**Welsh Refugee Coalition Briefing**

**Access to Social Services and other Care and Support for destitute asylum seekers with no recourse to public funds.**

|  |
| --- |
| **Summary**  Legal obligations on local authorities to provide a safety net for the most vulnerable individuals and to protect human rights apply to everyone, although there are some detailed exemptions and tests that apply for those with no recourse to public funds (NRPF status), such as asylum seekers or some other migrants.  It has however often been difficult for both public and third sector organisations to refer individuals. The assessment process and criteria applied have also appeared opaque. This leads to significant diversion of voluntary sector efforts and at times **safeguarding** risks to individuals.  The relevant law and guidance are complex and we therefore recommend introducing a **Wales wide hub**, to be a source of expert advice and backup to LAs, provided by trained individuals for each of the three areas of vulnerable adults, families and unaccompanied minors. Under the Social Services and Well Being Act (SSWBA) **the statutory guidance should be clarified** for these cases, and some **user-friendly guidance and tools** produced, building on existing resources in England and Scotland.  Implementation in each locality should provide for a clear **referral pathway** to ensure that the most vulnerable asylum seekers are assessed by a qualified social work professional with appropriate training in NRPF requirements, with **clarity and transparency in the assessment** process and the **criteria** applied for SSWBA and human rights assessments. Appropriate **training and awareness raising** are also needed for the statutory and voluntary sector – undertaking this jointly should facilitate better **partnership working**. Within Councils it may be necessary to clarify how to make budgetary provision for these cases, which fall outside typical caseloads.  In the short term some immediate clarification is possible and this paper outlines some **guidance on** **common misconceptions, which could be circulated** to LAs as a priority. **Next steps should include arranging training, developing guidance and identifying how a hub could be set up.** This hub could either be hosted in a single local authority, using expertise of existing staff, or could comprise social workers in two or three LAs, who were trained in relevant aspects. |

**1. Issues**

Across Wales there has been a wide range of examples of destitute asylum seekers with substantial care and support needs where local partners have struggled to get appropriate local authority support. Examples vary across local authorities, but there are many common issues.

Difficulties have included sometimes not knowing who specifically to contact with severe cases, cases of what appear to be incorrect interpretations of the law in respect of eligibility for assistance with care, local entitlements or shelter and sometimes a feeling that the third sector is being asked to provide for individuals that they are unable to support safely and should not be asked to help.

Examples of cases include women in late stage pregnancy (ie over 34 weeks gestation), individuals with severe mental health or physical disabilities, hospital discharges with severe ongoing issues or where some support has been granted, but not at a level that will address the need. Voluntary groups have sometimes had to step in to cover individuals where entitlement to public support was clear, spend a day at a time in relevant offices or accept that individuals will be street homeless.

Examples of issues across the three main categories of need include:

* Families who are assisted because of the children, but supported at rates below asylum support (ie at less than the level that the UK Government deems necessary to survive). The risk of children being taken into care means some families may not approach the Council.
* Vulnerable adults being passed between social services and housing departments, resulting in very vulnerable individuals becoming street homeless. We believe this is in part due to lack of understanding of NRPF related law.
* Those under 18 and in local authority support who are often not supported to resolve their immigration status – by either challenging UASC leave, making asylum claims, or making any other form of leave application – which then causes problems when they turn 18.

Whilst NHS Wales has a formal means of referral there are also examples of this not working well and the criteria applied by Councils not being transparent. There are in principle local multi-agency meetings, including safeguarding boards, that could address some issues, but these on their own do not appear to have resolved the cases that are seen, which primarily depend on appropriate expert wellbeing and human rights assessments that lead to further action.

Behind these examples we believe there is a more general lack of understanding of NRPF / asylum related law in relation to some entitlements and that only partial interpretations can be used to pass individuals between departments. There is also a challenge of providing adequate staff training, which can be expensive compared with the relatively few cases seen and which quickly needs updating when the law changes.

**2. Impact**

In addition to the immediate impact on individuals and those supporting them there are clear safeguarding risks for anyone who is destitute, especially for those who anyway have poor English language skills. For example, a police human trafficking and modern slavery team has confirmed that some of those referred under the National Referral Mechanism were asylum seekers.

It is important to handle these individuals appropriately, not least because their NRPF status may not persist. Whilst destitute individuals may at a given time be excluded from public funds and the right to work, many are subsequently able to pursue their cases and secure status to remain in the UK.

It is clear that a lot of voluntary and publicly funded time and money is being spent supporting these individuals, even some where the legal cases for support appear to be clear cut. This clearly diverts scarce resources away from others who are in great need. We also find that the level of communications and response varies across Local Authorities and sometimes from case to case.

**3. Recommendations for action**

**1. Clarify and update statutory guidance under SSWbA** – for example there is confusion over the obligation to provide for children whose parents may not be eligible for support due to a NRPF condition. Statutory guidance should be provided to clarify the duties on LAs under the relevant sections of the SSWBA for both children and their families, and vulnerable adults (quoted in the Annex).

**2.** Provide a **Wales- specific toolkit and guidance on NRPF conditions** as applying to asylum seekers, refugees and migrants more widely, mirroring that developed for England and Scotland. This needs to be clear and digestible (eg via provision of flow charts and easy to use on-line tools; the Scottish guidance is rather lengthy, whereas the NRPF Network managed from Islington Council has some user-friendly tools).

**3.** Develop a **Wales hub** as a centre of expertise to ensure there is well-informed advice and mentoring available to social workers, covering the areas of vulnerable adults, children and families and unaccompanied minors.

**4.** Provide **collective training** in the application of NRPF and other legislative conditions, to include both local authority officials and members of the third sector and where relevant NHS, to ensure common understanding and promote effective partnership.

**5.** National and local **policies** to provide a clear **referral pathway** for vulnerable destitute asylum seekers that is **transparent** in how it operates and **open to feedback**. Where possible given confidentiality requirements develop case studies and other **evidence on the impact** of policies.

**6.** As a first step, we suggest **circulating the attached analysis of common misconceptions,** as they address issues currently encountered by local partners. More detail is in section 4 below.

**4. Legal position – common misconceptions**

The misunderstanding and lack of awareness identified is not unique to Wales. In response, COSLA and the Scottish Government have recently produced guidance on Migrants’ Rights and Entitlements to Local Authority Services and Support, saying: “*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).”*

Despite the different social services legislation of our two countries, it is useful to draw on those shared misconceptions contained within the guidance. Some common misconceptions and the legal position include:

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

LEGAL POSITION: The NRPF condition is only a restriction on access to mainstream benefits, homelessness assistance and a local authority allocation of social housing. Social services’ support is not a public fund for immigration purposes and assistance should not be refused for this reason alone. **Section 35 of the Social Services and Well-being (Wales) Act 2014 (SSWB) - 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.

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

LEGAL POSITION: **Section 39 of the Social Services and Well-being (Wales) Act 2014 (SSWB) - Duty to maintain family contact -** states that a local 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 ECHR (the right to respect for a person’s family life).**

* MISCONCEPTION: Social services cannot help because the local authority does not get funding to provide support to people with NRPF.

LEGAL POSITION: Although the local authority is not under a duty to meet all formally assessed needs 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 **(Section 35 of the Social Services and Well-being (Wales) Act 2014).** 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.

* MISCONCEPTION: 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.

LEGAL POSITION: 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 assessment from being undertaken with respect to a child or young person, or adult, respectively. The absence of a pending immigration application should not prevent an assessment being carried out or interim support being provided when this is necessary. However, the adult or parent’s immigration status, and whether any applications have been made, will be relevant factors when determining whether the **Section 46 - Exception for persons subject to immigration control - of the Social Services and Well-being (Wales) Act 2014** exclusion to social services’ support apply.

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

LEGAL POSITION: A local authority may need to consider whether a pregnant woman is in need of assistance and therefore can be provided with accommodation and support under **Section 46 of the Social Services and Well-being (Wales) Act 2014.**

* MISCONCEPTION: 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.

LEGAL POSITION: A local authority can only refuse to provide support when a child is not to be found to be in need following a assessment. Where a parent has NRPF and has permission to work, one aspect of the assessment will involve considering whether employment is a viable option for them, as a conclusion about whether a child is in need must be made by evaluating all the available information about the family’s circumstances. Parents with NRPF are often prevented from working due to unaffordable childcare and housing costs.

**Annex – Some Sections of the Social Services and Well-being (Wales) Act 2014**

Other sections apart from those cited below are also relevant:

* **Section 5** provides that a person exercising functions under SSWBA must seek to promote the well-being of people who need care and support.
* **Section 2** defines well-being broadly (more broadly than under the Care Act 2014 – note the inclusion of “securing rights and entitlements” which could be of particular relevance to those with potential immigration claims).
* **Section 84** refers to the provision of immigration services.
* Section 7, cited below, defines a duty to have due regard for the **United Nations Convention on the Rights on the Child** andArticle 8 of the **European Convention on Human Rights** provides that the Defendant must have respect for the Claimant and the children’s family and private life.

**Part 2**

**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.

**Section 21. Duty to assess the needs of a child for care and support[[1]](#footnote-1)**

(1) Where it appears to a local authority that a child may need care and support inaddition 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,

(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.

**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**

(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.

1. The eligibility criteria for Section 21 support are set out in **Regulation 4.** [↑](#footnote-ref-1)