

DOMESTIC ABUSE VICTIMS WITH NO RECOURSE TO PUBLIC FUNDS

PRACTICE GUIDANCE

OXFORDSHIRE

2010



Introduction

The purpose of this guide is to assist practitioners who support people with no recourse to public funds who are suffering domestic abuse. The information provided is not exhaustive but a brief overview of what is available locally. For more detailed information please visit Southall Black Sisters website.

Domestic abuse is 'any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between any people who are or have been intimate partners or family members, regardless of gender or sexuality' (Home Office 2004)

This guidance only applies to those who are from a country that is not a member of the European Economic Area (EEA) as they may be entitled to additional support on a case-by-case basis. In addition if the home country has a social security agreement with the United Kingdom or European Union then the person may be eligible to some benefits, depending on the agreement. These countries are Turkey, Morocco, Algeria, Tunisia, San Marino, Barbados, Canada, Israel, Mauritius, New Zealand, Croatia, Bosnia-Herzegovina, Serbia and Montenegro or the former Yugoslav Republic of Macedonia.

This is a guide and it is vital that you get proper legal advice. It is an offence to give immigration advice unless you are qualified.

Defining No Recourse To Public Funds and Domestic Abuse

Who are we talking about?

- Any one who comes to the UK who does not have leave to remain, would include spouse visa, student, asylum seeker, partners of students or army personnel, overstayers etc
- **What are 'public funds'?**
 - Income-based jobseeker's allowance
 - Income support
 - Child tax credit
 - Working tax credit
 - A social fund payment
 - Child benefit
 - Housing benefit
 - Council tax benefit
 - State pension credit
 - Attendance allowance
 - Severe disablement allowance
 - Carer's allowance
 - Disability living allowance
 - An allocation of local authority housing
 - Local authority homelessness assistance

PUBLIC FUNDS DOES NOT MEAN LEGAL AID, - ANYONE ON LITTLE OR NO INCOME IS ENTITLED TO LEGAL AID FOR A SOLICITOR.

Rules on Working

Depending on the type of visa a person with No Recourse may be able to work. However this needs to be clarified by a Solicitor, so appropriate legal advice is required.

Legal Solutions

N.B. Legal advice must only be given by an appropriate solicitor.

Immigration

An overseas national may apply for a visa (entry clearance) to join his/her British or settled spouse (or civil partner) in the UK. The visa will be granted provided certain conditions are fulfilled, the most important of which for our purposes are that:

1. The couple intend to live together permanently
2. The couple have adequate financial support without additional recourse to public funds
3. The couple have adequate accommodation in the UK

If successful the applicant will be granted leave to enter the UK initially for **2 years**. The holder will be allowed to work but will not be entitled to access public funds (as defined on page 3).

Relationship Breakdown

If the relationship breaks down during the probationary period (i.e. the 2 year period) the overseas national will in general have no basis on which s/he can extend her/his stay in the UK.

However, in cases where the relationship has broken down as the result of domestic abuse there may be a possibility of applying to extend her/his stay and would have to return to their home country.

Domestic Abuse/Violence – Immigration

If the relationship breaks down as the result of domestic abuse then the overseas national may apply to the Home Office for indefinite leave to remain provided the applicant could show evidence of the violence that took place.

The evidence required must normally take the form of either **one** document from List A (see table below) or at least **two** documents from List B:

List A

- Injunction, non-molestation order or other protection order made against the sponsor
- Relevant court conviction against sponsor
- Details of relevant police caution against sponsor

List B

- Medical report from hospital doctor or GP confirming injuries consistent with being a victim of domestic violence
- Police report confirming attendance at home of applicant who is the victim of violence
- Social services letter confirming involvement in connection with domestic violence
- Support letter from women's refuge

Other evidence may, in some circumstances, be permitted.

The applicant does **not** have to wait until the end of the two-year probationary period to make the application for indefinite leave.

Recourse

If the relationship breaks down while the spouse or civil partner still has leave, they can support themselves by working but unless and until they are granted indefinite leave to remain **they continue to have no recourse to public funds**. This means that they cannot access mainstream welfare benefits or housing or homelessness assistance.

Where the spouse cannot work for whatever reasons the only option for support is through Social Services and Community Care support.

Once indefinite leave is granted the applicant will have full recourse to public funds subject to the usual eligibility criteria.

Social & Health Care Services

Community Care – social services support for those suffering from Domestic Violence

Social & Health Care services have duties or powers to accommodate persons in their area in certain circumstances.

- a) If there are children involved
- b) If there are care needs i.e. having a serious physical or psychiatric condition

For persons subject to immigration control, including those on spouse visas with no recourse, support **may** be available under Section 21 National Assistance Act 1948 if the applicant can show they satisfy a legal test known as the “destitution plus” test.

The test is set out at section 21(1A) and states that a person excluded from benefits “may not be provided with residential accommodation under subsection 1(a) if her need for care and attention has arisen solely

- (a) Because she is destitute; or
- (b) Because of the physical effects, or anticipated physical effects, of her being destitute.”

For Domestic Abuse victims with children

Children Act s17 gives local authority the power to accommodate children with their families where necessary to safeguard and promote the welfare of the child in need. The primary duty is to the child.

Where there are children, accommodation and (small) weekly payments can be provided by Social Services.

For pregnant Domestic Abuse victims

Section 21 (1) (aa) of the National Assistance Act 1948 (NAA) **empowers** local authorities to provide residential accommodation for expectant and nursing mothers who are in need of care and attention which is not otherwise available to them.

It has been established that destitute expectant or nursing mothers are not in 'need of care and attention' by reason of their being pregnant or nursing a child alone, meaning that the duty under Section 21(1)(a) NAA does not arise if alternative support is available from the UKBA.

In the case of a pregnant woman on a spousal visa fleeing domestic violence, the situation is different as UKBA support is not available. It would therefore be expected that the local authority would use its powers under Section 21 (1)(aa) to avoid the women becoming homeless whilst the visa is valid and/or she has an application pending for Indefinite Leave to Remain under the Domestic Violence Rule (submitted while the spousal visa was valid).

If the woman is a national of a European Economic Area (EEA) country, or unlawfully in the UK, support under Section 21 (1) (aa) will be excluded by Schedule 3 of the Nationality Immigration and Asylum Act 2002. In such cases the local authority must assess whether the withholding or withdrawal of support would be a breach of the pregnant or nursing mother's human rights

N.B. Provision of accommodation under s21 (1) (aa) is only a power not a duty. Each case should be assessed on its own merits.

Housing Solutions

Housing Assistance

Two types of housing assistance count as public funds:

1. An allocation of housing, or grant of a license or tenancy, by a local housing authority – for example, through the 'housing waiting list'.
2. Housing assistance under homelessness legislation.

However, there are other types of housing assistance that do not count as public funds:

1. Housing provided directly by housing associations. These are independent
2. Organisations that are separate from local housing authorities.
3. Housing provided by Key Worker Housing schemes.
4. Housing provided by your employer – for example, if you are a nurse.

These types of support will not count as recourse to public funds.

Section 2 Local Government Act

S2 Local Government Act is a broad enabling provision, which gives local authorities the power to promote the social and economic well being of those living within their area – including the giving of financial assistance. However it is of little use in domestic violence cases because Section 2 cannot be used to

provide **or pay for** accommodation unless the applicant passes the destitute plus test (in which case, of course, s21 support can usually be given).

Even if the applicant is not entitled to accommodation she may be entitled to some financial support under s2 – in practice this usually means little more than assistance with buying clothing.

Refuge Accommodation

Refuges are able to take people with NRPF on condition that they have the means to pay rent and subsistence. If they do not have the means to pay then very few are able to provide a bed in the refuge. Some refuges are able to provide a free bed. To find out if there is one available then contact the

Oxfordshire Domestic Abuse Service Helpline – 0800 731 0055

Financial Crisis Assistance

Sojourner Project

Who is eligible for this service?

- Victims of domestic violence who have no recourse to public funds admitted to, or granted an extension to their stay in the UK as a spouse, civil partner, unmarried or same sex partner
- Those who qualify for ILR under the Domestic Violence Rule
- The service can be offered to those meeting the above criteria, and their dependants.

Referrals

Referrals to the scheme can be made by anyone calling the Sojourner Project Duty Worker on 0207 840 7147. Once information on the referral's suitability has passed initial assessment, the woman will be admitted onto the first stage of the pilot. At this stage the referrer will be asked to complete a formal referral form sent by the Sojourner Duty Worker and e-mail it back to them on sojourner@eaveshousing.co.uk

Funding

Refuges supporting the victims will be provided with funding for 20 working days to support the victim whilst they complete Remain (ILR) under the Domestic Violence Rule.

Once an application is submitted and received by the UK Border Agency, the refuge will be provided with further funding for a maximum of 20 working days whilst UKBA come to a decision on the application.

The refuge that is accommodating the referred person and their children can apply to the Sojourner Pilot Project Manager for financial assistance. Under the pilot a service user is entitled to £60 per week subsistence plus an extra £30 per week for every child. Accommodation costs will also be covered, up to a total of £230 per week.

Funding will be paid a week in arrears on receipt of invoice. In addition, the refuges will also be able to claim for interpreter's costs. However, please be aware some interpretation services will be exempt from these conditions, therefore please discuss with the Sojourner Project Manager for more guidance. If services are likely to need more than £150 for interpreting, they should get authorisation from the Sojourner Project Manager.

This project is running until August 2010

Very limited crisis funds may be accessed by the following:

Reducing The Risk Independent Domestic Violence Advisory (IDVA) Service, Oxfordshire

The IDVA service provides support for high-risk victims of domestic abuse, female and male that has been referred through the Multi Agency Risk Assessment Conference (MARAC). They have a small stream of money to provide limited crisis support for those who have no recourse. The criteria are for those experiencing domestic abuse or those who have been trafficked either for sexual purposes or domestic servitude. For further details please call **01865 403120**

Useful Contacts

Oxfordshire Domestic Abuse Service Helpline	0800 731 0055
Reducing the Risk IDVA Service	01865 403120
Asylum Welcome Oxford	01865 722082
Karma Nirvana (Honour Based Violence)	0800 5999 247
Sojourner Project Duty Worker	0207 840 7147
Southall Black Sisters www.southallblacksisters@btconnect.org.uk	020 8571 9595
NRPF Network	www.islington.gov.uk
Turpin & Miller Solicitors (Immigration Solicitor)	01865 770 111
National Domestic Violence Helpline	0808 2000 247

APPENDIX 1

VISAS TO RESIDE IN THE UK

There are different types of visas to gain entry into the UK.

MARRIAGE

A UK marriage visa enables a person to apply for leave to enter the UK or leave to remain in the UK on the basis that they are married to a person who is present and settled in the UK.

It allows a non-EU spouse to come to the UK on the basis of their relationship and it allows them the right live and work in the UK. It will only be issued if the non-EU spouse is married to a UK citizen or someone who has Indefinite Leave to Remain in the UK.

A UK marriage visa is issued for two years. After that a person can apply for Indefinite Leave to Remain. If they have been married for more than four years outside the UK then they may qualify for permanent residence in the UK at the time of making their application. However if the marriage has been for less than 4 years then usually a Marriage Visa will be granted for a two-year probationary period.

To apply for a marriage visa the applicant and the partner must be over 18. To be eligible for the UK marriage visa partners must:

- Be legally married to each other; and
- Plan to live together;
- Have met each other;
- Can be supported by themselves without recourse to public funds; and
- Have adequate accommodation where dependants can live without recourse to public funds.

UNMARRIED PARTNERS

Since 1997 unmarried partners, including same sex relationships, are able to gain entry to the UK. The requirements since April 2003 are:

- To show that any previous relationship whether in marriage or as an unmarried couple has ended;
- Have been living together for at least two years in a relationship similar to marriage. They will need to provide documentary evidence confirming that they have been living together for this time;
- If they have been together for less than four years they will be granted a visa for a probationary period of two years. If they are still living together at the end of two years in the UK indefinite leave to remain will usually be granted;
- If they have been together for four years or more outside the UK they will be granted indefinite leave to remain in the UK without having to

live in the UK for two years. Again, they will need to provide documentary evidence proving this;

- They must intend to live together permanently with their partner;
- They must possess sufficient funds to pay for all of their living expenses and those of any dependants without claiming public funds.
- Accommodation for the unmarried partners, and any dependants, must be suitable and available;
- It is a requirement that the overseas unmarried partner has to be 16 years old or over, and the sponsor in the UK has to be at least 18 years old;
- Children who are under 18 years old of the unmarried partners are allowed entry to the UK as dependants, and can make their application at the same time as the main applicant;
- After a total period of five years in the UK if they meet the residence requirements they may then apply for citizenship.

FIANCEE VISA

A Fiancée visa allows a person to bring their intended partner to the UK as long as they themselves are living here lawfully. If one partner is returning to the United Kingdom to settle, a fiancée can also apply to join them at the same time.

A fiancée visa is issued so that the person can travel to the UK and marry. The visa is only valid for 6 months. After the marriage has taken place the applicant can apply for a marriage visa to stay, and after 2 years may apply for indefinite leave to remain.

- The applicant is seeking leave to enter the United Kingdom for marriage to a person present and settled in the United Kingdom or who is on the same occasion being admitted for settlement
- The parties to the proposed marriage have met
- Each of the parties intends to live permanently with the other as his or her spouse after the marriage
- Adequate maintenance and accommodation without recourse to public funds will be available for the applicant and any dependents until the date of the marriage
- There will, after the marriage be adequate accommodation for the parties and any dependants without recourse to public funds in accommodation which they own or occupy exclusively
- The parties will be able after the marriage to maintain themselves and any dependants adequately without recourse to public funds

People who wish to apply for a fiancée visa must be 18 years of age or over, and the partner with the settled status or who is returning to the UK to live permanently, must be 18 years of age or over.

To qualify for a UK fiancée visa, partners must:

- Plan to marry within a reasonable time (usually six months);
- Plan to live together permanently after the marriage;

- Have met each other;
- Have a place to reside for the applicant and any dependants to live until they are married without help from public funds;
- Be able to support any dependants without working or having to get help from public funds

INDEFINITE LEAVE TO REMAIN

Indefinite leave to remain (Permanent Residency) means being free from immigration control. There are no restrictions on work or length of stay. To qualify for indefinite leave to remain the applicant must have been in the UK for a certain length of time. This differs depending on their current visa status.

Indefinite Leave to Remain can be granted to people who have previously held a UK visa in a category leading to settlement. UK visa categories that lead to Indefinite Leave to Remain include:

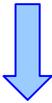
Status (Type of Visa currently)	Qualifying period
Ancestry	5 years
Work permit	5 years
Investors	5 years
Writers, composers and artists	5 years
Sole representatives	5 years
To establish in business	5 years
Unmarried partners	2 years
Marriage	2 year
Legal stay on any basis	10 years
Illegal stay on any basis	14 years

Indefinite leave to remain removes any immigration-based restrictions. After one year of permanent residence a person can apply for naturalisation.

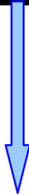
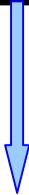
From the 2nd April 2007 persons applying for indefinite leave to remain must pass the “life in the UK” test. It is to confirm that the applicant can speak English and knows the life and history of the UK.

For more information please go to www.legalcentre.org

Client Experiencing Domestic Abuse

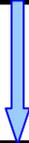
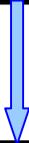


**Establish Immigration Status using checklist A&B for evidence
IN ALL CASES ACCESS AN IMMIGRATION SOLICITOR**



Has No Recourse To Public Funds

Has Recourse to Public Funds



Has children or has a serious physical or psychiatric illness

**Access homeless help and benefits from City Council
01865 252859**

YES

NO



Social & Health Care have a duty to support and accommodate

**Oxfordshire Domestic Abuse Helpline
0800 731 0055**

Sojourner Project - 0207 840 7147