes of people ineligible for support are:

- Person granted **refugee status** by another EEA state;
 - An **EEA national** and any dependants;
 - A failed asylum seeker who has **failed to comply with removal directions**;
 - A person **unlawfully present** in the UK (includes visa over-stayers).
- Where an individual is ineligible as defined above, the local authority can only provide support if the applicant demonstrates it is necessary in order to avoid a breach of their human rights.



Eligibility test – Human Rights considerations:

- In practice the relevant articles of the European Convention on Human Rights (ECHR) are likely to be:
 - **Article 3** (prohibition on torture or inhuman or degrading treatment or punishment); and
 - **Article 8** (respect for private and family life).

Local authorities should request proof that an application to remain in the UK under Article 3 or 8 has been made in cases involving non-EEA nationals who are otherwise ineligible for services, but who claim that a failure of the local authority to provide support will result in a breach of Article 3 or Article 8.



Assessment of Need:

In order to assess needs, local authorities should carry out, as appropriate,

- A **community care**; or
- A community **mental health**;

in order to establish whether the applicant is “destitute-plus”, that is, whether they have needs over and above “mere” destitution.

Or

- A s.17 **Children’s Act** assessment.



Establishing “destitute plus”:

- An applicant is excluded from entitlement to social services support if their claim is based solely on destitution.
- The key issue is whether there is an **imminent risk of significant harm** if support is not provided, which would only be suffered as a result of the additional circumstance of ill health, disability or other vulnerability.



Domestic Violence:

- In cases involving domestic violence, the issue is the **effect** that domestic violence has had and continues to have on the individual or their children.
- Destitution alone is not sufficient.
- Client needs to demonstrate a need for care and attention arising not only from a lack of accommodation and funds, but also for the **prevention of harm or violence** or some other circumstance.
- The test of being in need of care and attention not solely due to destitution is capable of including the effects of domestic violence.



Needs of the Child:

- Where the client is an adult with responsibility for a child, consideration must be given to undertaking a s.17 assessment to establish whether the child has needs over and above those that apply to the carer, e.g. the **existence of special needs**.
- Consideration needs to be given to the **child's right to family life** under Article 8 of the ECHR. The homeless child will be a child in need and should be accommodated in any event.
- Expectant and nursing mothers may also qualify for support under National Assistance Act.



Failed Asylum Seekers:

- Where an applicant is a failed asylum seeker and they have no need other than for accommodation and support to meet essential living needs, there is no duty on local authorities to support under s21 NAA.
- In these circumstances, referral can be made to IND for s.4 “Hard case” support.
- IND will normally provide support on condition that the applicant agrees to return voluntarily to their home country.
- International Organisation for Migration (IOM) will support the applicant in returning to country of origin.



NRPF Issues:

- Challenges facing the statutory sector have become increasingly acute as **demand for services** grows.
- **Complex and overlapping** immigration, community care and human rights law.
- Local authorities currently receive **no central funding** to meet costs.
- **Lack of statutory regulation** and guidance on how local authorities should respond.



NRPF Destitution Network

The Network operates under the auspices of the Association of Directors of Social Services (ADSS) Asylum Taskforce.

The Network aims to:

- **Share** information and good practice amongst local authorities and other agencies working in this area.
- **Work** with Government departments to raise the practical and policy issues of NRPF.
- **Obtain** reimbursement for local authorities of the costs of providing support to people with NRPF.
- **Develop** a strategic response to people with NRPF.



Contact Details:

- Web: <http://www.islington.gov.uk/nrpf>
- Web: <http://www.islington.gov.uk/nrpfnetwork>
- Email: nrpf@islington.gov.uk
- Tel: 020 7527 7101
- Fax: 020 7527 7110

NRPF Service
C/- Refugee and Asylum Service
Islington Council
299 Hornsey Road
LONDON
N19 4HN

