

London Borough of Bromley

PART 1 - PUBLIC

**Briefing for Care Services
Policy Development and Scrutiny Committee
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**INCREASE IN FAMILIES PRESENTING WITH NO RECOURSE TO
PUBLIC FUNDS**

Contact Officer: Mark Thorn, Head of Referral, Assessment and Early Intervention
Tel: 020 84617578 E-mail: mark.thorn@bromley.gov.uk

Kay Weiss, Assistant Director, Children's Social Care
Tel: 020 83134464 E-mail: kay.weiss@bromley.gov.uk

Chief Officer: Terry Parkin, Executive Director, Education, Care and Health Services
Tel: 020 83134060 E-mail: terry.parkin@bromley.gov.uk

1. Summary

- 1.1 This report sets out the current position following an increase in families requesting support from the Local Authority but have no recourse to public funds.
- 1.2 No Recourse to Public Funds (NRPF) applies to a person who is subject to immigration control by the Home Office and has no entitlement to welfare benefits or housing support and benefits as set out in Section 115 Immigration and Asylum Act 1996. This may include asylum seekers, refused asylum seekers and families over staying their visa entitlement. NRPF families often refer themselves to Children's Social Care claiming destitution and seeking financial support under the Children Act 1989.
- 1.3 Over the past three years there has been a steady increase in the number of NRPF families claiming support resulting in a significant increase in the London Borough of Bromley resources used to support families, often due to the delays taken by the Home Office making decisions about their status.

2. The Law

- 2.1 Where a destitute family has submitted a relevant application under Article 8 (Right to a Private Family Life) of the Human Rights Act 1998 with the Home Office and are not eligible for Home Office support, case law has established that a local authority will have a duty to support that family under Section 17

Children Act 1989, until a decision is made on the application or unless the application is “obviously hopeless or abusive” (Clue v Birmingham City Council (2010)).

- 2.2 A local authority is required to consider whether the denial of accommodation and/or services would breach a family’s rights under Article 8 Human Rights Act 1998. The rights of each family member must be considered and a Child in Need (CIN) assessment and a Human Rights Assessment must always be completed. The assessment(s) must consider whether the child (ren) is/are ‘in need’ in the UK and whether the child (ren) would be ‘in need’ if they were to return to the parent’s country of origin. This requires some enquiry into the existence of services in the parent’s country of origin where possible. The findings of the child in need assessment should be incorporated into the Human Rights Assessment. Failure of the local authority to provide support may be subject to judicial review and the Local Authority has been threatened with such action and received judgement against it by the court when it has not offered appropriate support.
- 2.3 Local authorities have a duty to safeguard and promote the welfare of children in need within their jurisdiction. Wherever possible, family support services should be provided to help families care for children in need. The *Children Act 1989* is the framework within which local authorities provide family support services. A child in need assessment may be required irrespective of a lack of presenting needs. Being destitute with no recourse to public funds is reason enough to intervene and the local authority must complete an assessment. The local authority has the power to provide temporary accommodation to a family that is destitute under Section 17 of the Children Act whilst these assessments are being carried out. To leave a family destitute whilst carrying out assessments would normally breach the Human Rights Act 1998 and Children Act 1989 and be subject to legal challenge.
- 2.4 All assessments are completed by a qualified social worker and careful consideration must be given when refusing help as this may leave the family destitute and be challenged through judicial review. Within Bromley, legal advice is sought on all new applications or where there may be circumstances leading us to decline support. Many NRPF families are well supported by legal aid centres who robustly challenge social work assessments that do not recommend support. In 2013/14, two NRPF families instructed legal representatives to apply for emergency judicial review resulting in two emergency orders to provide support being made against the Council.

3. Financial Impact

- 3.1 LB Bromley has seen an increase in families presenting to Children’s Social Care claiming support for accommodation and subsistence with no recourse to public funds. This has increased expenditure over the last 3 years from £292,748 in 2012/13 to £434,477 in 2013/14. The current forecast spend for 2014/15 is £635,065 against a budget of £382,230 leading to a projected overspend of £252,835. This appears to be steadily increasing and is a common feature reported by all other London boroughs.

- 3.2 In 2012 there were 16 families claiming support involving 25 children and by 2013 there were 22 families involving 38 children. Although the numbers change regularly there are currently 32 families claiming NRPf support in Bromley at the current time. This involves 55 children. Although this support is only meant to be temporary, delays with the UK Border Agency making swift decisions has led to delay and in some cases we have been paying for a family's accommodation and subsistence costs for over 2 years. Most families do not require ongoing social work support but cases are monitored and regular reviews undertaken with the Home Office which also has a cost in terms of time and resources. As an outer London authority LB Bromley generally has lower numbers of claimants than other neighbouring authorities such as Lewisham, Southwark and Greenwich.
- 3.3 Families are always offered the opportunity of assistance to return home, however this is rarely accepted if a Home Office application is in place and cannot be enforced by the Local Authority.
- 3.4 The Local Authority has established protocols to assess and manage cases and to ensure consistency of practice and expenditure for families with NRPf. In all cases families must provide documentary evidence that they have an active application with the Home Office and be destitute. Many of the families are not previously known to Children's Social Care and parents may have been working, were students or claim to have been supported by others and that the support has stopped. An assessment is completed in all cases giving due consideration to the children's needs and human rights in accordance with our statutory obligations.
- 3.5 Unfortunately local authorities are not funded for this support from central government and receive no reimbursement for this expenditure. This in itself cannot be a reason to refuse support and in most cases an application or appeal with the Home Office and confirmation the family are destitute will entitle the family to support (*Birmingham City Council v Clue* 2010). It is only when a decision is made regarding the families entitlement to benefits and the appeal process exhausted by the Home Office can the local authority stop providing support. Forecasting is therefore unpredictable and dependent upon demand as these families were often not known to the local authority previously. Support provided by local authorities to people with no recourse to public funds should be temporary, that is, kept under review and provided until the immigration status of the individual or family is resolved. Once the decision is made by the Home Office all provision from the local authority is stopped as the family will either be entitled to receive benefits or return home. In most cases this takes several months at least. It may also be necessary to provide interim support whilst assessments are being completed.
- 3.6 Accommodation payments are paid directly to the housing provider and only subsistence is paid to families, thereby minimising the possibility of inappropriate claims. Regular checks are made to the Home Office to ensure applications are still in place. Payments are made at the income support rate unless the accommodation provides breakfast whereby this is paid at the lowest income support rate less 20%. Suggestion has been made to paying NRPf families subsistence through food vouchers. Having sought legal advice

it would appear we have general discretion to do this however the advice raises the possibility of claims made under the Human Rights Act 1998, if it can be shown there is an infringement by way of treating some claimants differently to others offered subsistence by the Council. This may also not be the most efficient way to distribute subsistence funds as there may still need to be an amount paid for travel and other expenses not covered by food vouchers.

4. Management of NRPF cases in Children's Social Care

- 4.1 Families presenting as NRPF are initially assessed by the referral and assessment team that complete a human rights assessment and initial social work assessment. Although legally children subject to NRPF are children in need the distinction we have made is whether or not they require a social work service. If they do the case is allocated to a social worker otherwise the case remains open for administrative purposes only. Unfortunately, the increased numbers of claimants has had a detrimental effect on social work and administrative caseloads within Children's Social Care. To counteract this and in view of the increased numbers the following actions have been agreed.
- 4.2 To recruit a Social Work Assistant within the Referral and Assessment Team to monitor and manage NRPF administrative cases that do not require a social work service. This post will tighten the monitoring of these cases and provide a more consistent approach to liaison with the Home Office that can sometimes be time consuming. This post would normally be undertaking mainstream Children's Social Care work and represents a diversion of much needed staff resources as well as additional cost to the London Borough of Bromley not reflected in the budget figures in paragraph 3.1. Alongside this the London Borough of Bromley has made a joint bid with 4 other neighbouring local authorities for counter fraud funding from the Department of Communities and Local Government to improve partnership working and fraud detection.
- 4.3 To invest in the NRPF Connect system. This is an IT system that provides direct contact between the Home Office and local authorities to enable data sharing. The cost is £2k per year.
- 4.4 To re-consider the use of payment cards alongside leaving care and benefit clients. Whilst the introduction of this system may not be cost effective for NRPF users alone, together with other service users who rely on the Council for regular funding, this may be a more effective and safer way of distributing funding and would be an alternative to cash and food vouchers.

London Borough of Bromley Procedures for Assessing No Recourse to Public Funds is available in the Policy and Procedures Manual through the Safeguarding and Social Care page. A link has been provided below.

http://bromleychildcare.proceduresonline.com/chapters/p_fail_asy_nrpf.htm?printMe.x=9&printMe.y=9