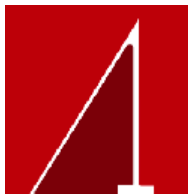


Access to social care for destitute migrants: need for guidance and pathways



Law Centre (NI)

At a glance

While in Great Britain local authorities have developed guidance that governs access to social care for destitute migrants, no such guidance exists in Northern Ireland.

This briefing paper outlines some of the difficulties faced by destitute migrants. It explains how changes to social security and immigration legislation may increase the prevalence of destitution in Northern Ireland.

This paper recommends that:

- The Department of Health develops guidance on the issue of social care for destitute migrants
- Health & Social Care Trusts develop a central referral mechanism for destitute migrants and issue guidelines on the type of support that can be provided
- Health & Social Care Trusts improve data collection on the number of requests for social care who are ineligible for mainstream support.

Law Centre (NI)

- Promotes social justice and provides specialist legal services to advice organisations and disadvantaged individuals in social security, community care and mental health and employment law
- Provides advice, casework, training, information and policy services
- Provides the Independent Advice, Support & Mediation Service, commissioned by Health & Social Care Board
- Participates as a member of the Department for Communities Operational Forum and Disability Consultative Forum
- Participates as a member of the NI Strategic Migration Partnership, the Home Office Asylum Stakeholders Forum, the Refugee & Asylum Forum and the Syrian Refugee Consortium
- Works in partnership with Advice NI and CAB to deliver the Welfare Reform Support Project

Our advice line

- General advice line: Mon- Fri, 9.30- 1pm Tel: 028 9024 4401
- Independent Advice Support and Mediation Service: Mon– Fri, 9-1pm and 2-pm Tel: 028 9024 4401
- Independent Welfare Changes Helpline Tel: 0808 802 0020

Background

In 2009, a Northern Ireland Human Rights Commission investigation called on the Department to develop guidance that would set out the Trusts' responsibilities to homeless and potentially destitute non-UK nationals.¹

In 2012, the Department informed the OFMDFM Racial Equality Panel Immigration Sub Group that it was developing access to social care guidance. The Department acknowledged the need for legal clarity for the small but compelling number of cases involving destitute migrants who had no access to social security benefits. However, in November 2013, the Department informed stakeholders that this guidance would not proceed.²

In the four intervening years, the Law Centre is increasingly aware of difficulties experienced by individuals and support organisations in relation to accessing social care for destitute migrants. Accordingly, the Law Centre calls on the Department to revise its position and to develop access to social care guidance. We also call on the Health & Social Care Trusts to introduce a central referral mechanism, issue guidelines on the provision of support and to appropriately record and monitor data.

Responding to need

Under Northern Ireland Community Care legislation, Social Services have wide powers to assist persons in need. However, immigration legislation significantly curtails the powers available to Social Services in terms of meeting the needs of migrants. In Northern Ireland, a complex mix of UK legislation (for excepted matters such as immigration) and domestic legislation (for devolved matters such as health and social care) means that many people subject to immigration control are deemed ineligible for social services or homelessness assistance.

However, local authorities / HSC Trusts are required to provide assistance that is necessary to prevent a breach of human rights or EU Treaty rights. Thus, the Trusts must conduct a human rights need assessment in order to ascertain whether there is a human rights breach. If the Trust identifies a human rights breach, it must provide the necessary services to meet that need(s).³ The assistance, if assessed as necessary is provided under Article 15 of the

¹ NIHRC, 'No Home from Home: Homelessness for People with No or Limited Access to Public Funds' (September 2009)

² Correspondence from Sean Holland to key stakeholders dated 7 November 2017. The Department stated that it would not issue guidance but that HSC Board would provide HSC Trusts with a summary of issues to be considered in the assessment of social care needs. The Law Centre's suggestion of at least developing a NI version of the NRPF Network's 'Pathways' diagram was not developed.

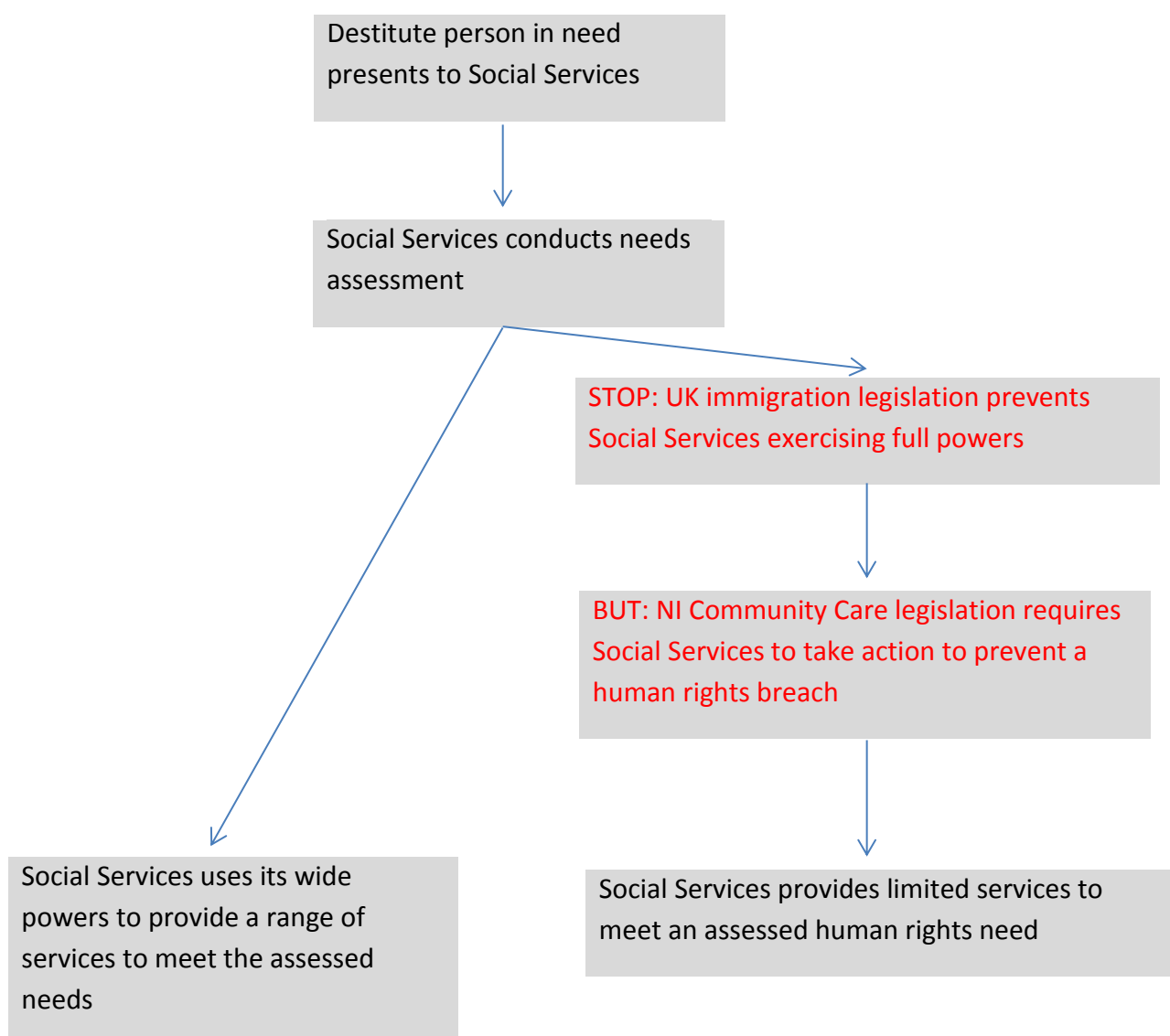
³ We acknowledge that not all destitute migrants will be eligible for Trust. For example, refused asylum seekers are generally required to meet the 'destitute plus' test outlined in Limbuela UKHL 2006. The threshold for obtaining assistance from local authorities was raised in the case of M v Slough UKHL 2008.

Health & Personal Social Services 1972 Order, Article 18 of Children NI Order 1995 or potentially under mental health legislation. The type of assistance required varies, although for many destitute migrants, accommodation is likely to be an urgent and necessary need.

The following diagram illustrates the different approach employed by Social Services in response to need.

**UK/Irish national/EEA national
exercising treaty rights**

**Person subject to immigration
control and/or deemed ineligible**



Different categories of migrants can find themselves destitute and ineligible to access mainstream statutory support. This can include:

- a) **EEA nationals who are not exercising Treaty rights.** This category includes migrants who have not worked and who are considered to have failed the Genuine Prospects of Work test. Such migrants are usually only eligible to receive in-work benefits; migrants who are not working may have no statutory entitlement.
- b) **Third country nationals subject to NRPF.** Many non-European migrants -including family members and work permit holders - are subject to the No Recourse to Public Funds condition. This significantly limits eligibility to statutory support. Migrant workers who suddenly lose their employment or family members fleeing domestic violence can find themselves in a particularly precarious position.
- c) **Refused asylum seekers.** Single adult asylum seekers whose applications for asylum have been rejected lose their entitlement to asylum support. Unlike other categories of migrants, asylum seekers are not permitted to work and so do not have the means to support themselves; further, returning home is rarely a safe option.

Increasing destitution

Law Centre anticipates that increasing social security / immigration restrictions will result in increased destitution among migrants in Northern Ireland. Brexit presents an additional challenge as it is likely to result in further restrictions on migrants' access to services. This will place additional pressures on Social Services.

Impact of social security restrictions

In recent years, changes to social security legislation have reduced the entitlement of EEA nationals' access to benefits. Examples include changes to the Habitual Residency test and the introduction of the Genuine Prospects of Work test.⁴

The effect of these changes is that more EEA nationals (and their family members) find themselves unable to access benefits and therefore are at increased risk of destitution.

Potential impact of immigration restrictions

The implementation of Immigration Act 2016 will change the asylum support system. The overall effect of the changes is that fewer asylum seekers will be eligible for asylum support and will become destitute. Under this legislation, refused asylum-seeking families whose asylum claims are rejected will lose their asylum support after 90 days, and thus will be made homeless. Up to 100 families could be affected. Through the Refugee & Asylum Forum, the Law Centre has sought to bring attention to the issues, asking the Executive Office to set up a working group of key stakeholders that would *inter alia* consider whether the Health & Social Care Trusts have the resources they need to meet increased demands.⁵

⁴ See Law Centre NI Information Briefing that details changes <http://www.lawcentreni.org/Publications/Law-Centre-Information-Briefings/Habitual-residence-and-right-to-reside-requirements-January-2015-update.pdf>

⁵ Refugee & Asylum Forum, 'Preventing destitution within the asylum process: urgent action required' (January 2017) accessible here: <http://www.lawcentreni.org/Publications/Policy-Briefings/Preventing-asylum-seeker-destitution-RAF-Jan-17.pdf>

Current situation

The Trusts do provide social care to some destitute migrants who are not eligible for public funds. Recent figures obtained through a Freedom of Information request reveal that only a very small number (<20) of migrants/families who were accommodated by the Trusts in 2015/16 – 2016/17 through the 1972 Order.⁶

The Law Centre considers that this small number indicates that many destitute migrants and support organisations are not actually aware that they may be entitled to social care.

Evidence supports this view : an NIHRC investigation that found a low level of awareness (including among some statutory agencies) of the Trusts' duties and access routes, whereas a survey conducted by Housing 4 All found that 77% of the destitute asylum seeker respondents did not approach the Social Services for support because they felt that they would not qualify.⁷

Thus, the Law Centre considers that the relatively low figures do not represent actual needs; figures compiled by the British Red Cross, which administers the Crisis Fund, indicate a greater prevalence of destitution across Northern Ireland.

Pathways to support

Destitute migrants are often reliant on charitable organisations for day-to-day food, (limited) shelter and support. Voluntary and community sector organisations are particularly likely to encounter migrants with vulnerabilities/care needs who may be eligible for Trust support. Law Centre member organisations report difficulties in making referrals as it is unclear whether referrals should be made to Gateway Services / Child Protection or to Physical Health & Disability Services. Given that each service employs different criteria (which may or may not be relevant for a destitute migrant), there is a real concern that destitute migrants are falling between gaps in service provision. If the Law Centre's support is sought, the approach taken is to write to the CEO of the particular Trust to request that the issue is delegated to the relevant team. This is a somewhat cumbersome approach and one that is not readily accessible for organisations with more limited capacity.

The need for a clearer pathway emerges whereby migrants can request assistance from the Trusts. Law Centre therefore recommends that a central referral mechanism is established whereby migrants can request access a human rights assessment. This central referral

⁶ Figures were obtained freedom of information requests by the organisation PPR, which shared the data with the Law Centre. Each of the five Trusts used a slightly different reporting period between 2015/16 and 2016/17: Western Trust, fewer than 5; South Eastern Trust, 4; Northern Trust, 0; Sothern Trust, 0; Belfast Trust, 10.

⁷ Housing 4 All, '*A Place of Refuge?*' (April 2016)

mechanism would not substitute the Gateway referral system; however, it would give migrants and support organisations access to a social work team with specialisms in this complex area of law and will reduce the risk of them being passed from pillar to post.

Types of support

When the Trust does identify that it has a duty to meet needs, the actual services provided in each case varies considerably. Some people receive accommodation whereas others receive financial support in cash or in vouchers.

While support should be tailored to individual need, the lack of agreed and consistent policy is concerning. NIHRC found that the service delivery for homeless non-nationals appeared to depend on ‘arbitrary factors’.⁸ This led the Commission to recommend the development of guidance to ensure transparent and consistent decision making (see Annex 1). The Commission also recommended that the use of voucher support as the sole means of support is ended.⁹

We note that the High Court in England ruled recently that lack of guidance as to what is normally appropriate in such situations leads to unjustifiable and unfair differences in the amounts paid to families.¹⁰ Thus, the lack of policy is arguably unlawful and underscores the need for legal clarity in the form of guidelines that outline the type and amount of support that may be provided.

Data collection and monitoring

The Belfast Trust has acknowledged that it does not have the necessary processes to capture data with respect to destitute migrants; the Trust has also indicated a willingness to identify and monitor such referrals in the future.¹¹ Law Centre welcomes this approach and recommends that the Health & Social Care Trusts develop a process to record and monitor this data. This will help create a better understanding of needs (and required resources).

⁸ NIHRC pg 56

⁹ NIHRC pg 145

¹⁰ PO v LB Newham (2014)

¹¹ See Belfast Trust response to PPR’s FOI dated 13 February 2017, Ref FOI/15258

Absence of Home Office referral

Although Home Office guidance requires the agency to refer cases of asylum seekers who have ‘clear and urgent needs’ to the nearest local authority social services department, there does not appear to be any evidence of a referral process in this jurisdiction.¹² The apparent lack of such a referral pathway makes it even more important that one is developed by the Trusts.

Summary of recommendations

Accordingly, Law Centre recommends that:

- Department of Health develops guidance on the issue of social care for destitute migrants.
- Health & Social Care Trusts develops a central referral mechanism for destitute migrants and guidelines on the type of support that can be provided.
- Health & Social Care Trusts improves data collection on the number of requests for social care who are ineligible for mainstream support.

Benefits of guidance and central referral mechanism

Developing statutory guidance and a central referral mechanism would bring many benefits. Namely, it would:

- ✓ Provide clarity to support organisations and to Trust staff
- ✓ Provide a clear and quick route whereby a destitute migrant can request assistance, be assessed and then receive services (if identified)
- ✓ Prevent destitute migrants falling between existing Trust services
- ✓ Mitigates the impact of the absence of a Home Office referral mechanism.
- ✓ Provides transparent and consistent decision making
- ✓ Complies with principles established in case law with regards to legal clarity.
- ✓ Provides the Trust with an opportunity identify and monitor needs

¹² The Law Centre has sought clarification from the Home Office. The agency advises that it has its own safeguarding procedures, however, there is no evidence of a referral mechanism in NI. This is the understanding of the Refugee & Asylum Forum.

Annex 1

Relevant recommendations taken from NIHRC investigation: Home NIHRC, 'No Home from Home: Homelessness for People with No or Limited Access to Public Funds' (September 2009)

15. All government agency staff, including Trust staff, should be familiar with when, and how, to refer a homeless non-UK national, who is excluded from accessing homelessness assistance and welfare benefits, to the relevant Health and Social Care Trust for an assessment of her or his entitlement to assistance (see Chapters 3 to 5).

18. The government agencies should develop, agree and effectively disseminate reliable interagency protocols. The protocols should identify any potential gaps in service provision and ensure that, in all circumstances, there is a referral route so that a homeless non-UK national, who is excluded from homelessness assistance and welfare benefits, can be assessed to establish if they are entitled to any other form of support. Appropriate and formalised, referral arrangements should be included. In addition, the interagency protocols should outline the approach to be adopted for daytime and 'after hours' services. Following on from this, the government agencies should produce an interagency guide for their staff, outlining options for assistance and referrals for homeless non-UK nationals (see Chapters 3 to 5).

22. The Department for Health, Social Services and Public Safety should develop guidance, setting out the Trusts' responsibilities to homeless and potentially destitute non-UK nationals. The guidance should cover the Trusts' responsibilities to children, families with children, and single adults.

23. At present, when Trusts decide to provide assistance to a homeless non-UK national under the 1972 Order or under the Children (Northern Ireland) Order 1995, the amount does not appear to be based on a clear assessment of need. While it may not be possible to set out minimum amounts, the Trust should develop guidance to ensure that payments to families are based on a proper account of potential costs, for example, accommodation, food, clothing and travel. As well as the right to private and family life, the Commission is committed to the principle that in adoption, or any other child placement proceedings, the best interests of the child shall be the paramount consideration. Therefore, the Commission makes the following recommendation:

24. Children should not be removed from their family, or threatened with removal, on the sole basis that those with parental responsibility are ineligible for homelessness assistance and welfare benefits. In recognition of the right of every person to human dignity, the Commission makes the following recommendation:

25. The use of voucher support as the sole means of support should end as soon as is feasibly possible.

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