**Luton Borough Council**

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**No Recourse to Public Funds (Disbenefitted Families) Policy**

**& Guide to Procedures**

**August 2015**

# Introduction

All families who present to Luton Borough Council requesting support with accommodation and subsistence will receive a humane and customer-focused response.

This Policy and accompanying Guide to Procedure will ensure a consistent response to people who request a service, irrespective of the department to which they initially present to. An interpreter or an ICT translation package should always be provided if the lack of these services would place a person/family at a disadvantage.

This policy acts as a guide to the duties and powers of Luton Borough 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.

# Applicable Legislation

At the present time no official guidance for local authorities and families without any recourse to public funds has been published by Central Government. Therefore the enduring legislative framework, supported by case law remains:

* Section 54 and schedule 3 of the Nationality, Immigration and Asylum Act 2002.
* Section 21 of the National Assistance Act 1948, if they have a need for care and attention beyond accommodation and not arising solely from destitution.
* Section 17 of the Children's Act 1989, if they are caring for minors.
* Consideration for Article 8 of the Human Rights legislation.
* Care Act 2015.

Local authorities have a duty to safeguard and promote the welfare of children in need or at risk within their jurisdiction, (and to promote their upbringing by their families).

Where a client is an adult with responsibility for a child, consideration must be given to undertaking an assessment to establish whether the child has needs over and above those that apply to the carer, e.g. the existence of special needs.

* Consideration needs to be given to the child's right to family life under Article 8 of the European Court of Human Rights Act (ECHRA). The homeless child will be a child in need and should be accommodated in any event.
* Expectant and nursing mothers may also qualify for support under the National Assistance Act.

# Children in Need

Under section 17 (10) of the Children Act 1989, the Local Authority has a duty to assess a child’s circumstances and offer services if:-

* He/she is unlikely to achieve or maintain, or have the opportunity of achieving or maintaining a reasonable standard of health or development without the provision for him/her of services by a Local Authority or;
* His/her health or development is likely to be significantly impaired, or further impaired, without the provision for him/her of such services or;
* He/she is disabled or;
* He/ she is unaccompanied

Under Section 20 of The Same Act:

Every Local Authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result:

* There being no person who has responsibility for him/her or;
* Him/her being lost or having been abandoned or;
* The person who has been caring for him/her being prevented (whether or not permanently, and for whatever reason) from providing him/her with suitable accommodation or care.

No Recourse to Public Funds DefinitionNo recourse to public funds (NRPF) refers to people from abroad who are unable to access welfare benefits. If a person is NRPF and subject to immigration control they would be unable to support themselves through work or other means causing destitution.

All local authorities in the UK have a duty to advise people who have NRPF on their personal circumstances and to assist them in finding a solution to their destitution. In limited circumstances, councils can provide care services including accommodation and financial support if the eligibility criteria are met.

# Services We Provide

The NRPF function is offered by the Rapid Intervention and Assessment Service (RIAS) and by a dedicated single point of contact through the Immigration Officer who provides information to all destitute people from abroad with NRPF 'ordinarily resident' in Luton. This includes:

* Explaining their situation and possible options;
* Practical and emotional support from qualified and experienced staff;
* Referral and signposting to agencies that assist with voluntary return to country of origin;
* Help and advice on health care;
* Assistance in accessing other services, such as local schools and health facilities;
* Provision of information about local community organisations.

# Care Services

Luton Borough Council Children and Learning Directorate will coordinate needs assessments and the provision of care services, by:

* Conducting immigration checks;
* Referring individuals for mental health assessments if appropriate;
* Carrying out a child in need assessment by a qualified social worker;
* Carrying out welfare benefit checks;
* Deciding on NRPF eligibility;
* Providing accommodation and financial or subsistence support;
* Overseeing budget control on NRPF services;
* Regularly reviewing cases;
* Monitoring council expenditure on NRPF to ensure best value in service delivery.

# Who is eligible?

To be eligible for care services from a local authority in the UK, including accommodation and financial support, an individual with NRPF must be:

* An adult, including adults with responsibility for children under the age of 18, who has been living with the care giver for at least 6 months within the proceeding 12 months;
* Ordinarily a resident in the local authority area;
* Assessed as having community care or mental health needs under the National Assistance Act 1948, or be someone whom there is a duty to support under the Children Act 1989;
* Eligible for support under immigration law or;
* Someone who has to be supported to prevent a breach of their human rights, under the European Convention on Human Rights.

In the absence of any national Government guidelines on how much subsistence should be provided to families with NRPF, Luton Borough Council will ensure that its subsistence payments are standardised across services and departments to meet the essential living needs of clients, and will be broadly based on Income Support rates for current and future service users. This will be reviewable at any time due to local circumstances, or changes to national policy on welfare reforms, particularly in relation too any new benefit cap.

# Who is not eligible?

There are three categories of people who are excluded from support by the local authority according to immigration law (Schedule 3 Section 54 of the Nationality, Immigration and Asylum Act 2002) and they are as follows:

* Nationals of the European Economic Area (other than the UK);
* People with refugee status;
* People unlawfully present in the UK (including those whose visas have expired).

In such cases Luton Borough Council must assess whether withholding or withdrawing support would constitute a breach of the individual's or family's human rights. The local authority may also conclude that the only support that is necessary to avoid a breach of human rights is the provision of assistance to the individual or family in returning to their country of origin.

Luton Borough Council strictly adheres to its statutory duty to inform the UK Border Agency Enforcement and Removals Unit when providing services to families or individuals who are unlawfully present in the UK.

# NRPF Case Manager

The NRPF service in Luton is funded by the Children and Learning Department and provides a robust assessment of eligibility for service, whilst offering a unique and humane resolution-focused service for destitute people from abroad with NRPF.

# Procedures for Working with Families with No Recourse to Public Funds

Families with no recourse to public funds will usually present or have been sign posted to the Rapid Intervention and Assessment Service (RIAS) in one of two different ways:

* Self-referral, or via a referral from the Housing and Community Living Department following an eligibility assessment.
* Self-referral or referral by an external agency.

The Duty Worker will need to consider if there is a possibility or evidence to suggest that there are child in need concerns or the potential for child in need concerns. If there is a strong possibility of such needs, as outlined below, a Child In Need Single Assessment needs to be undertaken and completed within **10 working days.** The duty worker will also be required to immediately inform the immigration case worker and provide all relevant details about the family and child(ren).

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

Because of the 'no recourse' status of the parents, the duty worker and the immigration case officer will also have to check the following alongside the Child in Need assessment:

* Key documents;
* Local Connection;
* Immigration Status;
* Destitution.

# Key documents

1. The person seeking a service must have sufficient identification although this may not be possible if, for example, the person is fleeing domestic abuse. In such cases evidence should be established at a later date via the assistance of a solicitor or the police.
2. If they do not bring the necessary documentation on first presentation, the assessment can still go ahead but the duty/social worker must inform them that any decisions regarding provision of support can only be made when they have provided the appropriate documents, and they should have wherever possible all the required documents before another interview is arranged.
3. If an interpreter is required, arrangements should be made with the interpreter to inform the person concerned of the documentation required.
4. Those seeking a service should be asked to verify their identity and immigration status with the production of the below forms of identification. If it is a Housing & Community Living referral, copies of any verification documentation should be sent to the duty worker and the immigration case officer.

* Passports and birth certificates for all members of the family;
* If available, travel documents e.g. return air tickets;
* Home Officer papers (Application Registration Card (ARC), application letters or refusal letters) and solicitors' letters and;
* If available, bank account statements (from the last 3 months).

1. All identification documents supplied must be original documents, which should be photo-copied and scanned onto the Liquidlogic case recording system.
2. If the applicant or any dependents have health needs, they must provide any documented evidence of ill health or disability for any member of the family, e.g. OT reports and mental health/psychiatric reports.

# Local Connection (Ordinarily Resident)

1. It is important to establish where the person has a local connection as it may be another local authority which has responsibility for this person/family. Therefore, it would be expected that the primary care giver would be able to provide details of their previous accommodation within LBC, along with the length of tenure and evidence of personal possessions within the area. Links to relatives and family should also be established, in addition to proof that the care giver and child(ren) are registered with a local General Practitioner, Dentist, and attend a local school.
2. Local connection criteria need not always apply, for example, if the person is at risk of violence if they return to the local authority where they have a local connection, or when the child(ren) are subject to a Child Protection Plan.
3. It should be stressed that social workers will follow up on the contact details given by those seeking a service to make enquiries to verify the local connection.
4. If it is established that the person has a local connection with another local authority, social workers should formally refer the person/family to the relevant local authority.

# Immigration Status of the Client

1. The immigration case officer will be able to contact Home Office case workers via the NRPF Network to establish if the person concerned has a ‘live’ immigration application, has been refused Asylum or has some other application pending.
2. The immigration case officer should have the documentation outlined in Key Documents to establish the status and identity of the applicant and his/her dependents and the Immigration Case Worker will cross-reference with the Home Office as fully as possible.
3. Social workers and the Immigration case officer will need to tell over-stayers they have a duty to inform the Home Office as they have approached the local authority for assistance.

# Destitution

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

# Single Assessment

1. Children in Need (single assessment) will need to be completed within 10 working days incorporating a thorough understanding of the:

* Developmental needs of child(ren);
* Capacities of parents/caregivers to respond to the needs of those children and;
* Impact of wider family and environmental factors on both parenting capacity and children.

1. An example of what might constitute a ‘child in need’ for the purposes of Section 17 of the 1989 Children Act includes:

* A disabled child or young person; those with emotional and behavioural difficulties; or those with caring responsibilities. It is also important to check that the child has access to appropriate health and educational provision.

1. Some guiding questions in the Child in Need single assessment should include:

* What support networks are available as an alternative to financial support under section 17 of the Children Act?
* Are the developmental needs of the children being met?
* Does the parent/s have capacity to respond to the needs of his/her children aside from the current restrictions to employment and/or benefits in the UK?

# Possible Accommodation Provision during the Assessment Period

If the family (with child(ren) under the age of 18 yrs) have no immediate accommodation or are at threat of impending homelessness, it may be necessary to arrange for short term emergency bed and breakfast provision. This is a far from ideal option, and is also disproportionately financially expensive. Therefore, the Duty Worker/ Social Worker must seek the Team Manager’s approval and ensure that the assessment is completed speedily, and that the tenure of emergency accommodation is brief.

# Completion of the Assessment

When the assessment is completed, the social worker should discuss the outcome of the assessment with their line manager, determine whether to Terminate Support, or offer Support from the Immigration case officer who will formulate a Child in Need Plan.

# Terminating Support

1. The decision to terminate support for an ongoing case should be made by the Team Manager with Service Manager agreement. This needs to be informed with an up-to-date assessment.
2. The social worker will need to inform the parents if their support is to be terminated. This should be done in an interview, with the use of an interpreter if necessary.
3. The social worker should arrange for a letter to be sent to the persons concerned including the 21 day notice period from when support will terminate and to advise them to seek legal advice if they disagree with the decision. This letter should be translated into the person's first language as appropriate. A copy of the letter should be sent to the generic Housing & Community Living email address book. [homelessprevention@luton.gov.uk](mailto:homelessprevention@luton.gov.uk)

# Support

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

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

1. It must be noted that Luton Borough Council may terminate existing support to a family where it becomes clear that the application to the Home Office is hopeless or abusive. This may happen where a family have lodged repeat applications arguing the same facts. Any decision to class a case as hopeless or abusive must be evidenced by seeing copies of all Home Office applications and in consultation with Legal Services.

# Immigration Case Officer

1. Following the single assessment and Destitute Assessment the case will need to be formally transferred to the Immigration case officer.
2. If all evidence is in place the family will move from emergency accommodation and subsistence payments arranged on a fortnightly basis via the electronic payment card. A property is sourced by an Immigration case worker via a Letting Agent. A pre tenancy inspection of the property is carried out and once satisfied it meets all the family needs, the property will be provided to the family.

1. The accommodation offered is via a tenancy agreement between LBC and the estate agents. It is then sublet to the family under licensing arrangements, and will include:

* A Table and some Chairs
* Beds
* Fridge /Oven / Cooker/ Washing Machine
* Wardrobe
* Sofa

1. The Immigration case officer will then device a Tenancy and License Agreement for a period of up to six months and will inform the Income team of the new tenancy, rental details, and also inform the finance team and order the family subsistence payment and update the Children & Learning Liquidlogic recording system.
2. The Immigration case officer will update the Luton NRPF Connect Database, which is maintained nationally by Islington Council and will inform the Local Engagement Officer.
3. The rental agreement is then signed by the Licensee, the letting agents, an immigration case officer and the Team Manager. The family then collects the keys to their accommodation and the Immigration case work officer will carry out announced and unannounced visits to the property at least 3 times a year. Their tenancy will only terminate when a final decision is made by the Home Office whether it will be granting Leave to Remain to the family or removal from the UK.
4. The Immigration case worker will devise a Child in Need plan, which will be reviewed and updated every 3 months.
5. If the Home Office grant the family Leave to Remain in UK, then 28 days notice will be given to the landlord and the Immigration case officer will support the family to apply for benefits which normally takes five to six weeks to be paid. The family are given six weeks’ notice of our intention to cease support. During this time the Children and Learning Immigration service will continue to pay accommodation and subsistence costs as per the bridging process. The Immigration case officer will liaise with the Housing Solutions Team within Luton Borough Council’s Housing Department to explore the best options under the homeless legislation. Housing will complete an assessment and notify the family and the Immigration case officer of the outcome within 10 working days of having received the notification from the Immigration case officer. Where there is a housing duty owed under the homeless legislation the Housing Solutions Team will ensure that there is a smooth transition for the family into their service within the six week bridging period.

1. The Immigration Officer hands the family a letter stating that they are now financially responsible for themselves and performs an end of license inspection on the property. Should there be any damage to the property or contents, the damage is assessed and a repayment schedule is drawn up with the relevant family.
2. The immigration case officer e-mails the Income Team to advise that the tenancy has ended and no further subsistence payments are required. The family hand back the keys by 12 noon.