



## **Children and Families**

# **Policy and practice guidance in respect of those with no recourse to public funds (NRPF)**

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## **PART 1 – NRPF POLICY**

### **Chapter 1**

#### **INTRODUCTION**

- 1.1 There are, and will always exist in Rochdale, a small number of people who have no recourse to public funds (NRPF) and are destitute (herein referred to as “those with no recourse”). Whilst not all these people will approach the local authority for support there will inevitably be a number that do.
- 1.2 Rochdale Metropolitan City Council (RMBC) wishes to provide a robust, humane, fair and transparent response to those with no recourse where barriers exist to return to country of origin and alternative, reasonable assistance from national bodies is not available, RMBC will liaise with the UKBA and where no barriers to return exist will seek to assist people to return to their country of origin.
- 1.3 This policy document sets out the framework upon which assessments of eligibility and need should take place so as to allow correct, robust and legally sound decisions to be made in relation to what support is provided on a case by case basis. This document also makes clear where, within the authority, responsibility lies for these assessments and the support provided.
- 1.4 This area of policy is heavily shaped by legal developments and so will be updated regularly. However, RMBC’s practice will change according to legal developments as these arise and not await the yearly refresh of the protocol. This is not intended as a comprehensive statement of the law in this area. Practitioners are referred to the guidance issued, and regularly updated, by the No Recourse to Public Funds Network.

## Chapter 2

### LEGAL DUTIES

- 2.1 The Secretary of State (SOS) has a statutory duty to support most asylum seekers through UKBA asylum Support. However in some cases the duty falls on the Local Authority to provide support instead. The Local Authority also has a duty to support some other groups of people who cannot claim state benefits and who have no other means of support. This includes people who are subject to immigration control. The SOS has no duty to assist these people unless they are asylum seekers or, in some cases, refused asylum seekers. The SOS does from time to time develop schemes of support for individuals who do not fall into these categories such as survivors of domestic abuse and individuals who have been subject to human trafficking.
- 2.2 Where alternative support and schemes are available for persons with no recourse, alternative support and schemes which may be available will be taken into account in any assessments undertaken.
- 2.3 Where the Local Authority has a power or duty to support, the principal legislation for adults will either be the National Assistance Act 1948 or, the Mental Health Act 1983 (in particular section 117) and for children it will be the Children Act 1989. The Human Rights Act 1998 is also likely to apply for both adults and children.
- 2.4 When a person from abroad who is not a UK citizen claims support and appears to be in need of services, it is essential their immigration status is first established in order to determine the eligibility for services from the Local Authority.
- 2.5 Assessments should then be undertaken by the relevant service, using the statutory criteria applicable to their status. In the case of a family, Children's services (CS) should undertake the assessment as it is unlikely that a duty will be owed to the adults alone. If the Children's assessor believes that one or more of the adults may be owed a duty in their own right then they should be referred to Adult's services (AS) for an assessment.

## Chapter 3

### POLICY STATEMENT

#### 3.1 GENERAL

3.1.1 At present draft guidance is being considered in respect of 'Care for Unaccompanied and Trafficked Children. An amendment to the Care Planning, Placement and Case Review will require all LA to refer to a Child's status as unaccompanied or trafficked child. An amendment to this policy will be undertaken once this guidance has been ratified.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/275759/Draft\\_guidance\\_-\\_Care\\_for\\_UASC.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/275759/Draft_guidance_-_Care_for_UASC.pdf)

3.1.2 RMBC will promote links and work collaboratively (as appropriate) with other local authorities, voluntary agencies and statutory bodies to ensure that those with no recourse are assessed, provided with appropriate support and, have their cases resolved in an appropriate manner. Further detail of how RMBC will work with the VCS can be found in appendix 13.

3.1.3 RMBC will ensure that all staff, responsible for assessing and/or supporting those with no recourse, are appropriately trained and capable and that their training remains suitably up to date.

3.1.4 Regular Legal Meetings (in both Adults' and Children's Services) will ensure that decisions are robust and fair.

3.1.5 RMBC will deliver services in a non-discriminatory and consistent manner taking into account race, ethnicity, culture, language, disability and religion.

#### 3.2 ADULTS

3.2.1 Where an individual destitute adult presents to RMBC, and it appears they may have need for health or social care provision, they will be referred to the Adult Contact Team 0844 264 0867 and a practitioner will first determine their immigration status. Their eligibility for services will depend on their level of need and immigration status. If it seems that there is reasonable potential for them to be eligible, then an assessment of their needs will be carried out in accordance with the Assessment Guide (Appendix 5).

3.2.2 Where an eligible need is established services will be delivered through the appropriate care management process as with all social care services

3.2.3 Vulnerable adults who go missing after services are provided will be reported by their social worker to UKBA.

### **3.3 FAMILIES WITH DEPENDENT CHILDREN**

3.3.1 It is unlikely that a local authority will be required to support an asylum seeking family or families that have been refused asylum. Local authorities cannot provide assistance in the form of support and accommodation under Section 17 Children Act 1989 (CA) to a child where support would otherwise be available to the child under Section 95 Immigration and Asylum Act 1999 (IAA). If a refused asylum seeker has a child after their Appeal Rights Exhausted (ARE) date they may be eligible for LA support.

3.3.2 Where a family presents to RMBC they will be referred to the First Response team (0845 226 5570) where a trained practitioner will first determine the immigration status of their respective charges. Their eligibility for services will depend on their level of need and immigration status. If it seems that there is reasonable potential for them to be eligible then the family's needs will be assessed by CSC Social Work practitioners in accordance with the guidance.

3.3.3 Where the CSC assessor believes that the adult may qualify in their own right for support from ASW then the adult will be referred to ASW for a separate assessment. Where a duty to the adult is established the accommodation needs for the adult will be met by ASW. The cost of additional bedrooms for children will be funded by CSC.

3.3.4 Where the adult does not qualify for support in their own right but the child is eligible for support then CSC, in consideration of the child's human right to respect for private and family life (article 8 of the European Convention on Human Rights (ECHR)) will tailor its support in a way designed to enable the family to stay together where possible. Separating children from their family at a point of hardship is unlikely to be in their best interests. Families with NRPF will be treated no differently from other families in that separation from parents will only be considered where there are significant safeguarding concerns.

### **3.4 FORMER UNACCOMPANIED ASYLUM SEEKING CHILDREN (UASC)**

- 3.4.1 When a UASC reaches 18 they may qualify for continued support under the Children Act or as an adult under the National Assistance Act or from UKBA, depending on their immigration status.
- 3.4.2 A decision needs to be made by Head of Service, CSC as to the entitlement from CSC no later than 6 months before their 18<sup>th</sup> birthday. This decision must be made in consultation with the Head of Service for Children in Care. Where a person is a national of an EEA country or unlawfully in the country, RMBC is prevented from providing support under the National Assistance Act (s.21(1)(aa)) unless to fail to provide support would result in a breach of the person's human rights. UASC that are 15 years old allocated to the Children in Care Team will be regarded as children in care with all entitlements and benefits as outlined in Volume 3 Planning Transitions to Adulthood Care Leavers Children Act 1989, April 2011.
- 3.4.3 Where there is evidence of a possible health and/or social care need, they will be referred to ASW team at that stage (17½) for an assessment of need pursuant to s.21 of the National Assistance Act 1948. Social workers from both CSC and ASW will support the individual through transition. Any decision on financial support under NAA or other welfare legislation will be made by Adult Social Care in conjunction with the Children in Care Service, who have a duty to support providing 'leaving care' services (which can include accommodation in certain circumstances) for UASC in appeal situations where status is not determined until their entitlement to 'leaving care' services ends.

### **3.5 SURVIVORS OF DOMESTIC ABUSE**

- 3.5.1 Rochdale Borough Council has adopted the cross Government definition of domestic abuse which states that domestic abuse is "Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, the following types of abuse: psychological; physical; sexual; financial; emotional."
- 3.5.2 Where a survivor of domestic abuse presents to RMBC they should be dealt with along the same lines as those set out above in parts 3.2 and 3.3.

However, when considering eligibility and in particular “ordinary residence” some exceptions can be made for those that are destitute due to being survivors of domestic abuse.

3.5.3 Where the survivor is ordinarily resident in a different area then the costs and support should be shared between the two authorities.

### **3.6 TRAFFICKING**

3.6.1 The 2000 U.N. Palermo Protocol definition states that:

*“Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.*

3.6.2 The number of children trafficked world-wide continues to rise. Although in the UK this is most prominent at airports and ports, trafficked children can present anywhere in the UK and professionals working with children should be aware of this fact.

A child who has been trafficked from abroad has the same right as any other child to protection under the Children Act and other relevant legislation and guidance. The Council will not return a trafficked child to its country of origin unless this is the best way to safeguard and promote the child’s welfare or unless it has been instructed by UKBA to assist in doing so.

3.6.3 The Council, through its safeguarding children protocol, will aim to ensure that vulnerable children are identified and given the help they need. In all cases where a child is suspected of being trafficked the Council will

- Ensure the safety of the child.
- Assess and vet any possible friends/relatives or named contacts in the UK.

- Provide adequate access to services, including GPs, CAMH, GUM and ensure appropriate referrals are made.
- Enable and facilitate a multi agency approach to ensure the needs of the child are considered and met.
- Provide safe and sensitive access to resources.
- Endeavour to raise awareness in all sectors.

3.6.4 The Council will collaborate with national protocols of child trafficking and with police and UKBA initiatives. The UK Trafficking Centre will be informed of all suspect cases and a referral made in these circumstances to the National Referral Mechanism (see guidance)  
[http://www.ecpat.org.uk/sites/default/files/nrm\\_child\\_first\\_responders\\_guidance.pdf](http://www.ecpat.org.uk/sites/default/files/nrm_child_first_responders_guidance.pdf)

3.6.5 If it appears that any adult in the area has been or may have been trafficked consideration must be given to implementing local Safeguarding of Vulnerable Adults procedures.

3.6.6 If an adult or a family (with adults) appears to be a victim of trafficking then they should be referred to the national Salvation Army service for such people who will accommodate and support them whilst their case is being resolved

### **3.7 PROVISION OF INTERIM SUPPORT**

3.7.1 Following the **Newcastle** decision and **LB of Barking and Dagenham** in case Law, provision of interim support to families with NRPF will be dependent on a needs assessment. The family may have other needs above those provided by Section 4 support thus the LA does have powers to provide support to the family; however this will be dependent on the outcome of the needs assessment and with liaison with the UKBA. The assessment will take into account all relevant factors including the immigration status of the applicant. The resulting claimant must have an active claim for support from the UKBA or an appeal has been submitted if an original claim has failed.  
<http://www.familylawweek.co.uk/site.aspx?i=ed112813>

3.7.2 The UKBA provides accommodation and subsistence support to asylum seeking adults and families under Sections 4 and 95 of the Immigration &

Asylum Act 1999. Where there is a delay in the provision of this support, Rochdale Borough Council can provide temporary support and assistance depending on the presenting circumstances and eligibility. This may include Interim relief when a decision has been agreed by the UKBA to provide support.

### **3.8 PRINCIPLES AND SERVICE STANDARDS**

- 3.8.1 **Effective service:** Services will be provided in consideration of national policy or local authority duty and legislative requirements.
- 3.8.2 **Empowerment:** Service Users will be provided with appropriate services and be active partners in decision making thereby assisting, promoting and enabling independence within legislative restrictions.
- 3.8.3 **Information provided by RMBC:** Service users will be communicated to appropriately in a language they will understand, on the service being provided to them. They will have been asked to confirm that they understand and will be able to use the information. VCS agencies and service users will be provided with a leaflet (in English and some of the core languages) outlining the NRPF assessment and support process, what we expect from them, what they can expect from us and what to do if they are not happy with the outcome of their assessment or the support they are receiving.
- 3.8.4 **Information required from the service user:** RMBC will not ask for any information that is not pertinent in either making a fair and robust assessment or in ensuring continued eligibility for support. However, clients will need to be aware that in undertaking a Human Rights Assessment significant amounts of highly personal information are required to inform the assessment. A letter of permission to release this information will be signed by the claimant.
- 3.8.5 **Equality:** Service users will be treated fairly on the basis of need and not discriminated against on the basis of age, race, ethnicity, gender, language, religion, disability, political persuasion or sexual orientation.
- 3.8.6 **Capacity and consent:** Service users will be given the right to make their own decisions and it will be assumed they have the capacity to do so unless proved otherwise by a formal assessment.

***The Mental Capacity Act provides a framework to empower and protect people who may lack capacity to make some decisions for themselves.***

The Mental Capacity Act makes clear who can take decisions in which situations, and how they should go about this. Anyone who works with or cares for an adult who lacks capacity must comply with the MCA when making decisions or acting for that person.

This applies whether decisions are life changing events or more every day matters and is relevant to adults of any age, regardless of when they lost capacity.

The underlying philosophy of the MCA is to ensure that those who lack capacity are empowered to make as many decisions for themselves as possible and that any decision made, or action taken, on their behalf is made in their best interests.

<http://www.legislation.gov.uk/ukpga/2005/9/contents>

- 3.8.7 **Office of Immigration Service Commissioners:** Advice given to service users and others will comply with the requirements of the OISC (N200100093) and Association of Registered Immigration Advisors (200410093). Since April 2001 non-solicitor immigration advisers are regulated by the Office of Immigration Services Commissioner (OISC) and it is a criminal offence to give immigration advice unless registered with or exempted by the OISC.
- 3.8.8 **Confidentiality:** Service users are entitled to expect confidentiality in all issues relating to their support and status. However, all local authorities are required to work on a multi-agency basis in relation to vulnerable children and adults and so information will be shared as appropriate with partner agencies.
- 3.8.9 The Authority is obliged to report to the Home Office, UKBA, the details of any person reasonably suspected to be a refused asylum seeker refusing to leave the UK and/or unlawfully present in the UK.
- 3.8.10 RMBC will proactively work with UKBA to resolve all NRPF cases as it is recognised that it is ultimately in the best interests of those with NRPF to resolve their status.

3.8.11 **Complaints/Appeals procedure:** Service users will have recourse to the Complaints procedure of RMBC and also the complaints procedures of the UKBA and OISC. An appeals process is also available to service users and may be used if there is dispute about service provision. In such circumstances the client will be given 14 (fourteen) days to appeal any decision made by the Council.

3.8.12 **Availability:** Where the social worker of an existing case is temporarily unavailable and assistance during their period of unavailability is required then the duty social worker in the Children's Assessment Team will provide that assistance as appropriate.

## **PART 2 – PRACTICE GUIDANCE FOR PRACTITIONERS**

### **Chapter 4**

#### **PRACTICE GUIDANCE**

#### **4.1 LEGAL FRAMEWORK**

- 4.1.1 Asylum and immigration continues to be a highly sensitive area of law. The legislation is extremely complex and both the law and practice are subject to frequent changes.
- 4.1.2 This policy cannot cover all the legal complexities and, where necessary, advice should be sought immediately from the Council's Legal Services. Practitioners are also referred to the detailed guidance and updating bulletins produced by the No Recourse to Public Funds Network. Where such guidance appears to contradict this document, legal advice must be obtained, as nothing in this Policy should be taken as recommending any step which would amount to a breach of the requirements of legislation (including the Human Rights Act) or statutory guidance. Practitioners are reminded that any mistake or delay in assessing eligibility or need could lead to the refusal or termination of support, the separation of families, or a person being removed from the UK, possibly without any right or opportunity to appeal.
- 4.1.3 LAs have a duty to inform the Home Office of any such person who they suspect or know is unlawfully present in the UK or a refused asylum seeker (Para 14; Schedule 3; NIA Act 2002).
- 4.1.4 The duty to assess a person's community care needs arises under Section 47 of the National Health Service and Community Care Act (NHSCCA) 1990. The duty to assess depends on the appearance of need, not on the likelihood of services being provided. This means that where there is evidence of a possible health and/or social care need, the responsible authority will be required to undertake a Section 47 NHSCCA assessment even if it is suspected that the individual may not be eligible for support from the LA.
- 4.1.5 In almost all situations where an adult requests a community care assessment, such an assessment should be completed, because the threshold to trigger the assessment is very low.

4.1.6 Most services are provided to adults under the NAA 1948. Services for children can only be provided under the CA 1989. Children whose need arose within the RMBC boundary may be considered Children in Need.

4.1.7 It is important to remember that in exercising powers, all relevant factors must be considered and irrelevant ones ignored and the local authority cannot fetter its discretion by strictly applying a blanket policy.

4.1.8 Fair Access to Care Services (FACs) criteria do not apply when assessing whether or not residential accommodation under Section 21 NAA should or must be provided for people with NRPF.

4.1.9 Relevant Legislation:

Children Act 1989

Mental Health Act 1983

National Assistance Act 1948

Asylum and Immigration Act 1996

Immigration and Asylum Act 1999

Asylum Support Regulations 2000

Nationality, Immigration and Asylum Act 2002

Withholding and withdrawal of support (Travel Assistance and Temporary Accommodation) Regulations 2002

Asylum and Immigration (Treatment of Claimants etc) Act 2004

Immigration, Asylum and Nationality Act 2006

Human Rights Act 1998

Convention on Refugees 1951

European Economic Area (EEA) Community Treaty

## **4.2 GENERAL GOOD PRACTICE**

4.2.1 All adults with NRPF who present to RMBC requesting support with accommodation and subsistence should receive a humane and customer-focused response.

4.2.2 In cases where there is no duty on RMBC to provide support, advice and assistance should be provided to individuals in pursuing other options such as voluntary return or section 4 support provided by the UK Border Agency (UKBA). However, options should not be proposed when it is clear these will

not work. When RMBC has a duty to support the presenting person, this should always be offered to the person.

#### 4.2.3 Safeguarding Statement

It is important to be aware that families/individuals who may be ineligible for services may suffer extreme levels of anxiety and hopelessness as a consequence of any decisions Rochdale City or partner's make.

Nationally there have been incidents of self harm and abandonment of children in such circumstances. It is therefore important that this potential risk is considered as part of the Assessment process. In particular practitioners need to consider the resilience of adults especially those who care for younger children where the immediate concerns can often be more active.

## Chapter 5

### SPECIFIC PRACTICE GUIDANCE FOR ASSESSMENTS

#### 5.1 ESTABLISHING ELIGIBILITY (See process)

5.1.1 In making decisions on eligibility for support, social workers will have to take 3 steps. These steps, set out in further detail below are:

- Step 1 – Establishing whether RMBC is the responsible Local Authority for providing support
- Step 2 – Establishing eligibility for support under immigration and other law
- Step 3 – Establishing destitution

5.1.2 Steps 1 and 3 are generally the same whether it is regarding adults or families with dependent children. Step 2 varies somewhat between the two but there are some common pieces of legislation. All three steps have certain complexities and are reliant on developing law. As such, practitioners should use the guidance contained within the NRPF Networks Practice Guidance for Local Authorities:

- “Assessing and Supporting Children & Families and Former Looked-after Children who have No Recourse to Public Funds (NRPF) for Support from Local Authorities under the Children Act 1989”
- “Assessing and Supporting Adults with No Recourse to Public Funds (NRPF)”
- Any other supplementary guidance documents for local authorities that provide legal updates

These documents can be found at the following location on line:

<http://www.nrpfnetwork.org.uk/guidance/Pages/default.aspx>

5.1.3 Legal issues which arise at any stage should be clarified with Legal Services.

#### 5.2 PROVIDING SUPPORT

5.2.1 Where it is assessed that support or assistance must be provided, this should be kept under regular review and the responsible social worker must keep themselves informed of any change in the person's circumstances. This includes changes in a person's immigration status, which may effect RMBC's obligation to provide support or assistance.

- 5.2.2 Accommodation and subsistence support should be provided in line with the support packages commonly agreed (Appendix 7) whilst ensuring that the person's needs are sufficiently met.
- 5.2.3 Their "care and attention" needs should be dealt with in the same way as those who have recourse to public funds (as far as this is possible).

### **5.3 REFUSING SUPPORT**

- 5.3.1 All assessment decisions should be recorded in writing and the outcome clearly communicated to the person in appropriate language and format. The assessment outcome should clearly state why the applicant is not eligible, or no longer eligible for support. It should also be made clear that, should their circumstances worsen and/or change (though remaining destitute), then they should re-present to RMBC for a reassessment.
- 5.3.2 Any adverse findings (e.g. that a person's account is not truthful) must be put to the person so that they may have a chance to respond. Any new information provided by the person after the decision, or any alternative explanations must be considered.
- 5.3.3 If the person has been receiving support and this is to be withdrawn, reasonable notice must be given to allow the person to make alternative arrangements and what constitutes reasonable notice will depend on the person's circumstances. Usually 'reasonable notice' will be at least 14 days (unless the support was clearly only for the duration of the assessment in which case a shorter period of notice will suffice).
- 5.3.4 Information should be given to people ineligible or refused support of voluntary organisations that might be able to provide support (see appendix 13 for details).
- 5.3.5 In regards to EEA migrants (or people who gained refugee status in another EEA state), local authorities have the power to purchase travel tickets to enable an individual to return to their country of origin when it would be an effective response to avoid a breach of a person's human rights (under Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation))

Regulations 2002). Embassies may also be able to purchase travel tickets for their nationals. Pending their return to the relevant EEA state, the local authority can provide time-bound interim accommodation, but has no power to provide cash payments.

- 5.3.6 Should practitioners believe that support has been claimed fraudulently, such suspicions should be reported to the NRPF Panel for consideration as to whether any legal action against the claimant should be considered.

#### **5.4 INTERIM SUPPORT**

- 5.4.1 Where the presenting need is urgent, consideration needs to be given to whether or not interim support should be provided pending completion of the assessments. The form to be completed by the social worker when interim may be appropriate can be found in appendix 10.

- 5.4.2 Where UKBA have agreed to provide support under Sections 4 or 95 of the Immigration & Asylum Act 1999 and there is a delay to the commencement of that support during which it is deemed necessary and lawful to provide support then costs should be sought to be claimed back from the UKBA through contacting: [la.finance.income@homeoffice.gsi.gov.uk](mailto:la.finance.income@homeoffice.gsi.gov.uk)

#### **5.5 FAMILIES WHERE AN ADULT MAY BE ENTITLED TO CARE FROM ADULT SERVICES IN THEIR OWN RIGHT**

- 5.5.1 It is the experience of RMBC that these cases are extremely rare. Where they arise, it is expected that Children's services will conduct an assessment on their own and, where they suspect a separate duty may be owed to an adult within the family they will refer the adult directly to Adult's Services for a separate assessment.

- 5.5.2 If duties are owed by both Adult and Children's Services there should be joint provision for the family.

#### **5.6 SURVIVORS OF DOMESTIC ABUSE**

- 5.6.1 Rochdale Borough Council has adopted the cross Government definition of domestic abuse which states that domestic abuse is "Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or

family members regardless of gender or sexuality. This can encompass, but is not limited to, the following types of abuse: psychological; physical; sexual; financial; emotional.”

- 5.6.2 Survivors of domestic violence who are from abroad and have NRPF will usually have been granted limited leave to enter the United Kingdom as a spouse or a fiancé of a person present and settled in the UK. This leave is granted subject to a condition that the individual has no recourse to public funds, although individuals granted leave as spouses or civil partners are permitted to take up employment.
- 5.6.3 Where the criteria for the Home Office’s Destitution Domestic Violence (DDV) concession scheme are met this will be pursued to enable a temporary period of recourse to public funds whilst their case is considered. This will enable access to mainstream provision (such as domestic violence refuges) and should remove the requirement for support from RMBC. The Job Centre Plus should assist in this matter by ensuring that all staff are trained to accept the special proof of entitlement provided to people under the DDV concession. See appendix 14 for further details of this scheme and how to access it. At the same time it should be ensured that the adult has made an application for indefinite leave to remain under the domestic violence concession rule.
- 5.6.4 If a survivor of domestic abuse refuses to apply for the DDV concession, it is likely that any consequent breach of their Human Rights (by, for example, destitution) will be considered a consequence of the individual’s own actions, rather than a consequence of any steps taken by RMBC, meaning that they would not be eligible for support.
- 5.6.5 Spouses and partners of EEA nationals fleeing domestic violence may be entitled to alternative support (depending on their individual circumstances) and should seek advice from their local Job Centre regarding what support or benefits they may be entitled to.
- 5.6.6 Survivors of domestic abuse from abroad will be assessed within the ordinary legal framework.

- 5.6.7 The applicant needs to demonstrate that their need for care and attention is made materially more acute by circumstances arising not just from a lack of accommodation and funds, but also from the effect of domestic abuse. Applicants will need to demonstrate eligibility for support and financial assessments will be undertaken. An ECHR assessment will be carried out if required. Decisions will be served in writing and in person and the applicant will be required to sign for receipt of that decision.
- 5.6.8 For lone survivors, assessment should be made under the provisions of the National Assistance Act 1948 and for families there should be a joint assessment under that Act and under the Children Act 1989.
- 5.6.9 Expectant and nursing mothers may qualify for support under Section 21(1) (a) and section 21 (1) (aa) of the National Assistance Act 1948.
- 5.6.10 Survivors of domestic abuse are more likely to be particularly vulnerable and to meet the criteria for “destitute plus” (see Assessment Guidance).
- 5.6.11 In most cases Schedule 3 of the Nationality, Immigration and Asylum Act 2002 will not apply to them because they will not be here in breach of immigration law. In cases where Schedule 3 does apply, they will be entitled to support if withholding or withdrawing support would result in a breach of their Human Rights.
- 5.6.12 Applications for leave to remain under rule 289A of Immigration Rules should be made with legal advice and applicants should be asked to obtain a specialist Immigration legal advisor.
- 5.6.13 The Council will require evidence of destitution (or imminent destitution), no recourse to public funds and that an application for leave to remain has, or is being made, under rule 289A, before services are provided. Acceptable evidence will be: passport (indicating NRPF); ECHR assessment (including financial assessment); Immigration check; UKBA letter(s); letter(s) from legal advisor. Where destitution is imminent, the decision of whether or not to provide help and assistance at that point in time should be taken on a case by case basis. The benefits and risks of an early intervention to both the council and the service users should be considered.

- 5.6.14 This does not affect any immediate short term provision that is provided in cases of urgent need to ensure the welfare and safety of the individual or family.
- 5.6.15 Assessment and support should be as per that set out within the NRPF Networks Practice Guidance for Local Authorities with the following extra considerations as per 5.6.15 – 5.6.19
- 5.6.16 Step 1 Establishing Ordinary residence  
Support under s.17 CA is not based on ordinary residence. Considerations in relation to ordinary residence can apply, however, when assessing whether other sources of support are available to a family. Fleeing domestic abuse is however, likely to be considered a good reason to move from one area to another.
- 5.6.17 In relation to adult only support, a survivor of domestic violence who flees to another local authority remains ordinarily resident in the local authority from which they fled, until such time as they are permanently housed in another local authority. In these situations the survivor is still ordinarily resident in their original authority but is physically in need of services in the new authority. Partnership working is advantageous in meeting the individual's needs.
- 5.6.18 Where there is a duty on the original local authority to provide support to people who have an assessed need for care and attention, the original authority should pay rent and subsistence. The new authority is responsible for providing local services in respect of health, community care, education etc. Should the responsible authority not pay this then RMBC will pay these costs instead and will seek to recoup these costs from the responsible authority. Support should not be withheld whilst such disputes are resolved.
- 5.6.19 Step 2 Establishing eligibility for support under immigration and other law  
Assessors should be mindful that in most cases Schedule 3 of the Nationality, Immigration and Asylum Act (2002) will not apply to them because they will not be here in breach of immigration law. In cases where Schedule 3 does apply, they will be entitled to support if withholding or withdrawing support would result in a breach of their Human Rights.

5.6.20 Step 3 Establishing Destitution

Assessors should be mindful that in assessing whether an individual is destitute-plus domestic violence may be relevant.

## **Chapter 6**

### **WORKING TOWARDS CEASING SUPPORT**

#### **6.1 WITHDRAWING SUPPORT**

- 6.1.1 When clients supported under community care legislation are granted indefinite leave to remain in the UK, they no longer have NRPF and are entitled to work or access mainstream benefits.
- 6.1.2 If support is to be withdrawn, a reasonable notice period must be given to enable clients to make the transition onto mainstream support. Any withdrawal of support will be notified in writing.
- 6.1.3 This may be a difficult period for clients, particularly single adults, who may not necessarily be deemed in priority need for social housing. Further, adults supported under Section 21 NAA are unlikely to have the funds to afford a rent deposit in order to enter the private rented sector and their additional needs associated with their particular conditions may prevent them from entering into full-time employment.
- 6.1.4 In referring clients for assistance under the Housing Act 1996 it is good practice to make referrals early and to provide the case background, any recent medical information and any assessments of relevance. Explain why the person may not be able to obtain accommodation for themselves and why a rent deposit scheme may be needed.
- 6.1.5 It may also be necessary to refer clients on to the job centre and ensure they have a National Insurance number or know how to obtain one.

#### **6.2 ASSISTANCE IN RETURNING HOME**

- 6.2.1 Where a person wishes to return voluntarily, and is staying in the UK illegally, or has previously claimed asylum or whose visa has expired, assistance is available from Refugee Action. Refugee Action can provide additional assistance to clients with medical needs.
- 6.2.2 If the person is not eligible for support from Refugee Action, the local authority can use its powers to provide flights home and, if necessary, a financial reintegration package.

6.2.3 For EEA Nationals assistance may be provided through Thamesreach Reconnections – 0870 383 3322.

## **APPENDICES**

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## **Appendix One: List of EU/EEA states**

**The European Economic Area (EEA) consists of**

**Austria**

**Belgium**

**Bulgaria**

**Croatia**

**Cyprus**

**The Czech Republic**

**Denmark**

**Estonia**

**Finland**

**France**

**Germany**

**Greece**

**Hungary**

**Iceland**

**The Republic of Ireland**

**Italy**

**Latvia**

**Liechtenstein**

**Lithuania**

**Luxembourg**

**Malta**

**The Netherlands**

**Norway**

**Poland**

**Portugal**

**Romania**

**Slovakia**

**Slovenia**

**Spain**

**Sweden**

**UK**

**\*Although Iceland, Liechtenstein and Norway are not members of the European Union (EU), their citizens have the same rights as EU citizens to enter, live in and work in the UK.**

## **Appendix Two: List of Public Funds**

- income-based jobseeker's allowance;
- income support;
- child tax credit;
- universal credit;
- working tax credit;
- a social fund payment;
- child benefit;
- housing benefit;
- council tax benefit;
- council tax reduction;
- domestic rate relief (Northern Ireland);
- state pension credit;
- attendance allowance;
- severe disablement allowance;
- personal independence payment;
- carer's allowance;
- disability living allowance;
- an allocation of local authority housing; and
- Local authority homelessness assistance.

Public funds do not include benefits that are based on National Insurance contributions. National Insurance is paid in the same way as income tax and is based on earnings. Benefits to which a person is entitled as a result of National Insurance contributions include:

- contribution-based jobseeker's allowance;
- incapacity benefit;
- retirement pension;
- widow's benefit and bereavement benefit;
- guardian's allowance; and
- Statutory maternity pay.

Health care and education do not count as public funds, although an individual's immigration status may affect whether they are eligible for them.

### Appendix Three: Glossary of Abbreviations and key terms in relation to NRPF

<b>ARE</b>	Appeals rights exhausted
<b>CA</b>	Children Act
<b>DLR</b>	Discretionary Leave to remain
<b>DVR</b>	Domestic violence rule
<b>ECHR</b>	European Convention on Human Rights
<b>EEA</b>	European Economic Area
<b>EU</b>	European Union
<b>HRA</b>	Human Rights Acts
<b>IAA</b>	Immigration and Asylum Act
<b>ILR</b>	Indefinite Leave to Remain
<b>LA</b>	Local Authority
<b>MHA</b>	Mental Health Act 1983
<b>NAA</b>	National Assistance Act
<b>NAM</b>	New Asylum Model
<b>NIA</b>	Nationality, Immigration and Asylum Act
<b>NRPF</b>	No recourse to public funds
<b>OISC</b>	Office of Immigration Service Commissioners
<b>SAL</b>	Standard Acknowledgement Letter
<b>UASC</b>	Unaccompanied asylum seeking child
<b>UKBA</b>	United Kingdom Border Agency

#### Definitions

##### **ARC**

Application Registration Card, issued by the UKBA to asylum seekers as a form of identification.

##### **ASYLUM SEEKER**

An asylum seeker is a person who is not under 18 and who has made a claim for asylum which has not been determined.

##### **CLANDESTINE ENTRANT**

Illegal entrants who enter the UK without passing through any immigration control.

##### **DISCRETIONARY LEAVE TO REMAIN (DLR)**

A period of leave granted where neither humanitarian leave, refugee status nor leave within Immigration rules is granted.

## **EUROPEAN UNION/ACCESSION STATES/EEA**

### **EU Member States**

Austria; Belgium; Denmark; Finland; France; Germany; Greece; Ireland; Italy; Luxembourg; Netherlands; Portugal; Spain; Sweden; UK.

### **Accession States**

Cyprus; Czech Republic; Estonia; Hungary; Latvia; Lithuania, Malta; Poland; Slovakia; Slovenia; Bulgaria; Romania.

(Malta and Cyprus – full membership rights immediately on joining).

### **EEA**

The European Economic Area comprises EU member states, plus Iceland, Norway & Liechtenstein. For freedom of movement purposes Switzerland is also treated by all EEA members as if it is a member of the EEA.

### **EXCEPTIONAL LEAVE TO ENTER/REMAIN (ELTE/ELTR)**

Permission to remain or enter the UK. Now replaced by Humanitarian or Discretionary Leave.

### **HUMAN RIGHTS ACT (1998) HRA**

Incorporates European Convention on Human Rights (ECHR) into UK law.

### **ILLEGAL ENTRANT**

A person who is physically in the UK and has entered in breach of Immigration law.

### **ILLEGAL IMMIGRANT**

Not a correct term in Immigration law.

### **INDEFINITE LEAVE TO REMAIN/ENTER (ILR/ILE)**

Granted subject to immigration controls. Also referred to as settled status, permanent residence. A family reunion visa is also equivalent to indefinite leave to remain.

## **LAWFULLY RESIDENT**

A person who has current permission to remain in the UK or is in the UK awaiting the outcome of an appeal.

## **LEAVE OUTSIDE THE RULES**

The UKBA may exercise discretion and grant someone leave to remain even if the person does not meet the criteria of Immigration Rules.

## **OVERSTAYER**

A person who was lawfully present in the UK but whose permission has now expired and is in breach of immigration rules and liable to removal.

## **NO RECOURSE TO PUBLIC FUNDS (NRPF)**

Individuals and/or families that have entered the UK and are not eligible to claim welfare benefits, including access to housing and some health costs.

## **REFUGEE**

The United Nations Geneva Convention of 1951 defines a refugee as:

“Any person who, owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such a fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his habitual residence, is unable, or owing to such fear, unwilling to return to it.”

## **REFUGEE STATUS**

Recognition by the UKBA of an asylum seeker as a refugee under the 1951 Convention leads to the grant of ILR/ILE. There are various rights including family reunion and issue of travel documents.

## **REFUSED ASYLUM SEEKERS**

Also known as “failed asylum seekers” – someone who has claimed asylum, but received a negative decision from the Home Office.

**SAL**

Standard Acknowledgement Letter which is a temporary form of identification until ARC is issued.

**SUBJECT TO IMMIGRATION CONTROL**

Any person who needs leave to enter or remain. Leave may prohibit access to public funds.

**UNACCOMPANIED ASYLUM SEEKING CHILD**

Is a person who, at the time of making the asylum application who:

- Is or, there is no proof to the contrary, under eighteen.
- Is applying for asylum in his or her own right.
- Has no adult relative or guardian to turn to in this country.

## **Appendix Four: Acceptable Evidence**

### **Acceptable evidence:**

- Home Office document giving Rochdale City address.
- Tenancy agreement showing date of occupancy.
- Letter from Benefit Agency/RMBC department regarding inability to claim or cessation of benefit.
- Letter from legal representative which gives details of current status.

### **Acceptable evidence for support:**

Original documents must be provided. In exceptional circumstances, certified copies will be accepted if stamped and certified by the Home Office or Legal Representative. All or some of the following evidence may be required:

- SAL
- Benefit Book
- Birth Certificate
- ID Card
- ARC – Asylum Registration Card
- Home Office Letters
- Marriage Certificate
- Photographic Evidence
- NINO
- Passport
- Letter from Legal Representative
- Bank Statements / Building Society Book(s)
- Tenancy Agreement
- P60 / P45
- Driving Licence
- Referral from Voluntary Agency

## **Appendix Five: Appeals Process (Against decisions made by the council)**

- The client will be given 14 (fourteen) days to appeal any decision made by the Council. The client must be advised to submit the grounds, including any supporting evidence, in writing to the Practice Manager within 14 days of the date of the letter. The Practice Manager will convene an appeals panel which will consist of at least 2 people, and will be constituted from the following classes of personnel: Practice Manager, Head of Service, Legal Rep, Welfare Rights Officer, Social Worker (Children / Disabilities / Elderly / Mental Health). An interpreter will be provided if required.
- The Client should be invited to attend the appeals panel meeting. A legal representative will be allowed. The Panel may adjourn to consider the appeal or request further evidence. The Client will be informed of the decision, in person or in writing by recorded delivery within 5 working days of the panel decision. A copy of the complaints procedure will be included with the decision letter. The decision letter must indicate the reasons and refer to appropriate legislation.
- The decision of the panel is final.
- Any further substantive evidence produced at a later date will be considered if that evidence is validated.

## **Appendix Six: Financial and Administration Process**

### **Education:**

Local Authorities have a duty to provide education for all children within their area.

### **Payments:**

Payments in must be recorded in the Remittance Register and paid in line with Borough Council policy. Payments out must be made and recorded in line with Borough Council policy.

### **Section 4 support:**

UKBA provides Section 4 support for those that have reached the end of the asylum process. Support is restricted to Housing and subsistence payments via an Azure card. This may be the only form of support available to destitute refused asylum seekers who cannot be removed for practical or health reasons and where a Judicial Review, fresh claim or further representation is pending.

Strict requirements must be met in order to qualify for section 4 support. The client must be destitute and satisfy one of the following requirements:

- The client is taking all reasonable steps to leave the UK or is placing themselves in a position where they can do so; or
  
- The client cannot leave the UK because of a physical impediment to travel or for some other medical reason; or
  
- The client cannot leave the UK because, in the Secretary of State's opinion, no viable route of return is currently available; or
  
- The client has applied for a judicial review of their asylum application and has been given permission to proceed with it; or
  
- Accommodation is necessary to prevent a breach of their rights within the meaning of the Human Rights Act 1998.

## Appendix Seven: Support Provided

RMBC will assess the level of support required to avoid a breach of the client's human rights. As a guide, RMBC will consider this, in financial terms as against Section 95 (s.95) asylum support rates. 2013/14 rates are detailed in the table below. We will review s.95 rates on a yearly basis to ensure that we continue to reflect this benchmark. Where other support is available to a household then the amount of support provided by RMBC will be reduced proportionately.

### Rochdale Support

Type of person/people	£/week
Married or in a civil partnership couple	£72.52
Lone Parent (18 years old or over)	£43.94
Single person (18 years old or over)	£36.62
16/17 year old	£39.80
Child/ren Under 16 year old (per child)	£52.96
Baby under 12 months old	An additional £5
Pregnant women and children under 3 years old	An additional £3
Housing (includes rent, council tax, water charges and amenities)	See table (Table 1)

### Housing Support from Rochdale-(Table 1 Day rates)

Bedroom need	Rochdale	Heywood	Middleton	Council Tax *	Gas Water electric **
Single under 35 (shared rate)	£8.25	£6.42	£9.29	£2.82 (shared)	£3.21 (shared)
1	£11.87	£11.54	£13.87	£2.82	£3.21
2	£14.01	£14.01	£16.32	£2.82	£4.83
3	£16.32	£16.32	£18.13	£2.82/£3.29	£4.83
4	£21.42	£21.42	£26.79	£2.82/£3.29/£3.76	£4.83

\*Using C/Tax rates of band A £1026.87 band B £1198.01 and band C £1369.16

\*\* BBC web site using average dual energy bill of £1315 plus £8.50 p/w water

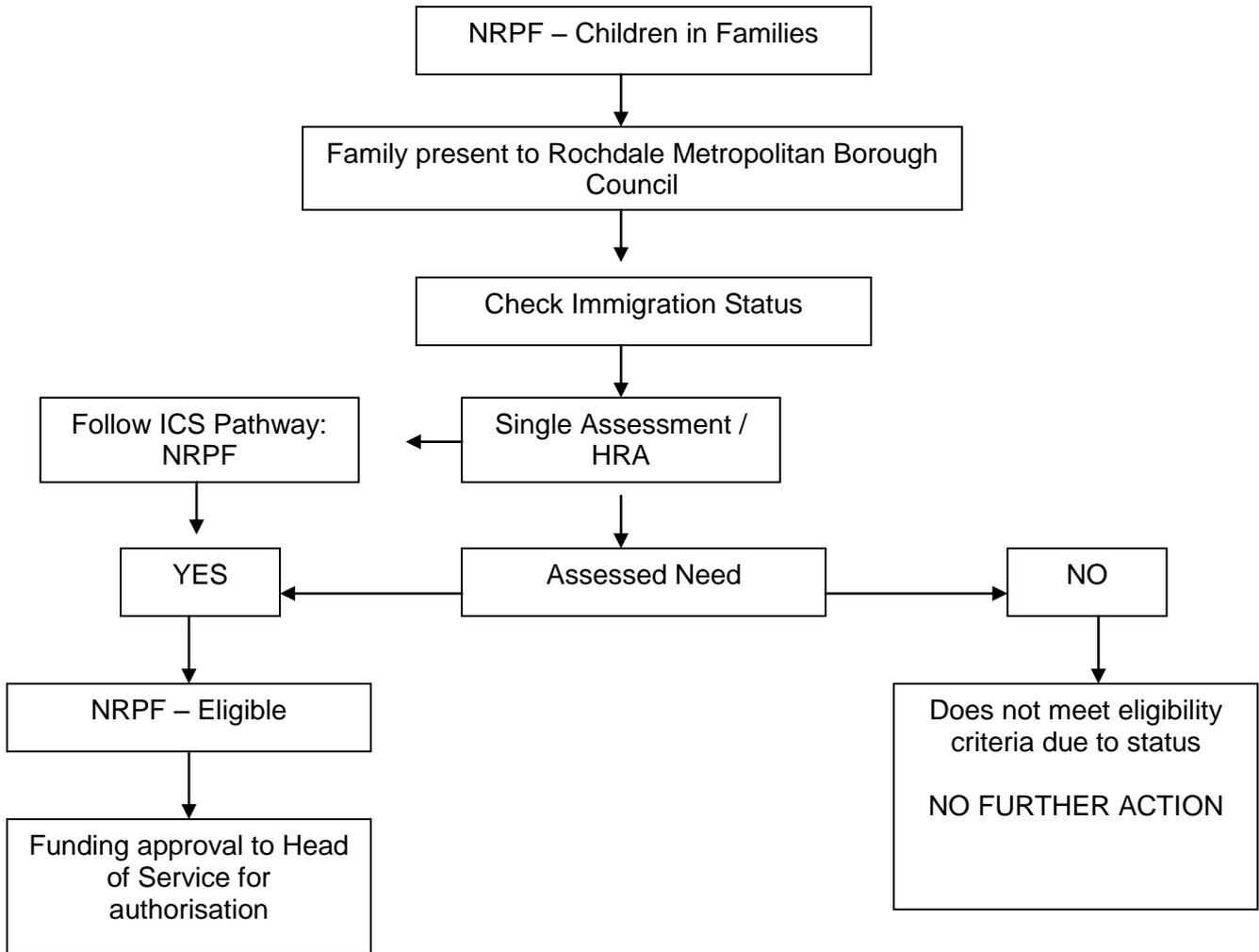
RMBC will ensure that those to whom they have a duty are safely and appropriately housed. This may include NRPF households maintaining existing accommodation using the funding agreed for housing. Where existing accommodation is not available RMBC will usually arrange accommodation on behalf of the NRPF household. This will be temporary accommodation. Any rent arrears will not be paid by Rochdale MBC and the service user

needs to agree to pay back a fixed amount to the provider from subsistence allowance given.

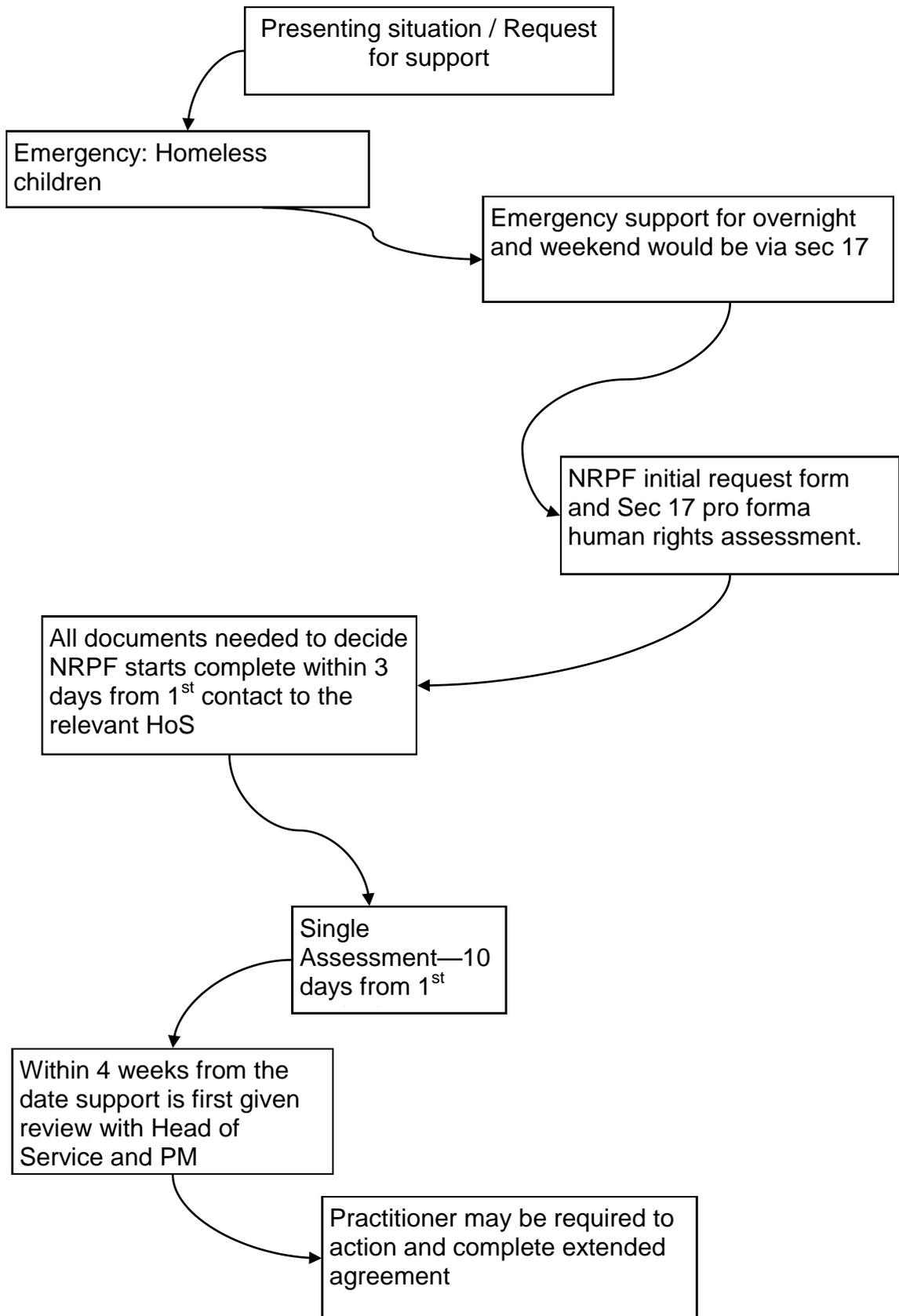
RMBC may, at its discretion, move NRPF households to different properties though RMBC will seek to consider the impact on the household prior to carrying out any moves. Initial accommodation may only be an interim measure and, during such periods of interim accommodation (such as bed and breakfast accommodation), all or part of the subsistence cash payment may be paid to a third party (such as the owner of bed and breakfast accommodation) for in kind subsistence support (such as the provision of breakfast). Where this is the case RMBC will separately consider on a case by case basis whether any balance remaining is sufficient to meet the household's subsistence needs not already being met by the in kind services.

**Appendix Eight: Assessment process chart**

**First Response Team**



**Appendix Nine: RMBC process for agreeing NRPF support for families**



**Appendix Ten: No Recourse To Public Funds Support Request**

<b>Team Code:</b>	<b>Practice Manager:</b>	<b>Social Worker:</b>
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<b>Name of Adult(s)</b>	<b>DOB</b>	<b>Address</b>	<b>Ethnicity</b>

<b>Name of Child/ren</b>	<b>DOB</b>	<b>Address</b>	<b>Ethnicity</b>

**Any other agencies involved: (eg Refugee Action, School etc)**

<b>Guidance / Eligibility Established</b>	<b>Yes</b>	<b>No</b>	<b>Not yet completed</b>
Ordinarily Resident			
Destitute plus (additional needs) (page 5 NRPF guidance/ Islington)			
Relevant Assessments completed:			
Single Assessment (Sec 17)			
Human Rights Assessments Template			

**Reason for request:**

**Assessment of Need:**

**Action Planned and Timescales:**

**Code used: NRPF**

**Costs:**

Request Agreed:

Signed: ..... Date:.....

Practice Manager

Signed: ..... Date:.....

Head of Service

Review Date: .....

**Appendix Eleven: No Recourse to Public Funds: Extended Agreement Request**

**PROGRESS REPORT**

<b>Team Code:</b>	<b>Practice Manager:</b>	<b>Social Worker:</b>
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<b>Name of Adult(s)</b>	<b>DOB</b>	<b>Address</b>	<b>Ethnicity</b>

<b>Name of Child/ren</b>	<b>DOB</b>	<b>Address</b>	<b>Ethnicity</b>

**Date of first agreement:**

**Continued support required:**

**Relevant liaison with UK Border Agency (e.g. caseworker name)**

**Timescales and Actions to resolution:**

**Cost Analysis:**

**a) Cost to date**

**b) Costs for next 4 weeks**

Signed: ..... Date:.....

Social Worker

Signed: ..... Date:.....

Practice Manager

Signed: ..... Date:.....

Head of Service

## Appendix Twelve: ECHR ASSESSMENT FORM

This form is designed for use in relation to requests for assessment or resources from service users subject to immigration control who have no recourse to public funds.

Specifically, it has regard to the following Articles of the European Convention on Human Rights:

- Article 3, prohibition of torture or inhuman or degrading treatment or punishment);  
and
- Article 8, right to respect for private and family life.

Article 3 is an absolute right. There are 5 components to Article 3: inhuman treatment, degrading treatment; inhuman punishment, degrading punishment; torture. There are two key issues in relation to Article 3: (i) whether the facts of a service user's claim fit into one of the 5 components of article 3 and (ii) the need to show a minimum level of severity for Article 3 to be engaged.

Article 8 grants a right to respect for private and family life, home and correspondence. The right to respect for private life can include medical issues. Article 8 is a qualified right. Public authorities are prohibited from interfering with the Article 8 right except where the grounds for interference are in accordance with law, they pursue a legitimate aim and they are necessary and proportionate. The following are legitimate aims: the interests of national security, public safety or the economic well-being of the country, the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others.

This form is designed to supplement, not replace, assessment formats arising from *Framework for Assessment* (in relation to the Children Act 1989) or assessments conducted under the National Assistance Act or other accepted national or local authority assessment formats. Where appropriate, the most recent statutory assessment should be appended to this ECHR assessment.

## Section 1: Key Information

Family Composition: **Include date of birth, other names and aliases under which individuals are known**

Confirmation of Identity: **Is there a certificate, nationality document etc?**

**Background / Chronology:** Provide give a brief history of background and any social service support. In completing this section the following questions should be used as a checklist:

1. How long has the family/each applicant been in the country?
2. What is their immigration or asylum status, what is the date of any decision or appeal and what applications remain outstanding?
3. What are the medical, educational, social or other needs of each family member (include details of the GP and any person or organisation consulted or being consulted)?
4. What is the financial situation? What accommodation is available? What previous accommodation has the applicant/family had? How was that lost?
5. How has the applicant/family supported itself until now?
6. Are there any other people or organisations who have provided or could provide any support?
7. Is there any reason why the family cannot return to their country of origin (please set out in full)?
8. What other family or relatives do the family have in this country? What contact does the family have with them?
9. What difficulties, whether in terms of employment, schooling, medical provision or otherwise, would be caused were the family to return home?
10. Is there any other factor or factors which ought to be borne in mind?

## Section 2: Immigration Status

2a. EU Nationals<sup>1</sup>: **Complete this section for individual EU nationals who have applied for financial or social work support from the Council. For other people subject to immigration control with no recourse to public funds, including failed asylum seekers, complete section 2b.**

Purpose of Assessment: **Please record and explain to the individual/family the purpose of this assessment.**

**Assessment of current situation:** Is the individual/family destitute? Have they any other available means of support? Are children attending school?

**Assessment of ability to work:** Is the individual or anyone in the household able to work? Are there health needs that affect the service user's ability to work? Please record/obtain relevant medical proof where appropriate.

**Other Means of Support:** Does the individual think that they might be able to become self-supporting in the near future? Are they having support from friends, family, religious communities, charities etc? If yes, obtain details.

---

Travel needs: **Establish whether or not it is possible for client to return home to their country of origin. Have they the means (finance, passport, travel documents)? If not, what help would the family need?**

2b Failed Asylum Seekers/Overstayers: **Complete this section for failed asylum seekers who have or have not been issued with Section 9 letter by the Home Office, and other people subject to immigration control who have no recourse to public funds.**

Purpose of Assessment: **Please record and explain to the individual/family the purpose of this assessment.**

**Assessment of current situation:** Does the family originate from a “ Safe State” as defined by the Home Office? Is the individual/family destitute? Has the family any other available means of support? Are children attending school?

**Assessment of Health Needs:** if the individual or anyone in the household was legally able to work, could they do so? Please record/obtain relevant medical proof where appropriate.

**Other Means of Support:** Does the individual think that they might be able to become self -supporting in the near future? Are they having support from friends,

family, religious communities, charities etc? If yes obtain details

Travel needs: **Establish whether or not it is possible for client to return home to their country of origin. Have they the means (finance, passport, travel documents)? If not, what help would the family need?**

### **Section 3: Assessment and Recommendations**

Human Rights: **Consider whether there would be a breach of Article 3 or Article 8:**

**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.**

**Article 8: If the family or individual returned to county of origin, would the right to respect for private and family life be compromised?**

In the case of failed asylum seekers, should individual/ family be applying for support under section 4 of the Immigration and Asylum Act 1999 or do they have other means of support?

**Recommendation:** Assessing officer should make recommendation as to the future of this case based on their assessment. Is there any other support to be considered? Provide a reasoned conclusion.

--

**Confirmation of recommendation/decision:**

Practice Manager should make a decision as to why this person should/should not receive continued support.

Name of Service User	Signature	Date
Name of Social Worker	Signature	Date
Name of Practice Manager	Signature	Date

## **Appendix 13: VCS support agencies and arrangements with RMBC**

### **Introduction**

Rochdale Borough Council recognise the key role that voluntary and community sector (VCS) agencies have to play in supporting and advising those with no recourse. A large number of VCS agencies are likely to come into contact with those with no recourse. Some of these VCS agencies will only advise/support those with no recourse on an occasional basis whilst other agencies will advise/support those with no recourse on a regular basis. This appendix sets out how we will work alongside VCS agencies and distinguishes throughout between specialist agencies who see those with no recourse on a regular basis<sup>2</sup> and those that don't.

### **Referrals**

It is likely that a significant number of those with no recourse will seek help from a VCS group prior to engaging with the Adults' or Children's duty teams. We would expect all relevant VCS agencies to be aware of, and have easy access to the Adults' and Children's services phone numbers for an NRPF claim to be made. We would expect specialist VCS agencies<sup>3</sup> to make use of the NRPF referral form (see appendix 16) and use this to tease out and understand their situation. This should better enable specialist agencies to make appropriate referrals. When RMBC receives an NRPF referral from a specialist agency in the agreed manner (ie through use of the referral form) it will instigate an assessment unless, upon discussion, the referrer and social worker agree that an assessment is not appropriate.

Prior to making a referral, specialist VCS agencies<sup>3</sup> should seek to manage the expectations of those with no recourse so that they have a good understanding of what to expect from RMBC. This should include referring clients to the "RMBC Principles of Service and Standards leaflet".

### **Supporting refused clients**

Where RMBC is legally unable to support those with no recourse then RMBC will provide the individual with details of VCS agencies (both specialist and non specialist) who may be able to provide them with some help and assistance. Further to this, where the client has already had engagement with a specialist VCS agency then the client will be asked to sign a data sharing agreement to enable their refusal letter to be shared with the said agency. Alternatively, should the client be refused by RMBC and then subsequently present at one of the specialist VCS agencies, then the agency should, with a signed data sharing agreement (to be scanned and emailed across), be able to request and be sent the refusal letter.

Specialist VCS agencies will be expected to support clients in understanding:

- The reasons for refusal
- The fact that should their circumstances change then they should reapply for support
- The appeals process and grounds for appeal

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<sup>2</sup> Namely; Refugee Action

**Training**

Specialist VCS agencies<sup>3</sup> will be invited to contribute (in kind) towards the training of RMBC social workers around NRPF and the realities of the service user experience.

RMBC will offer opportunities for staff from specialist VCS agencies<sup>3</sup> to shadow RMBC staff (as observers only where not already involved in a case) at various points of the NRPF decision making process. This will be agreed between the relevant head of service (children's or adults) and specialist VCS agency<sup>3</sup>.

## **Appendix 14: The Destitution Domestic Violence (DDV) Concession**

### **Introduction**

On 1 April 2012 the UK Border Agency (UKBA) introduced the Destitution Domestic Violence (DDV) concession to replace The Sojourner Project. A person who successfully qualifies for this concession will receive temporary leave for three months, which allows them to apply for access to public funds (including jobseeker's allowance, income support and housing benefit). During this three month period the person should make a separate application for indefinite leave to remain under the Domestic Violence Rule.

For more information on the Domestic Violence Rule see the UKBA website:

[http://www.ukba.homeoffice.gov.uk/visas-immigration/settlement/applicationtypes/applicationformset\(dv\)/](http://www.ukba.homeoffice.gov.uk/visas-immigration/settlement/applicationtypes/applicationformset(dv)/).

### **Who is eligible for the DDV concession?**

There are strict eligibility criteria for the concession, which applies to single adults and adults with children. To meet the UKBA's criteria a person must:

- Have 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 present and settled in the UK; and
- Have had that relationship break down due to domestic violence; and Be destitute and in need of financial help; and
- Intend to make a claim to stay permanently in the UK under the Domestic Violence Rule.

Spouses of EEA nationals do not fall within the scope of the concession and, at the present time, it does not cover the spouses of Commonwealth soldiers resident in the UK.

### **How to access the DDV concession**

A person who meets the eligibility requirements can notify UKBA of their need to access public funds by submitting the 'protecting victims of domestic violence' notification form, which is available online at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/residency/dv-notification-form.doc>.

The notification form can be emailed or posted to UKBA, but email is recommended where possible, since notifications submitted by post are processed more slowly.

### **What next?**

If a person is granted three months leave under the DDV concession this will replace the leave given to enter or remain as a spouse or partner. If a migrant does not submit an application for indefinite leave to remain to the UK Border Agency within the three month period, their leave will come to an end and they will be expected to either apply to regularise their leave in the UK in another category or leave the UK.

The UK Border Agency encourages applicants to submit applications for indefinite leave within six weeks of being granted leave under the concession, which is similar to the time periods that were used in the Sojourner project, to allow them time to make a decision whilst an applicant has access to public funds.

If there is a serious reason why an application is unable to be submitted within the three month temporary leave period, the applicant or their representative must contact the UK Border Agency and discuss the reason of the possible delay.

As long as a person submits an application before their temporary leave expires, their leave will continue until they are either granted further leave, their application is rejected or, if they choose to appeal a rejection, until their appeal rights are exhausted.

### **What does this mean for local authorities?**

Once an eligible person has been granted temporary leave they are eligible to access, or apply to access, public funds, including housing benefit, seek support from domestic violence shelters or apply for a homelessness assessment at their local authority housing office. However, until a person with no recourse to public funds has submitted their notification under the DDV concession, and until UKBA has responded (usually within 1-2 days), an applicant will not have access to public funds.

Social services departments should assess a person or family fleeing domestic violence in these circumstances in the usual way, taking into account a local authority's duty to protect victims of domestic violence<sup>3</sup>. Where a person appears eligible for the DDV concession, the proportionate response is likely to be the provision of temporary support while their notification is processed.

The DDV concession only applies to people whose leave to enter or remain in the UK was as a partner of a British citizen or person settled in the UK and so social services departments may come across cases where the concession will not apply. In this situation the presenting person or family should be assessed in the usual way, taking into consideration whether they have no recourse to public funds under Schedule 3 Nationality and Immigration Act 2002.

For more information on assessing and supporting people with NRPF see the NRPF Network's guidance, available online at:

[http://www.islington.gov.uk/advice/asylum-immigration/refugees\\_migrants/nrpf\\_network/Pages/policy\\_guidance.aspx](http://www.islington.gov.uk/advice/asylum-immigration/refugees_migrants/nrpf_network/Pages/policy_guidance.aspx).

### **Frequently asked questions**

#### *What evidence needs to be supplied with a notification?*

A person notifying UKBA under the DDV concession does not have to supply evidence that they are a victim of domestic violence with their notification, but this evidence will need to be supplied with any later application under the Domestic Violence Rule.

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<sup>3</sup> As stated in *Opuz v Turkey* (2009) (Application no. 33401/02)

*How long will UKBA take to process a notification?*

The DDV concession is still relatively new, but so far the indications are very positive. In the majority of cases, if a notification is submitted to the UK Border Agency before 3pm via email, a decision to grant three months temporary leave is being issued on the same day. Notifications can be submitted via post but this will delay a decision and the applicant potentially having access to vital public services.

The UK Border Agency has a target to outcome notifications within 5 working days of receipt.

*How does an eligible person access benefits?*

Once UKBA has issued an eligible person with temporary leave to remain they should apply for benefits as usual, for example by applying to the Department for Work and Pensions. As with any benefits application, there will be a gap between applying and receiving financial benefits, but payments should be backdated to the date a valid application was made. During this gap it is possible for an individual to apply for a crisis loan through Jobcentre Plus. A person granted leave under the DDV concession is exempt from both stages of the habitual residency test for benefits.

The UK Border Agency will provide the applicant with a letter to present to the Department for Work and Pensions explaining their status.

*Are there any problems with the DDV concession?*

So far the DDV concession appears to be working well, but we are monitoring its impact, so please feel free to let us know if you identify any problems.

**More Information**

Further details about the DDV concession are available:

- On the UKBA website –  
<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/residency/FAQs-DDV-concession.pdf>  
  
<http://www.ukba.homeoffice.gov.uk/visas-immigration/while-in-uk/domesticviolence/>
- From DWP –  
<http://www.dwp.gov.uk/docs/u2-2012.pdf>
- From the Women's Resource Centre –  
[http://www.wrc.org.uk/what\\_we\\_do/campaigns/women\\_with\\_no\\_recourse\\_to\\_public\\_funds/resources\\_for\\_womens\\_organisations\\_supporting\\_women\\_with\\_no\\_recourse\\_to\\_public\\_fund](http://www.wrc.org.uk/what_we_do/campaigns/women_with_no_recourse_to_public_funds/resources_for_womens_organisations_supporting_women_with_no_recourse_to_public_fund)

