

Impact of LASPO on local authorities supporting destitute migrants and migrant children in care

Local authorities play a vital role in alleviating migrant destitution by providing housing and financial support to families, care leavers and vulnerable adults who are excluded from mainstream welfare benefits due to their immigration status. Support for people with no recourse to public funds (NRPF) is administered by social services in adherence with safeguarding duties set out in the Children Act 1989 and the Care Act 2014. [1]

This support is unfunded by central government and costs 50 local authorities at least £43.5 million per year to administer. The removal of legal aid for immigration matters has added to the financial pressures local authorities experience in administering this safety net due to people not getting the advice they need and relying on social services' support for longer periods than they would have otherwise done.

In order to comply with statutory duties, social services will need to fund legal advice for children in care and young people leaving care when legal aid is unavailable. However, it should not fall to local government to meet the funding shortfall created by LASPO.

The impact of legal aid cuts on local authorities and vulnerable migrants therefore needs to be considered in any review of legal aid provision. Restoring legal aid for immigration matters is an example of how central government could help local authorities to deliver services to residents using the scarce resources that are currently at their disposal.

1. Data on NRPF households supported by social services

Data from 50 local authorities shows that at the financial year end 2017-18:

- 2552 households and 4049 dependants were supported
- Cost of accommodation and financial support = £43.5 million per year (average cost of £17,193 per household)
- 67% of households exited local authority support on account of being awarded leave to remain with recourse to public funds
- The average time spent on support increased to 887 days
- 27% of households are non-EEA nationals supported for 1000+ days who are waiting for a final outcome on their immigration case
- The parent or adult in two-thirds of households has no current immigration permission (with the majority pursuing non-asylum immigration claims)
- 30% of support requests made to the local authorities were accepted over the year [2]

2. Impact of the lack of legal aid for immigration matters

When support is provided, social services will need to ensure that a person has obtained immigration advice in order to support them to establish a sustainable pathway out of destitution. Our data clearly demonstrates that the pathway off dependency on social services' support for the majority of households will be obtaining leave to remain with recourse to public funds. People may receive support whilst they are seeking legal advice to establish what their options are and/or waiting for a decision on their application or appeal.

With the average time spent on support at just under 2.5 years, this indicates that people experience significant delays throughout the process of achieving leave to remain in the UK. This is detrimental to the welfare of children, vulnerable adults and increases support costs for the local authority. The lack of legal aid for immigration matters is a contributory factor to people experiencing longer periods of dependency on social services' support whilst their immigration matter is resolved. Additionally, vulnerable people may be forced to resort to using inappropriate methods to obtain funds for legal advice leaving them at risk of exploitation and accruing debt they cannot afford to repay.

2.1 People who need to regularise their status

Since April 2013, assistance with applications made on non-asylum human rights grounds, for example, the family life (FM) rules, private life rules or outside of the rules has not been within the scope of legal aid. These are the immigration routes most commonly pursued by people receiving social services' support – our data shows that the parent or individual in two-thirds of households has no current immigration permission. Often poorly prepared applications are not accepted as valid, for example, when a fee waiver is refused. Where a substantive decision is a refusal, people can be waiting for a year for an appeal hearing date to be listed. [3] Limited availability of legal advice means that wrong or poorly prepared applications are often made, or appeals are pursued when in fact a fresh application on new grounds would be more likely to succeed.

Where a person or family has no outstanding application or appeal, the local authority may consider whether their return to country of origin would avoid a human rights breach. Before doing so, the local authority would need to be sure that there are no further grounds upon which the person has a claim to remain in the UK. Legal advice is therefore required, particularly when a person was previously unrepresented, had poor quality advice or a significant period of time has elapsed since their last substantive decision from the Home Office or courts. As a very small proportion of people (3%) exit social services' support to take up return to country of origin (whether voluntarily or enforced), this indicates that the majority will go onto make further claims to remain in the UK.

2.2 People who are lawfully present with NRPF

For the small proportion of people (12%) supported by social services who already have leave to remain, but with a restriction no accessing public funds, they will need to obtain a change in their status to allow recourse to public funds. In 2016, the OISC confirmed that providing advice or assistance fell within the scope of immigration advice regulation for two types of applications that people requesting local authority support commonly have to make:

- Destitution Domestic Violence Concession
- Change of Conditions application to have the NRPF condition removed following a grant of 30 months leave to remain on a 10-year settlement route under the FM or private life rules [4]

People may also need to make these applications prior to reaching crisis point in order to avoid becoming homeless and in need of social services' support. As 30% of referrals received by local authorities were taken on for support last year, this indicates that social services will also be working with people to try and prevent homelessness. Accessing immigration advice will be key to successfully achieving this in many cases.

2.3 Victims of domestic violence

A 2015 report by COMPAS at Oxford University found that experiences of domestic violence were a key element in many referrals of women with NRPF and their children to local authorities for support, with relationship breakdown, including domestic violence, often leading to previously stable circumstances deteriorating. [5]

Access to immigration advice is essential so that victims of domestic abuse are fully aware of their immigration position and how this may impact on their support options. They may need to take immediate action if they have a pending application which may be varied, or where a new claim is required. Difficulties accessing legal advice may mean that a person will face delays getting access to public funds.

Legal aid is only available for: people on a spouse visa making an ILR application on the basis of domestic violence, EEA nationals in some instances, and people claiming asylum. As the majority of people requesting social services' support have no current immigration status, current legal aid provision will not meet the needs of many people fleeing from abusive relationships, and the lack of legal aid for the applications listed at section 2.2 means that local authorities are more likely to need to intervene by providing support rather than being able to prevent homelessness.

2.4 Children in care and young people leaving care

The Department for Education has been clear in its statutory guidance that it is social services' responsibility to help a child in care or young person leaving care to access specialist immigration or asylum advice. [6]

The Local Government Ombudsman has found councils to be at fault for not assisting children in care to obtain immigration advice when they have needed to make an immigration claim or register as a British citizen. [7]

Although many children in care will be Unaccompanied Asylum Seeking Children and eligible for legal aid, there will be a significant proportion who are not pursuing asylum claims or are EEA nationals and require legal advice. Therefore, costs of funding legal advice will fall to councils where legal aid is not available. Data on these children is not routinely collected and we do not have any information to demonstrate the costs and extent to which this impacts on councils.

3. Local authority responses to the legal aid gap

Some councils fund legal advice provision through voluntary sector grants, but these alone will not enable all residents in need of immigration advice or those receiving social services' support from the local authority to access the specialist legal help that they need.

Although Exceptional Case Funding (ECF) could be an option for some, ECF is difficult to apply for without firstly obtaining a legal opinion about the merits of the case and is not something that social workers would routinely be able to assist with.

Training and enabling staff to become OISC regulated will be challenging when local authorities are experiencing significant resource pressures. Only one local authority in England has an adviser registered with the OISC who is based outside of the Nationality Checking Service. [8]

The Children's Society published a report in 2017 that highlighted the inconsistent responses that local authorities were taking to obtaining and funding legal advice for migrant children in care. [9]

References

[1] Local authorities may provide housing and financial support to the following people who are excluded from mainstream benefits and housing services by their immigration status:

- Families to safeguard the welfare of a child in need - section 17 of the Children Act 1989
- Adults with care and support needs - the Care Act 2014
- Vulnerable adults who do not have eligible care and support needs, but where the provision of housing is necessary to prevent a breach of their human rights – section 1 of the Localism Act 2011
- Former looked after children receiving leaving care support - the Children Act 1989

[2] Data from NRPf Connect annual report 2017-18. The database is used by 50 local authorities nationally (47 in England; 3 in Scotland) and is project managed by the NRPf Network. The database enables secure data sharing between local authorities and the Home Office.

<http://www.nrpfnetwork.org.uk/Documents/NRPf-connect-annual-report-2017-18.pdf>

[3] <https://www.independent.co.uk/news/uk/home-news/immigration-appeals-home-office-waiting-times-soar-delays-a8276436.html>

[4] <https://www.gov.uk/government/publications/clarification-of-the-oiscs-jurisdiction>

[5] <https://www.compas.ox.ac.uk/2015/safeguarding-children-from-destitution-local-authority-responses-to-families-with-no-recourse-to-public-funds/>

[6] Department for Education, Care of unaccompanied migrant children and child victims of modern slavery statutory guidance, paragraphs 18-21, 61 & 90

<https://www.gov.uk/government/publications/care-of-unaccompanied-and-trafficked-children>

[7] Local Government Ombudsman complaints : Royal Borough of Greenwich (13 019 106), 19 January 2016 <https://www.lgo.org.uk/decisions/children-s-care-services/looked-after-children/13-019-106>; Dudley Metropolitan Borough Council (15 015 327), 19 May 2016

<https://www.lgo.org.uk/decisions/children-s-care-services/looked-after-children/15-015-327>

[8] http://home.oisc.gov.uk/register_of_regulated_immigration_advisers/register.aspx

[9] <https://www.childrenssociety.org.uk/legal-aid>

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June 2018

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