

Families with “no recourse to public funds”.

Guidance and Procedure for Children & Families

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Families with no recourse to public funds

Guidance & Procedure.

1. Introduction

- 1.1 All families who present to Warwickshire County Council requesting support with accommodation and subsistence will receive a humane and customer-focused response. Where an adult/s with a child or children present as subject to no recourse to public funds and are destitute or face destitution the local authority need to complete an assessment of the child/ren or young person. The local authority has a duty to children in need under [Section 17, Children Act 1989](#).
- 1.2 This guidance and procedure will ensure a consistent response to people who request a service, irrespective of the department to which they initially present to. An interpreter should always be provided if the lack of these services would place a person/family at a disadvantage.
- 1.3 This guidance and procedure acts as a guide to the duties and powers of Warwickshire County Council and outlines the response to requests for service provision. It does not attempt to provide an exhaustive statement of the relevant law; nor is it a substitute for legal advice either generally or in relation to individual cases.
- 1.4 No recourse to public funds will be referred to as NRPF hereafter.

2. Definition of no recourse to public funds

- 2.1 Adults who have no legal entitlement to financial support or assistance from the state are people who have 'no recourse to public funds'. Referred to as NRPF within this document. People with NRPF are people subject to immigration control who generally fall into the categories listed below:
 - People with refugee status from another European Economic Area (EEA) country other than the United Kingdom (UK) or are dependents of people in the UK who have refugee status from a EEA country other than the UK;
 - 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;

- Failed asylum seekers who have exhausted their appeal rights and who have failed to co-operate with removal directions;
- 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 UK illegally;
- 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;
- 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;
- People on student visas who are unable to work and have no recourse to public funds.

3. What state benefits are families with NRPF's excluded from claiming?

3.1 There is an expectation that people subject to immigration controls are able to support themselves. Therefore, [Section 115 Immigration and Asylum Act \(1999\)](#) excludes: "a person subject to immigration control" from being able to claim the majority of benefit payments. Some people subject to immigration controls may be able to claim some benefits if they have previously been employed and contributed National Insurance.

- Contributory-based jobseekers allowance
- Bereavement benefit
- Contributory-based employment and support allowance
- Maternity allowance
- Income support
- Child tax credit
- Incapacity benefit
- Guardians allowance
- Retirement pension
- Statutory maternity pay
- Widows benefit
- Statutory sick pay

- 3.2 In addition, [Section 117 Immigration and Asylum Act \(1999\)](#) excludes: “a person subject to immigration control” from being able to claim:
- An allocation of local authority housing.
 - Local authority homelessness assistance.
- 3.3 Some people subject to immigration controls will be unable to claim state benefits and will be prevented by the Home Office from engaging in employment. The children in these families are vulnerable. Where an adult/s with a child or children present as subject to NRPF and are destitute or face destitution the local authority need to complete an assessment of the child/ren or young person.

4. Informing and checking with the Home Office

- 4.1 It is vital that whenever a family present themselves where there is an issue relating to their immigration status the local authority has is legal duty under [Schedule 3, Nationality Immigration and Asylum Act \(2002\)](#) to report this to the Home Office if:
- Any person they suspect or know to be unlawfully present in the UK or
 - A refused asylum seeker who has not complied with removal directions.
- 4.2 The Home Office can be contacted on a case by case basis, by contacting the Home Office’s Intervention & Sanctions Directorate (ISD) by email: EvidenceandEnquiry@homeoffice.gsi.gov.uk
- 4.3 In limited situations people with NRPF are entitled to work; this should be reflected on their immigration documents if this is the case.
- 4.4 In all cases a check with the Home Office is the recommended in case documents are not available, have been altered or passed between adults. However, original documents should be provided by the family and photocopies taken, kept on file and checked with the Home Office.
- 4.5 The family should be advised that checks will be completed with the Home Office. The family should be able to provide some of the following documents which will help prove their immigration status:
- Passport (stamp in passport)
 - Visa or Residency card

- Biometric Residency Permit (BRP)
- Asylum registration card (ARC)
- EEA registration certificate
- Home Office issued convention travel document or certificate.
- Home Office letter specifying immigration status.

5. The role of the local authority

In the following cases adults with NRPF can claim and benefit from local authority assistance. There are very strict criteria as to who would qualify for assistance from the local authority.

5.1 Community Care Needs (Health / Mental Health)

- 5.1.1 Persons with NRPF are entitled to receive medical treatment via the NHS. Also the local authority must 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 [S47 of the National Health Service and Community Care Act \(1990\)](#) i.e. through *physical or mental disability*.
- 5.1.2 If the adult has health or mental health needs the local authority is required to provide care and support as set out under the [Nationality Immigration and Asylum Act \(2002\)](#)
- 5.1.3 [Section 21 of The Care Act \(2014\)](#) states that the local authority does not need to support the adult in terms of care services if the adult has care needs solely because of destitution and not because of physical health or mental health needs.

5.2 Education

- 5.2.1 Children of parents with NRPF are entitled to state education in the UK.
- 5.2.2 All children in reception, year one and two automatically get free school meals, regardless of whether they have NRPF. For older children, normally eligibility for free school meals is linked to being in receipt of certain welfare benefits, all of which are public funds. Therefore a child may not be entitled to a free school meal if their parent has NRPF and cannot claim these benefits.
- 5.2.3 It is recommended that individual enquiries are made with schools regarding assistance they may be able to provide with the provision of

school meals and funding school uniform and school trips etc. However, there is no legal requirement for schools or the local authority where the child lives or attends school to provide this support.

5.3 NHS Treatment

- 5.3.1 People with NRPF can access NHS health care. The majority of healthcare is free to everyone but some may be charged to certain people. Services delivered by a GP, treatment for contagious diseases and accident and emergency treatment at a hospital are free of charge to everyone.
- 5.3.2 Hospital treatment is chargeable to certain people particularly visa overstayers, illegal entrants and refused asylum seeking families who are not in receipt of asylum support from the Home Office. Such people will be required to pay before hospital treatment can be provided, unless such treatment is immediately necessary or urgent. Failure to pay an NHS debt of £1000 or more could lead to an immigration application being refused.

5.4 Children's Services

- 5.4.1 The [Nationality, Immigration and Asylum Act \(2002\)](#) excludes children at Schedule 3 para 2(1) (b). Therefore children are entitled to local authority support if the local authority considers that the family are in need under [S17 Children Act \(1989\)](#).
- 5.4.2 The local authority has the following duties towards all children, young people and families regardless of their immigration status:
- To carry out a Child in Need Assessment for all children under 18 years old where there may be concerns about a child/children's welfare and/or safety and to provide them with services/support in line with their needs under [S17 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/support in line with their needs under [S17 Children Act \(1989\)](#) and accommodation under [S20 Children Act \(1989\)](#).
- 5.4.3 There are a number of possible situations which are regularly seen where assessments and support is required for example:

- A. One parent has NRPF but the other parent is a British Citizen or has an immigration status enabling them to work/claim benefits. The parent who has NRPF and the child/ren should be supported financially by the other parent. The parent who is working/claiming benefits can claim all relevant benefits in relation to themselves and the child/ren.
- B. Both parents have NRPF but the family are being adequately supported by family members.
- C. Both parents have NRPF but the family are being adequately supported via the church and/or charities.
- D. Parents claim that they are destitute, at risk of destitution and/or at risk of being homeless.

5.4.4 The UK Border Agency defines destitution as not having adequate accommodation or the inability to meet essential living needs. In order to establish destitution the family needs to demonstrate that they have no other means of support available. This would include establishing whether they are homeless or cannot meet essential living needs, and exploring whether support could be provided by:

- friends or family;
- the voluntary or community sector;
- savings;
- a sponsor;
- eligibility for welfare benefits;
- selling anything of value.

6. The Assessment

6.1 A Single Assessment should be completed for children and young people with their families if they present as destitute through having no recourse to public funds. The assessment follows the normal [Single Assessment procedure](#) and Framework for the Assessment of Children and Families. However, a Single Assessment needs to include significantly **more** than a standard assessment. A '*detailed and circumstantial*' enquiry has to take place including determination of what financial support needs the family have considering other sources of support such as friends and family. It is vital that the information given by the family is evidenced and checked. In addition a comprehensive Human Rights Assessment needs to form part of the social worker's assessment.

6.2 There is a requirement for the social worker to complete an assessment:

- a) If there is a possibility or evidence to suggest that there are Child in Need concerns or the potential for Child in Need concerns;

AND

b) If the family needs financial or other support.

6.3 In particular the following should be clearly evidenced within the assessment:

- A. **Home Office informed/checked:** The social worker needs to check the family's immigration status with the Home Office to establish if there is a 'live' asylum application, refused asylum or some other application pending.
- B. **Immigration and other documents:** The social worker needs to request to see and take photocopies of immigration documents as set out in 3.5. Other documents in the possession of the family that confirm identification/ages/health needs etc. should also be copied and kept on file.
- C. **Immigration solicitor:** The social worker should ask the parent/s' permission to speak or contact their immigration solicitor who may be already supporting the family to find out the status of any outstanding applications/appeals.
- D. **Significant events and moves:** The social worker should seek to obtain a full chronology of events for the family. This should include reasons for moving from their country of origin and/or whether the family originate from a "Safe State" as defined by the Home Office. Social workers should seek to establish where the family have lived previously and how they managed to move. Details regarding how the family travelled to the UK should be taken and consideration needs to be given to the family being subject to illegal activity like people trafficking.
- E. **Checks with other local authorities and countries:** Where children have previously lived in other parts of the UK checks need to be completed with that local authority. Where children have lived or usually live overseas, contact should be made with the appropriate Embassy or Consulate. Information can also be sought through the Foreign and Commonwealth Office who will contact their counterparts overseas.
- F. **Ability to work:** Consideration needs to be given if the adults or anyone else in the household is able to work. If they are able to work as there are no Home Office rules preventing this, consideration needs to be given to any health needs that impact on the ability to work and medical proof needs to be obtained.
- G. **Financial assessment:** If a family is claiming to be destitute then a clear picture needs to be ascertained about what means of support are available

and whether any family or friends are providing monetary support. Evidence regarding how families have supported themselves prior to the assessment should be sought and verified. This may include contacting employers, family members and the Department of Work and Pensions. Documents should be requested from the family such as wage slips, bank statements etc.

- H. **Home/property assessment:** An assessment of the current home should be completed. Social workers should consider the access to and ownership of items and assess the family's ability to support themselves. For example, do they have a car; if so how is this funded?
- I. **Support network:** Parents and members of the family should be fully considered and assessed by the social worker. Consideration should be given to a supported move and referral to another local authority if the family has significant connections out of County. The Home Office needs to be informed if families move. In addition support from community, voluntary or other social networks needs to be explored and form part of the assessment.
- J. **Children must been seen, preferably alone:** As with all assessments children should be seen, preferably alone, to explore their understanding of their family's current situation and lived experiences, wishes and feelings.
- K. **Return to country of origin:** The assessment should consider whether the child would be a Child in Need in their own country and whether repatriation of the family is a viable option.
- L. **Human Rights Assessment:** Social worker's need to consider the child's rights under articles of the [European Convention on Human Rights](#). Specific consideration need to be given to:
 - a) Article 3. If support were refused or withdrawn would the individual/family be subject to treatment amounting to torture or to inhuman or degrading treatment or punishment. It is important to note that this is an absolute right, so if proved, there is no defence. Degrading treatment occurs where a person reasonably feels fear and anguish that is humiliating, where this is caused by the action or inaction of national or local government.
AND
 - b) Article 8. Their right to respect for private and family life. How can the family be kept together/reunited? Would these rights be compromised if they returned to their country of origin? Social workers should use country of origin information to support their

assessment by providing evidence of services available in various countries. Information is available on the [Foreign & Commonwealth Office website](#).

- 6.4 If the assessment concludes that it would be a breach of the family's Human Rights to withhold or withdraw support, then it follows that support would be provided to the family using powers under [Section 17 Children Act 1989](#). However, case law has established that there is no duty to support foreign nationals who are freely able to return to their Country of origin. If it is a viable option for the family to return home, but they refuse to do so, any hardship or degradation suffered will be a result of their decision to stay in the Country and not as a result of any breach of Human Rights by the local authority.

Using interpreters and translating documents

- 6.5 When completing the assessment it is vital that family members are supported through the use of interpreters where English is not their first language. Information regarding the assessment process and a copy of the assessment should also be provided in their first language.

Support and advice

- 6.6 Seeking advice and support regarding the assessment process is vital. This will be available in teams from team managers and operations managers. The service manager with lead for NRPF Policy is also available to provide advice on the assessment or policy.
- 6.7 Where the assessment concludes that the information is not credible legal advice should always be sought. Legal services can also provide advice around human rights aspects of the assessment if required.

Reaching a conclusion

- 6.8 Great care must be taken to ensure the assessment arrives at a lawful conclusion. If conclusions are reached that the information provided is not credible, social workers will be required to provide evidence to this effect should the refusal of support be challenged legally by the family. Legal advice must always be sought before the conclusion of the assessment is authorised by a manager.
- 6.9 A notable Court case is: [R \(on the application of O and the child's Mother and Litigation Friend Ms PO\) v. LB Lambeth \(2016\) EWCH 937](#). In the above stated case the court found that the social worker was entitled to conclude that the mother was not destitute. The court said that the social worker had

made thorough enquiries and drawn his conclusions fairly from the information, including the gaps, inconsistencies and absences of explanation.

6.10 The Judge further said:

Whether a child was 'in need' for the purposes of s17 was a question for local authorities' discretion. Appropriate respect should be given to the judgements of social workers, who have a difficult job making decisions in financially straightened circumstances against a background of ever greater competing demands on their ever diminishing financial resources. Reports setting out social worker conclusions of the type in the instant case should be construed in a practical way, with the aim of seeking to discover their true meaning. However courts have to be satisfied that sufficiently diligent enquiries have been carried out and that social worker conclusions have been reached on some basis other than 'feel'. In the interests of using limited funds wisely and effectively, applicants have to give as much information as possible to help decision-makers reach a conclusion about destitution. If the evidence was that a family had been in the UK without recourse to public funds for a number of years, the local authority should enquire why and to what extent other sources of support have suddenly ceased. In the absence of a satisfactory explanation and/or adequate contact details for family and friends who have provided assistance in the past; the local authority is entitled, subject to demands of fairness, to draw inferences that the applicant is not destitute or homeless.

6.11 The Assessment should not preclude immediate support being provided to the child/children if deemed necessary. This could be in the form of money, vouchers, food or emergency accommodation.

7. Domestic Abuse

7.1 Any adult known to be suffering from domestic abuse should be supported to report the abuse to the Police.

7.2 If there is domestic abuse between two adults with NRPF then children's services' primary responsibility is to safeguard the welfare of the children in the family. Child protection procedures should be escalated as appropriate and the family's immigration status should have no bearing on decision-making in relation to child protection issues. Consideration should be given as to what measures could be put in place to offer the victim and the children additional protection.

- 7.3 Legal orders of protection for the child/ren may be necessary through the Family Courts or:
- a) The police may decide to give the perpetrator a domestic violence protection notice (DVPN) or to apply for a domestic violence protection order (DVPO); these would offer the victim and the child/ren increased protection.
 - b) The victim could be supported to apply to the Court for a Non-Molestation Order.
- 7.4 If the parent suffering domestic abuse is supported to separate from their abusive partner and takes the child/ren with them, the local authority has a continuing responsibility to support that parent to care for the child/ren under [s17 Children Act \(1989\)](#). An assessment should be carried out to inform need and interim support given if deemed necessary.
- 7.5 The local authority has no duty to financially support a NRPF parent who does not have children in their care.

Family Visa

- 7.6 An adult on a Family Visa is legally resident in the UK. It means that they are the spouse, civil partner or family member of a UK Citizen or someone legally in the UK with another form of immigration status i.e. a working visa, student visa or Leave to Remain.
- 7.7 There are restrictions on Family Visas which means that the adult with the visa has no ability to access public funds. They are expected to be financially dependent on their spouse or partner. If an adult with children is dependent on their spouse or partner to meet their financial needs and they leave their partner; they may be left without an income. A parent with visa restrictions making them ineligible for public funds who is claiming destitution should be subject to assessment and should be supported to care for their children under [s17 Children Act](#) as appropriate. A parent who has left their partner may want to return to their family and this should be supported as per [s7 Children Act](#).
- 7.7 It remains the case that the parent who does not have the Family Visa should be financially supporting their spouse or partner and the children. This may however be difficult due to the circumstances. Mediation or liaison via an intermediary could be supported if safe.

The Destitution Domestic Violence Concession (DDVC)

- 7.8 An adult can be granted by the UK Border Agency Destitution Domestic Violence Concession (DDVC) which allows temporary Leave to Remain for three months, which allows them access to public funds such as Jobseeker's Allowance, income support and housing benefit. The temporary Leave to Remain would replace the Family Visa. Only persons who are eligible can apply for the concession.
- 7.9 Temporary support for a parent/child may be necessary under [S17 Children Act \(1989\)](#) until their DDVC application has been processed and they have been granted the concession.

Eligibility

- 7.10 Spouses of EEA Nationals are ineligible for the Concession as are the spouses of Commonwealth Soldiers. EEA Nationals (European Economic Area Nationals) are: Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Iceland, Liechtenstein and Norway).
- 7.11 Those who are eligible must meet the following criteria:
- a) An adult who has entered the UK or been given leave to remain as a spouse, civil partner, unmarried or same sex partner of a British Citizen or someone settled in the UK.
 - b) The adult has had their relationship end due to domestic abuse.
 - c) The adult is destitute and in need of financial help.
 - d) The adult intends to make a claim to stay permanently in the UK under the domestic violence rules.
- 7.12 An adult who is eligible for the Concession can apply whether they have children or not. An adult who meets the eligibility requirements can submit the [Protecting Victims of Domestic Violence Notification Form](#) which can be obtained from: www.ukba/homeoffice.gov.uk. The form can be emailed or posted to the UK Border Agency.
- 7.13 During the three month temporary Leave to Remain period the adult is expected to:
- a) Submit an application for Indefinite Leave to Remain;
 - b) Apply under another immigration category; or
 - c) Leave the UK.

- 7.14 The adults who are granted Temporary Leave to Remain under the Concession are encouraged by the UK Border Agency to submit an application to formalise their immigration status within six weeks. If their substantive application is rejected the applicant has a right of appeal.

8. Service Provision

- 8.1 Families may not be aware that they can access health and education provision. Social workers must ensure that children are registered with a GP and help the parents apply for local school if they not already registered with these services.

The provision of accommodation:

- 8.2 Claims of destitution or impending destitution are often accompanied by a threat of homelessness. A child without accommodation should be automatically deemed a *child in need* (R v. Northaven District Council, Ex p Smith (1994)). Local authority and housing associations are limited in the support they can provide:

The local authority housing department

- 8.3 The local authority's housing department:
- a) Is NOT able to allocate a family with NRPF housing; and
 - b) Is NOT able to assist family with NRPF with housing under homelessness provisions. (s117 Immigration and Asylum Act 1999).

Housing associations

- 8.4 Housing associations are independent, not for profit organisations that provide low cost housing. Parents with NRPF who apply to housing associations themselves can enter into a contract with them. This does not count as accessing a public fund. **However, if the parents are referred to the housing association by the local authority (children/adults/housing/any other part of the council) then the Home Office considers this accessing public funds and it is NOT permitted.**
- 8.5 Children's social care teams should actively explore whether the family can live with family or friends. If this is not possible families can be accommodated in temporary accommodation (e.g. Bed & Breakfast) or in more long-standing accommodation (e.g. private rental accommodation) funded by children's services (if assessment deems it necessary).

- 8.6 Accommodation provided by the local authority children's team is provided under [S17 Children Act \(1989\)](#) for the children and the parents are provided with accommodation with their children to care for them. Separation of parent/s and children is unreasonable unless there are safeguarding concerns. The children and parents have a right to home and family life under [Article 8 of the Human Rights Act \(1998\)](#). Therefore unless there is a safeguarding concern which may result in removal of the child from a parent, this should not be considered or form any part of the assessment.
- 8.7 Where accommodation is provided by the local authority children's team this must be agreed by a service manager who must satisfy themselves that best value for money has been achieved. Any tenancy agreements must be checked by legal services and agreed by service managers.

Additional requirements for private landlords

- 8.8 A Statutory Code of Practice in relation to Landlords came into effect as of the 01/02/16 [pursuant to [S32 \(6\) \(a\) of the Immigration Act \(2014\)](#). The Code brings into force [S22 of the Immigration Act \(2014\)](#) which states that: *A Landlord must not authorise an adult to occupy premises under a residential tenancy agreement if the adult is disqualified as a result of their immigration status.* The Code applies to:
- Landlords (both businesses and individuals) who let accommodation with a lease or tenancy agreement;
 - Occupiers (including those in social housing) who sub-let their accommodation, who will be landlords for the purposes of the Landlord Scheme, and
 - Landlords or occupiers who take in lodgers to share their accommodation with a licence to occupy the property.
- 8.9 Breach of the code would result in a fine. The Code of Practice applies to new tenancies or renewals of old tenancies. The Code of Practice states that landlords have to check documents to ensure that the person has 'the right to rent'. However, the following are exempt from the Code:
- Accommodation provided by a local authority under a statutory power to prevent homelessness. Onus falls on the local authority to check documentation;
 - Social housing [already have to consider a tenant's immigration status under [Para 1 Sch3 of the Immigration Act \(2014\)](#)];
 - Hostels and refuges;
 - Care homes, hospitals and hospices;
 - Tied accommodation (accommodation provided with a job);
 - Halls of residence;
 - Leases of +7years;

- Non-rent paying house guests.

- 8.10 The Code sets out acceptable documents and states landlords should complete a check with the Home Office if they have queries or if all relevant documents can be produced by the family. The Code states that the landlord has to satisfy themselves that the proposed tenant has a 'right to rent' by:
- a) Seeing certain documents in the presence of the proposed tenant;
 - b) Satisfying themselves that the document/s are genuine;
 - c) Retaining copies of the documents and
 - d) Dating the copies with the date that the documents were seen.
- 8.11 A person with an application outstanding or an appeal in progress is deemed a person who has a *discretionary right to rent*. Therefore, they have a right to rent until their application is refused/appeals exhausted.
- 8.12 Landlords must complete checks on tenants to check their immigration status has not changed. If a tenant has lost their *discretionary right to rent* as their application has been refused or their appeals have been exhausted; then the Landlord must make a report to the Home Office and retain a copy of the notification number provided; this provides protection against a penalty.
- 8.13 If the local authority ascertains that a tenant has lost their *discretionary right to rent* as their application has been refused or their appeals have been exhausted; then the local authority must make a report to the Home Office and retain a copy of the notification number provided; this provides protection against a penalty. The report to the Home Office must state:
- The full name, date of birth and nationality of the occupier believed to have no right to rent;
 - The address of the premises they are occupying;
 - The name and contact address of the landlord;
 - Where relevant, the name and contact address of the agent; and
 - The date on which the occupier first took up occupation.
- 8.14 Landlords who refuse to rent on the grounds of immigration status could be prosecuted under [Equality Act legislation](#). The government particularly highlights in a separate document ([Code of Practice for Landlords: avoiding unlawful discrimination when conducting 'right to rent' checks in the private rented residential sector](#)) that Landlords should not make assumptions on the basis of a prospective tenant's immigration status or inability to provide documents.

Subsistence Support

- 8.15 Case law has determined that payments or provision (vouchers, food etc.) to alleviate destitution must allow for exceptions to be made in order to meet additional or individual arising need. So a set amount for all families is not appropriate, individual needs must be considered. Child Benefit is not designed to meet the subsistence needs of children so it is not rational or lawful to set standard rates in line with these amounts. In addition, lack of complaint from a family does not mean that the local authority can be satisfied that they are making payments appropriate to meet the children's needs without an assessment being completed and regularly updated.
- 8.16 When making subsistence payments reference should be made to the [Delegated Decision Making Policy](#). All payments should consider the individual circumstances of the family. Agreement from a service manager is always required when payments are made to those with NRPF and should be subject to regular review to ensure the individual circumstances have not changed.

9. Support to return to country of origin or another country

- 9.1 Under the [Travel Assistance and Temporary Accommodation Regulations 2002](#), the local authority can only offer travel fares if:
- A) The parent/s have refugee status in another EEA State
 - OR
 - B) The parents are EEA Nationals EEA (European Economic Areas)
- 9.2 In addition the local authority must be certain that the child/children would not be 'in need' if they were to travel to their country of origin or another country.
- 9.3 In relation to families who fall outside the above criteria, the Home Office offers financial reintegration packages to families who receive their assistance to return to their Country of origin. Home Office Voluntary Departures Department can be contacted by for further advice and assistance by calling 0300 0040202 or emailing voluntaryreturns@homeoffice.gsi.gov.uk
- 9.4 There are some practical barriers to families returning to their country of origin, such as:
- Those in the late stages of pregnancy who cannot fly upon a plane.
 - Those with health conditions which mean that they cannot travel.
 - Those who have no travel documents.

- Those from countries where there is no safe route of return. This list changes from time to time and social workers should contact the [Local Immigration Team based in Solihull](#) for the latest information:

Immigration Enforcement
Sandford House
41 Homer Road
Solihull
B91 3QJ
Telephone: 0121 713 3337

- 9.5 Where people do not have the correct documents to enable them to travel, the local authority should provide support in contacting embassies and accessing their services and seek further advice and support from the Home Office. Where there are no practical or legal barriers to return, a local authority should consider within the Human Rights Assessment any breaches of human rights that may result from supporting a route of return to country of origin.
- 9.6 If a parent refuses the offer of assistance in returning to country of origin and intends to remain in the UK unlawfully, considerable concerns arise with regards to the wellbeing and safety of the child/children. In such circumstances, it is a requirement to undertake the following steps:
- A. Liaise with the Local Immigration Team so that the case is given priority by the UKBA Enforcement and Removals.
 - B. Confirm with the relevant embassy and/or the UKBA whether the family have valid travel documents in order to facilitate the family's removal from the UK.
 - C. Work with the UKBA to ensure that the children are not left in the UK homeless and destitute and in breach of immigration rules.
 - D. If the parent informs the local authority that they have found friends or family who will support them, enquires should be made as to the nature of the support that will be provided and whether this will be suitable to meet the children's needs.
 - E. If the family moves to stay with friends or family in a different local authority area, ensure that a referral is made to children's services in the new local authority area, so that a further Child In Need Assessment is completed and inform the Home Office that the family have moved to another area.

10. Can legal advice be funded?

10.1 Civil Legal Aid is available for:

- Advice on asylum or asylum appeal decisions
- Asylum seekers needing accommodation
- A loss of accommodation because the UK Visas and immigration service has refused or withdrawn support
- A victim of domestic abuse
- A victim of human trafficking or modern slavery

10.2 Unaccompanied minors who are claiming asylum or who have been trafficked are entitled to [Civil Legal Aid](#). Unaccompanied minors who are not seeking asylum (but some other form of leave to remain) can still apply for [Civil Legal Aid](#) and it will be considered through exceptional funding provisions.

10.3 The local authority are required to assist unaccompanied asylum seeking minors with form filling if appropriate. Children with parents will fall under and be considered as part of their parents' immigration application.

10.4 There is no duty under [Section 17, Children Act 1989](#) for a local authority to pay for a family's legal advice. The Government, through its legal aid provisions, has set the parameters on what it considers reasonable and necessary in terms of financial support for legal advice. **Therefore generally legal costs should not be funded by the local authority.**

10.5 It is illegal for a person to provide immigration advice that relates to an individual's circumstances if that person is not a regulated legal advisor or immigration adviser. To locate a legal advisor visit www.lawsociety.org.uk or an immigration adviser regulated by the Office of the Immigration Services Commissioner (OISC) at www.home.oisc.gov.uk. Some Law Centres also provide legal advice, see www.lawcentres.org.uk. The Citizens Advice Bureau is commissioned to provide legal advice by the local authority but only certain offices provide immigration advice.

11. Review and termination of support.

11.1 Support under Section 17 cannot reasonably be time-limited. It needs to continue for as long as the child/children are in need. However, where parents have the ability to work and are refusing to work, time-limited support would be a reasonable consideration. There is an expectation that parents will actively seek employment.

- 11.2 Support should be regularly reviewed and monitored through a Child In Need Plan and should involve all relevant agencies.
- 11.3 The decision to terminate support for an ongoing case should be made by a service manager. This needs to be informed by an up-to-date assessment or an update to an existing assessment (if significant new information has come to light).
- 11.4 The social worker will need to inform the person 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 a 28 day notice period from when support will terminate. The person should be advised to seek legal advice if they disagree with the decision. This letter should be translated into the person's first language as appropriate.

12. Further Information

- 12.1 Legislation and immigration rules can change therefore checking the latest information at the [Home Office website](#) is advised. In addition there is useful information available from the No Recourse to Public Funding Network, available at www.nrpfnetwork.org.uk.
- 12.2 If you have any queries or feedback please discuss this with your team manager or operations manager.