

Children Looked After Children's Services

Families with No Recourse to Public Funds

**West Sussex County Council
Children's Services**



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West Sussex County Council Children's Services
Families with No Recourse to Public Funds

1. Families with No Recourse to Public Funds

People who have no legal entitlement to financial support or assistance from the state are people who have no recourse to public funds. They may self-refer for support or are referred from other agencies.

Children's Social Care Services are likely to be approached by families with children or by children or young people who are unaccompanied or separated from their parent or legal/customary caregiver.

These families may be:

- a. People with refugee status from another European Economic Area (EEA) country other than the UK or are dependents of people in the UK who have refugee status from a EEA country other than the UK;
- b. People who are citizens of an EEA country other than the UK or are the dependents of people who are citizens of an EEA country other than the UK;
- c. Failed asylum seekers who have exhausted their appeal rights and who have failed to co-operate with removal directions;
- d. Persons who are unlawfully present in the UK who are not asylum-seekers, for example, people who have overstayed their leave to remain, people who have been trafficked into the country, people who entered the country illegally;
- e. People who have been granted limited leave to remain on the condition that they have no recourse to public funds, for example, people who are spouses/unmarried partners of persons with British citizenship or indefinite leave to remain, who have been granted a two year probationary period on condition of no recourse to public funds;
- f. People who have been granted discretionary leave to remain, for example, 'separated' children or young people from non-suspensive appeal countries whom the Home Office does not grant either refugee status or humanitarian protection, and are given 12 months leave to remain or until their 18th birthday, whichever is shorter;
- g. People on student visas who are unable to work and have no recourse to public funds.

(This list is by no means exhaustive and provides examples of the categories of people who may present to Children's Social Care Services as destitute and have no recourse to public funds).

2. Role of the Local Authority

The local authority is restricted by legislation in what it can provide in terms of assistance and support for all the categories of people outlined in the previous section.

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Under Section 54 of the Nationality, Immigration and Asylum Act 2002, families who fall under categories a. to d.; are not eligible for support from the local authority under Sections 17, 23C, 24A or 24B of the Children Act 1989. They are also not eligible for:

- Support or assistance under Section 21 and Section 29 of the National Assistance Act 1948;
- Support for the elderly under Section 45 of the Health Services and Public Health Act 1968;
- Section 21 of and Schedule 8 to the National Health Service Act 1977;
- Accommodation under homelessness legislation;
- Promotion of well-being under Section 2 of the Local Government Act 2000.

The Home Office allows for limited forms of assistance to be given by local authorities to some families and this could be in the form of:

- Travel assistance to leave the UK to people in category a. and b. with dependents under 18 years;
- Temporary accommodation to people in category a. and b. with dependents under 18 years awaiting the implementation of their travel arrangements;
- Temporary accommodation to people in category d. with dependents under 18 who are awaiting instructions for removal.

However, the local authority still has the following duties towards all children, young people and families regardless of their status:

- To carry out a Child in Need Assessment for all children under 18 years old who are in families, where there may be concerns about a child/children's welfare and/or safety under the Children Act 1989;
- To carry out a Child in Need Assessment for all 'separated' children under the age of 18 and to provide them with services in line with needs identified under the Children Act 1989;
- To carry out an assessment of an adult for community care services where it appears that the individual may be in need of such services under Section 47 of the National Health Service and Community Care Act 1990.

3. Procedures for Working with Families with no Recourse to Public Funds

Families with no recourse to public funds usually present in one of two different ways:

- Self-referral without an appointment;
- Self-referral or referral by an external agency, by appointment.

Social workers need to consider if there is a possibility or evidence to suggest that there are child in need concerns or the potential for child in need concerns. If there is a strong possibility of such needs as outlined above, a Child and Family Assessment should be undertaken.

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When interviewing members of the family, social workers should explore, as fully as possible, existing sources of help and support in the community, voluntary groups, social networks etc.

Because of the 'no recourse' status of the parents, social workers will also have to check the following alongside the Child in Need assessment:

1. **Key documents;**
2. **Local Connection;**
3. **Immigration status;**
4. **Destitution.**

1. **Key Documents**

- a. The person seeking a service must have sufficient identification although this may not be possible if, for example, the person is fleeing domestic abuse. In such cases evidence should be established at a later date via the assistance of a solicitor or the police;
- b. If they do not bring the necessary documentation on first presentation, the assessment can still go ahead but the social worker must inform them that any decisions regarding provision of support can only be made when they have provided the appropriate documents, and they should have all the required documents before another interview is arranged;
- c. If an interpreter is required, arrangements should be made with the interpreter to inform the person concerned of the documentation required;
- d. Those seeking a service should be asked to verify their identity and immigration status with the production of the following forms of identification:
 - Passports and birth certificates for all members of the family;
 - If available, travel documents e.g. return air tickets;
 - Home Officer papers (Application Registration Card (ARC), application letters or refusal letters) and solicitors' letters; and
 - If available, bank account statements (from the last 3 months.
- e. All identification documents supplied must be original documents, which should be photo-copied or scanned and the copy/scanned documents retained on the relevant file;
- f. If the applicant or any dependents have health needs, they must provide any documented evidence of ill health or disability for any member of the family, e.g. OT reports, mental health/psychiatric reports.

2. **Local Connection**

- a. It is important to establish where the person has a local connection as it may be another local authority, which has responsibility for this person;

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- b. Local connection criteria need not always apply, for example, if the person is at risk of violence if they return to the local authority where they have a local connection;
- c. It should be stressed social workers will follow up on the contact details given by those seeking a service to make enquiries to verify the local connection;
- d. If it is established that the person has a local connection with another local authority, social workers should refer the person to that local authority;

3. Immigration Status of the Client

- a. Nominated persons will be able to ring the Home Office to check if the person concerned has a 'live' asylum application, been refused asylum, or has some other application pending;
- b. Social workers should have the documentation outlined in Key Documents to establish the status and identity of the applicant and his/her dependents and this should be cross-referenced with the Home Office as fully as possible;
- c. Social workers need to tell over-stayers they have a duty to inform the Home Office as they have approached the local authority for assistance.

4. Destitution

- a. It is important to build up a clear picture of the family's circumstances and social workers need to assess if the client is indeed destitute, i.e. he/she has no means of supporting him/herself nor family or friends whom he/she can rely on for support;
- b. Social workers must consider if the information given both verbally and in documented form is credible. If they do not think it is credible, they must be confident that there is enough evidence to the contrary (taking care to record this) in case the local authority decision is subject to legal challenge.

Completion of Assessment

When the assessment is completed, the social worker should discuss the outcome of the assessment with their line manager.

If the family is in need of urgent/immediate support, the social worker should seek legal advice and discuss the case with the line manager. Authorisation must be sought from the Service Manager before any provision of immediate support.

Terminating Support

The decision to terminate support for an ongoing case should be made by the **Service Manager**. This needs to be informed with an up-to-date assessment.

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The social worker will need to inform the parents if their support is to be terminated. This should be done in an interview, with the use of an interpreter if necessary.

The social worker should arrange for a letter to be sent to the persons concerned including the 28 day notice period from when support will terminate and to advise them to seek legal advice if they disagree with the decision. This letter should be translated into the person's first language as appropriate.

Arranging Support

Social workers will need to ensure the Child and Family Assessment sets out the basis upon which support for the family is provided and outlining the needs of the family. This should cover:

- If the family needs an interpreter;
- Special accommodation needs;
- Health needs;
- Length of proposed support;
- The legislation under which the family is being supported, e.g. Section 17 of the Children Act 1989.

Provision of Accommodation

For families with no recourse to public funds who require accommodation the following steps should be taken:

1. The person concerned and the social worker should identify the specific needs of the family taking into account location, type of property required;
2. The social worker should identify appropriate properties;
3. The social worker and person(s) concerned should view suitable properties and identify a suitable property taking into account the needs of the family and the location;
4. Accommodation must be fully furnished;
5. The social worker will negotiate with the landlord the payment of the bond, rent and acquire the relevant information to make payment;
6. The social worker will obtain copies of documents indicating that all safety checks have been completed in relation to the property;
7. The tenancy agreement will only be in the parent's name as this will facilitate future claims for benefits if leave to remain is granted;
8. The social worker will make arrangements for payments of rent to the landlord on a monthly basis directly to his/her bank account and ensure that Council tax is also paid;
9. The social worker will ensure that prior to and after the family move into the tenancy everything is in place;
10. If the family is granted leave to remain at a future date the social worker will meet with the landlord and family to clarify payment of rent, council tax and tenancy agreement. This will be confirmed in writing to the landlord and the tenant;
11. The landlord and family has a duty to notify the local authority that they are in receipt of benefits/housing benefit and any over payment of rent to the landlord will be reclaimed by the local authority.

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4. Common Scenarios

4.1 Visa Over Stayers

Schedule 3 of the Nationality, Immigration and Asylum 2002 Act prohibits local authorities from providing assistance to visa Over Stayer families under **Section 17 CA**. A Human Rights Assessment should be carried out, including a **Child in Need** assessment, to determine whether it would be a breach of the family's human rights to withhold or withdraw support. As part of the Child in Need assessment, the local authority should determine whether the child would cease to be a Child in Need on returning to their country of origin.

It is good practice to seek to resolve the immigration situation of the family, which may involve applying for leave to remain (for example if there are family connections in the UK or 'compassionate' reasons for the family to stay in the UK). Options to return the family to the country of origin should be explored; the IOM may assist in arranging travel documents and tickets. National embassies may also be able to help.

4.2 Family Fleeing Domestic Abuse

If an adult has been in the UK on a spousal visa for less than two years and they and/or their dependent become victims of domestic abuse, they can apply for indefinite leave to remain (ILR) under the Domestic Violence Rule (DVR). The local authority should explore whether there is sufficient evidence to make a claim under this Rule. The application process incurs a cost however this fee can be waived if the applicant provides evidence of destitution.

Those making applications under the DVR must seek legal advice in completing the application.

In order to qualify for local authority support pending the outcome of this application or in cases where the adult has been in the country on a spousal visa for over two years, or in any other circumstance, they must demonstrate that the effect(s) of domestic abuse are sufficient to warrant support under Section 21 NNA. Domestic Abuse alone for single individuals does not constitute a need for "care and attention" under Section 21 NAA.

In cases involving domestic abuse within a family, support can be provided under Section 17 CA. A Child and Family Assessment must be undertaken to assess eligibility for services.

People on spousal visas are entitled to work in the UK. Although this may not always be possible, it is good practice to explore options for them to self-support.

In some cases where people fear returning home because of the stigma associated with domestic abuse or the breakdown of a marriage for example, an application may be made under Article 3 of the Human Rights Act 1998. If an application under Article 3 HRA is submitted, the family would be entitled to UKBA support.

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4.3 EEA Nationals

Schedule 3 of the Nationality, Immigration and Asylum 2002 Act prohibits local authorities from providing accommodation to families with children from EEA countries under Section 17 CA.

A Human Rights Assessment should be completed on EEA migrants who cannot support themselves and become destitute to ensure that withholding or withdrawing services or purchasing tickets home would not be a breach of their human rights. The local authority may purchase travel tickets for EEA national families to their country of origin under Section 2 LGA (providing this would not be a breach of their human rights).

EEA nationals do not require leave to enter or to remain in the UK, however their right to reside is subject to some restrictions. EEA nationals exercising their 'treaty rights' are called 'qualified persons', who are in the UK as jobseekers, workers (including some former workers), self-employed, self-sufficient or students. EEA migrants may apply for permanent residence after five years of residing as a qualified person.

EEA migrants that are habitually resident in the UK may be eligible for non-contributory benefits and in such cases they should be referred to the relevant local authority department or the job centre. For more information on the Habitual Residency Test, please see the web pages of the **Department of Work and Pensions**.

If an EEA migrant family that is not permanently resident ceases to have the right to reside in the UK, for example if they become an 'unreasonable economic burden' on the UK social system, the local authority may be able to purchase tickets home for the family, subject to a Human Rights Assessment.

EEA nationals from the accession states (A8 nationals) [1], whose countries joined the EU in 2004; face some additional restrictions to residing and working in the UK. A8 nationals are required to register their first 12 months of employment under the **Workers Registration Scheme**. After 12 months employment, A8 nationals have the same rights as other EEA migrants.

During the first 12 months, A8 nationals have NRPF and the local authority can use their power under Section 2 LGA to purchase tickets home, subject to a Human Rights Assessment.

Bulgarians and Romanians (A2 nationals) have further restrictions to residing and working in the UK. A2 nationals must apply for **Accession Worker Cards**. Self-employed or self-sufficient A2 nationals are not required to apply for the accession worker card.

[1] The A8 countries are Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia.

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4.4 All Rights Exhausted (ARE) Refused Asylum Seekers who have a Child after the ARE date

A refused asylum seeker whose first child is born 21 days after her claim is rejected and has exhausted all appeal rights will be treated as a refused asylum seeker. They are not entitled to ongoing Section 95 IAA support but may be eligible for Section 4 IAA support.

For a parent that presents to a local authority with a child born after the ARE date, a Human Rights Assessment should be carried out as detailed in Part 5.5.

4.5 Families with a Child that has a Disability

Where a **Child has a Disability**, an assessment must be conducted on the needs of the child and of the carer and their ability to care for the child. Asylum seeker families where a child is disabled should be supported by the UKBA, who should ensure that the accommodation meets the child's needs.

4.6 Nursing or Expectant Mothers

Expectant and nursing mothers may qualify support under Section 21 (1)(a) and Section 21 (1)(aa) of the NNA Test case R (Gnezele) v Leeds City Council; R (Dayina) v Leeds City Council however ruled that refused asylum seeker expectant or nursing mothers were excluded from support under NNA because they could access Section 4 IAA support.

For other expectant and nursing mothers, local authorities have a *power* not a *duty* to provide support in these circumstances. West Sussex will provide support while the woman is pregnant and for six to eight weeks following the birth of the child. On terminating support, the family should be referred on to alternative forms of support or signposted to services helping them to return home.

4.7 Leaving Care Provisions

Post-18 former unaccompanied asylum seeking children whose appeal rights are exhausted have NRPF. However, those who have been **Looked After** as children (including children supported under **Section 20 CA**) may receive assistance from the local authority under the Leaving Care Act 2000. This duty was established in the Hillingdon judgement [2] and affects those between the ages of 18 and 21 (and up to 24 if they are in full-time education). All such young adults in West Sussex are currently supported as care leavers at this time.

Former unaccompanied children supported under Section 17 CA will not be entitled to leaving care provisions on turning 18.

[2] R (Behre) v Hillingdon Council (2003)

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4.8 Safeguarding Children

Local authorities have a general duty under the Children Act 1989 to enable children to live with their families. The refusal of support under Section 17 CA may raise safeguarding concerns for the child. This is particularly acute in regards to families caught by Schedule 3 NIA who are barred from local authority support under the CA.

It is good practice to find solutions to the destitution faced by the family. This may involve exploring options for families to return to their countries of origin, subject to a Human Rights Assessment and a child in need assessment. It may also involve exploring opportunities to apply for leave to remain.