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## Inside this issue

The NRPF bulletin provides information and updates on the work of the NRPF Network, and on developments in case law, legislation, policy and practice regarding social services provisions to migrants with no recourse to public funds. The NRPF Network is a network of local authorities and partner organisations focusing on the statutory duties to migrants with NRPF. More information on the NRPF Network can be found at:

[www.nrpfnetwork.org.uk](http://www.nrpfnetwork.org.uk)

## NRPF Connect update- DCLG Immigration and Enforcement Roundtable

On 13 February the NRPF Network, Chief Executives from several London authorities and the Home Office attended an Immigration Enforcement Roundtable held by the DCLG in order to explore the budgetary and local service challenges facing local government resulting from supporting those with no recourse to public funds (NRPF).

The NRPF Network presented an overview of their work and the pressures facing local government in dealing with NRPF individuals, particularly focusing on rising costs to local authorities of supporting NRPF cases and the effects of government policies on demand for services. The Network stressed the need for greater strategic consideration and for more collaborative working between the Home

Office and local authorities in order to improve the full resolution of cases.

Outcomes of the meeting are that: DCLG will undertake scoping work with a view to undertaking a New Burdens Assessment of the various changes in law and practice that have given rise to increasing numbers and costs for local authorities; the Home Office will work with the NRPF Network to increase usage of NRPF Connect, which will be the main system for resolving cases; and a senior level governance group will be established to oversee this area of work, using data from NRPF Connect to help with this process.

Please see [our website](#) for further information about NRPF Connect.

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## Limited leave to remain with NRPF condition- Home Office procedure for requesting a review of leave

### Home Office policy

The current Home Office policy on granting limited leave with recourse to public funds under the FM family rules, or on the basis of family or private life, is published in the [Immigration Directorate Instructions Section FM 1.0 Partner and ECHR Article 8 guidance](#), and confirms that that recourse to public funds will be granted only when an applicant is destitute, or where there are particularly compelling reasons relating to the welfare of a child of a parent in receipt of a very low income. This decision is at the discretion of the Home Office caseworker, and the definition of destitution used is in line with that regarding the provision of support to asylum seekers and their dependants under section 95 of the Immigration and Asylum Act 1999:

*'A person is destitute if:*

- a) They do not have adequate accommodation or any means of obtaining it (whether or not their other essential living needs are met); or*
- b) They have adequate accommodation or the means of obtaining it, but cannot meet their other essential living needs'.*

Following representations made by the NRPF Network in 2012, Home Office policy stated that an applicant in receipt of support under 95 or section 4 of the Immigration and Asylum Act 1999, or supported by a local authority *should normally* be deemed to be destitute, and therefore granted leave with recourse to public funds under Code 1A.

However the current policy, dated October 2013, states that the Home Office *may*

grant leave to remain with recourse to public funds to those supported under section 95 or section 4 of the Immigration and Asylum Act 1999, and that a Home Office caseworker will make their own assessment of destitution when a client is supported by a local authority in order to establish whether the NRPF condition is imposed.

Examples given of when the Home Office may not determine a local authority supported applicant to be destitute include where an applicant was receiving an income from employment that is supplemented by the local authority, or where an applicant had the right to work and the local authority had not considered prospects of employment. Home Office caseworkers are instructed to consider current or prospective employment and the availability of child maintenance, if applicable.

It is the NRPF Network's position that all clients fully or partly supported by a local authority at the time of decision fulfil the definition of destitution, as the provision of support demonstrates that they cannot meet their essential living needs, and the local authority's assessment of destitution should take priority. We are aware that many local authority supported clients have been granted leave to remain with NRPF and often local authorities will continue to have a duty to support such clients, even though they have permission to work, as they are still unable to access mainstream welfare benefits and local authority housing. This position is therefore supported by local authorities.

We are taking up this apparent policy change with the Home Office and would be interested to hear of any examples where the Home Office does not remove the NRPF condition following a request made by a local authority supported client.

### **What can your client do?**

For local authorities using NRPF Connect, it has been agreed with the Home Office that for cases already recorded on NRPF Connect:

- if the LA believes the code 1A concession was not correctly applied, this will be resolved via NRPF Connect, where a query can be raised, and
- NRPF Connect cases will be flagged on Home Office systems and case working teams will contact the Home Office team dealing with Connect or the local authority prior to making the decision to ensure that code 1A is implemented correctly.

An agreement that the financial information inputted on the database is sufficient evidence of a local authority's support further streamlines this process.

For local authorities that do not use NRPF Connect and for new clients that approach a local authority for assistance after being

granted limited leave with NRPF, then the Home Office's [formal procedure](#) will need to be followed. Migrants may request a review of the imposition of the condition of NRPF if:

- their financial circumstances have changed and they have become destitute since being granted limited leave to remain, or if there are compelling child welfare issues; or
- the applicant was destitute, or there were compelling child welfare issues at the time the application was considered, but no evidence of this was provided.

The procedure applies to applicants who have been granted limited leave to remain under the following circumstances:

- as a partner or parent under Appendix FM (unless they have been granted under the 5 year partner or parent route, or
- as a bereaved partner or as a fiancé(e) or proposed civil partner), or
- on the grounds of private life under paragraph 276BE or paragraph 276DG of the Immigration Rules, or
- outside the rules on the grounds of family or private life.

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## **Welfare benefit eligibility- JSA (Income Based) and Housing Benefit restrictions for EEA national 'jobseekers' and 'workers'**

### **Changes for EEA Jobseekers**

Three changes have been made that will limit the eligibility of EEA nationals, who are in the UK exercising treaty rights as 'jobseekers', for certain means tested benefits.

(1) Since 1 January 2014 the [Immigration \(European Economic Area\) \(Amendment\) \(No. 2\) Regulations 2013](#) amended the Immigration (EEA) Regulations 2006 so that an EEA national may become a 'jobseeker' after being resident in the UK

as a qualified person in another capacity, and the status of 'jobseeker' can only be retained for longer than six months if there is compelling evidence that the EEA national has a genuine chance of employment.

(2) [The Jobseeker's Allowance \(Habitual Residence\) Amendment Regulations 2013](#) that came into force on 1 January 2014 only allow new arrivals to the UK to be eligible for income based Jobseeker's Allowance (JSA (IB)) if they have resided in the Common Travel Area (UK, Channel Islands, Isle of Man or Republic of Ireland), for at least three months prior to making the claim. This change is most likely to affect newly arrived EEA 'jobseekers' but also affects British or Irish Citizens returning to the UK from outside of the Common Travel Area.

(3) In addition to this, changes made by the [Housing Benefit \(Habitual Residence\) Amendment Regulations 2014](#) mean that non-UK or Irish EEA 'jobseekers' will no longer be eligible for Housing Benefit after 1 April 2014. Transitional measures apply to those already receiving Housing Benefit before this date. Please see Housing Benefit Circular HB A6/2014 for more information:  
<https://www.gov.uk/government/publication/s/hb-circular-a62014-the-housing-benefit-habitual-residence-amendment-regulations-2014>

### **Changes for EEA workers**

Two changes have been made that will limit the eligibility of EEA nationals who need to access certain means tested benefits following a period of employment or self-employment in the UK. The changes affect whether such a person retains 'worker' status or is considered to be a 'jobseeker', which will impact on their benefit entitlement.

(1) On 1 January 2014 the [Immigration \(European Economic Area\) \(Amendment\) \(No. 2\) Regulations 2013](#) amended the Immigration (EEA) Regulations 2006 so that EEA nationals will only retain the status of 'worker' for six months after becoming unemployed, and only if they have a 'genuine prospect' of gaining employment during that period. EEA nationals will only retain the status of 'worker' beyond six months if they have worked for longer than a year in the UK before losing their job and if they can provide 'compelling evidence' that they have a genuine chance of employment. In each instance the EEA national must have registered as a jobseeker.

An EEA national continues to retain 'worker' status if they are temporarily unable to work due to an illness or accident, or if they have stopped work and embarked on vocational training, which must be related to the previous employment if they ceased work voluntarily. A 'self-employed' EEA national may still only retain this status if they are temporarily unable to carry out their activities due to an illness or accident.

(2) Since 1 March, EEA workers claiming JSA(IB), Housing Benefit, Child Benefit and Child Tax Credit have to satisfy the Minimum Earnings Threshold. They must show that their average gross earnings from employment are continuously at least £646/month (£149/week) for three months before they can access these benefits. The gross earnings threshold will rise to £663/month (£153/week) from 1 April 2014. For those who are self-employed, their average profits before tax and National Insurance deductions are made must meet the same minimum threshold.

If a migrant claiming these benefits cannot demonstrate their earnings were at or above this level for three months prior to making their benefit claim, then they will be subject to a further assessment to establish whether they are undertaking 'genuine and effective' work. The following guidance has been published by the DWP for JSA and Housing Benefit assessors:

Housing Benefit Circular HB A3/2014:  
<https://www.gov.uk/government/publications/hb-circular-a32014-minimum-earnings-threshold>

JSA Decision Makers' Guide memo 1/14:  
<https://www.gov.uk/government/publications/decision-makers-guide-memos-staff-guide>

### **Summary of changes**

When an unemployed EEA national makes a JSA(IB) claim, the DWP will need to establish whether they are a 'jobseeker' or a worker who has retained 'worker' status. The EEA national must have resided in the UK for three months prior to making their application. The work undertaken by those retaining 'worker' status must satisfy the Minimum Earnings Threshold, or be deemed to have been 'genuine and effective'. If either element of this test is satisfied then the EEA national will generally only receive JSA(IB) for up to six months, unless the circumstances allowing for 'worker' status to be retained beyond six months, as outlined above, are met. Whilst receiving JSA(IB), the EEA national will also, as a 'worker', be entitled to Housing Benefit.

If an EEA national is a 'jobseeker' or fails both elements of the Minimum Income Test, so is deemed to be a 'jobseeker' rather than a 'worker', then they will receive JSA(IB) for up to six months (or

longer if the circumstances outlined above are met), and from 1 April will not be eligible to claim Housing Benefit. If an EEA national's circumstances change so that they are considered to be a 'jobseeker' rather than a qualified person in another capacity, then they will no longer be able to receive Housing Benefit.

The three month residence rule for JSA (IB) claims clarifies the timeframe for the habitual residence test (HRT) to be satisfied, but prior to this change the HRT often prevented a newly arrived EEA nationals from being eligible for JSA (IB) for a similar period.

The DWP's Minimum Earnings Threshold guidance means that welfare benefit claims made by EEA nationals with incomes lower than the gross income threshold will be subject to increased scrutiny. This is likely to particularly affect part-time workers.

### **Implications for local authorities**

EEA nationals are sometimes provided with emergency assistance by social services departments to prevent children becoming destitute or to meet the community care needs of single adults. Such support is usually temporary, until the family or individual can access work and/or benefits, or leave the UK.

These changes, as with other restrictions to the welfare state, will lead to an increase in the number of EEA nationals, who are looking for work, that approach local authorities for support because they do not have enough funds to cover their essential living needs. This will impose an additional burden on local authorities in terms of staff time to undertake assessments of need as well as the direct costs associated with providing subsistence and accommodation

support and, if necessary, assistance in returning to the parent's country of origin.

When working with EEA nationals, all local authorities must consider the exclusions to social services support set out under Schedule 3 of the Nationality Immigration and Asylum Act 1999. In considering the exclusions to support, the local authority must carry out a detailed human rights assessments and this must include consideration of the different ways in which an EEA national may be a 'qualified person' in order to establish whether their rights under Community Treaties would be breached should support be refused or withdrawn. It may be reasonable for an EEA national 'jobseeker', who is able to access services in their country of origin, to be offered assistance to return there as the limits of the Local Authority's responsibility and in light of the exclusions set out under Schedule 3.

In order to enable the NRPF Network to address the impact of these changes on

local authority support provision, please provide feedback on this issue to the regional meetings (see page 9). The Network will use data from NRPF Connect to identify trends and will consider what guidance can be provided to members to assist in establishing whether support must be provided to EEA nationals and their family members under section 17 Children Act 1989 and section 21 National Assistance Act.

EEA nationals and their family members presenting to local authorities should always be referred to their [local CAB](#) or an equivalent welfare rights advice agency in order to establish their entitlement to benefits or to check whether any DWP refusals are correct. EEA nationals may also contact the [AIRE centre](#) for advice about their rights under European law. When it is not clear whether an EEA national is a 'qualified person' and/or whether withholding support would breach their European treaty rights, social services departments are strongly advised to seek an opinion from their legal teams.

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**Case law update! MN & Anor v LB Hackney [2013] EWHC 1205 (Admin) & N and N v LB Newham & Anor [2013] EWHC 2475 (Admin)**  
**- Considering destitution within a child in need assessment when the parents fail to provide full information; human rights considerations**

Two cases heard last year considered whether the local authorities concerned had acted lawfully in declining to accept that the claimants were children in need under section 17 Children Act 1989. In both cases the claimant's parents declined to provide information about their support networks in the UK, and findings were also made on the human rights assessments that the local authorities carried out.

The family who brought the case of [MN v Hackney](#) were overstayers who had made an application to the Home Office that was refused. At the time their assessment was carried out they had no pending application and had not been served with a removal decision. Mr Justice Leggatt found that:

*"On the evidence, the reason for [the social worker's] inability to make a positive finding that the family was, or was not,*

*destitute was not any lack of diligence or effort on his part, but the failure of the claimants' parents to provide him with sufficient information".* (paragraph 44)

The Judge determined that only a positive conclusion that the claimants were in need is required to establish whether the local authority had the power to provide services under section 17, and that the reference in section 17 Children Act 1989 to a child 'in need' means a child whom the local authority has assessed as being in need by means of an evaluative judgment.

In the case of [N and N v LB Newham](#), the father and mother of the claimants were an illegal entrant and overstayer, respectively, and the family had a pending immigration application. Mrs Justice Swift found that the social workers *"..were in effect prevented from carrying out a full investigation of the family's financial position because of the parents' refusal to provide the necessary information and, as a consequence, were not satisfied that the claimants would be in need if accommodation and financial support was not provided"* (paragraph 50).

Both cases highlight the requirement for local authorities to consider whether the family is destitute as part of the child in need assessment, and a rational finding on whether or not any children are children in need must be made following a proper investigation, otherwise the local authority may be open to legal challenge on the basis of failing to carry out a proper investigation, or making an irrational conclusion regarding a family's destitution following a full investigation.

In each case, the Judges found that it had been unnecessary for the social workers concerned to go on to consider the effects of destitution on each family's human

rights under the ECHR, following their conclusions that the families would not have been destitute if assistance was refused.

In determining whether Hackney's conclusion that refusing support would not be in breach of the claimant's rights under the ECHR, had the claimants been assessed as being children in need, Mr Justice Leggatt considered the case of [R \(KA\) v Essex County Council \[2013\] EWHC 43 \(Admin\)](#), which held that support must be provided to destitute families with NRPF pending the setting of removal directions, as previously reported in [Bulletin no.39](#).

In contrast to *KA*, Mr Justice Leggatt held that there would be no breach of the family's human rights if the family is not supported prior to being issued with removal directions when there is no outstanding application for leave to remain. He found that *KA* was not correctly decided and that it was wrong to regard article 8 as having such an expansive scope :

*'I would therefore not accept that in the present case merely because the claimants have a potential argument (which is not hopeless or abusive) that removing them from the UK would contravene article 8, this in itself gives them a right under article 8 to require Hackney to provide them and their parents with accommodation and support to the extent necessary to enable them to stay in the UK until such time as a decision is taken to remove them and a tribunal has considered that argument'.* (paragraph 84)

Local authorities are advised to refer to their legal departments if they are making a decision that does not follow the findings of *KA*.

Mr Justice Leggatt found Hackney's human rights assessment to have been flawed because it failed to properly analyse the impact of moving to the country of origin on the claimant's private lives, namely their social and cultural ties having primarily focused on their family life. As one of the claimants had lived in the UK from the age of two to 11, this was

particularly relevant. The authority was also found not to have properly considered whether the disability provision in the country of origin would be available to one of the claimants who had autism. Had the decision to refuse support depended on the local authority's view that the family's rights under Article 8 of the ECHR would not have been breached, the Judge would have found the decision unlawful.

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## Asylum Help – changes to asylum support assistance

From 1 April 2014, the provision of asylum support advice and assistance will be undertaken by Migrant Help. The Refugee Council will operate a children's panel to support UASC in England only.

Asylum Help is the service that asylum seekers will need to access for information about the asylum process and/or section

95 and section 4 asylum support. The information is web-based and there is a free telephone helpline (in various languages) for asylum seekers to call if they require assistance with completing their applications for support.

For more information about the service see: <http://asylumhelpuk.org/>

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## NRPF Training

The NRPF Network provides training for local authorities and voluntary sector organisations on a commission-basis. The training covers all aspects of NRPF service provision including the assessment process for adults, children & families and leaving care cases. The learning objectives for the training are:

- To identify who is eligible and who is not eligible for support under social services legislation.
- To be able to use legislation and case law to help resolve complex cases.
- To apply good practice in assessing and supporting individuals and families.
- To be aware of the resources available in order to stay up-to-date with policy and legal developments.

### Feedback from November 2013:

*'The training was relevant and useful to my practice and development; the facilitator provided clear information and relevant group work sessions which allowed stimulating debate and learning. The great day ended with a quiz and yes a sweet touch of chocolates - thumbs up all round and thank you!'*

Ann Munroe, Social Worker, Luton Borough Council.

**Open access:** Please check [our website](#) for details of future training dates, or contact us if you would like to enquire about commissioning training for your organisation: [nrpf@islington.gov.uk](mailto:nrpf@islington.gov.uk).

## Regional NRPF Network Meeting Dates

### East Midlands Regional NRPF Network meeting

2 May 2014, 9.30 to 11.30am, Red Cross, Derby. For more details please contact: [sarah.short@emcouncils.gov.uk](mailto:sarah.short@emcouncils.gov.uk)

### East of England Regional NRPF Network meeting

Date and location TBC. For more details please contact: [Malgorzata.Strona@eelga.gov.uk](mailto:Malgorzata.Strona@eelga.gov.uk)

### West Midlands NRPF Meeting

Date and location TBC. For more details, please contact Dally Panesar: [d.panesar@wmsmp.org.uk](mailto:d.panesar@wmsmp.org.uk)

### London Regional NRPF Network meeting

11 June 2014, 2pm – 4pm, Croydon Town Hall. For more details please contact: [Viviane.Nicoue@croydon.gov.uk](mailto:Viviane.Nicoue@croydon.gov.uk)

### North East Regional NRPF Network meeting

May or June, date TBC, Civic Centre, Newcastle-upon-Tyne. For more details, please contact: [jonathan.nash@newcastle.gov.uk](mailto:jonathan.nash@newcastle.gov.uk)

### North West Regional NRPF Network meeting

3 June 2014, 2.00 – 4.00pm  
Manchester Town Hall  
For more details, please contact: [john.horgan@manchester.gov.uk](mailto:john.horgan@manchester.gov.uk)

### Scotland NRPF Network meeting

Date and location TBC. For more details, please contact [mhoraig@cosla.gov.uk](mailto:mhoraig@cosla.gov.uk)

### South East Regional NRPF Network meeting

Date and location TBC. For more details please contact: [roy.millard@secouncils.gov.uk](mailto:roy.millard@secouncils.gov.uk)

### South West Regional NRPF Network meeting

16 May 2014, Taunton. For more details, please contact: [dave.newall@swcouncils.gov.uk](mailto:dave.newall@swcouncils.gov.uk)

### Wales NRPF Network meeting

Date and location TBC. For more details please contact: [Anne.Hubbard@wsmp.org.uk](mailto:Anne.Hubbard@wsmp.org.uk)

### Yorkshire & Humberside Regional NRPF Network meeting

Date and location TBC. For more details please contact: [phil.cryer@bradford.gov.uk](mailto:phil.cryer@bradford.gov.uk)

For more details on the regional networks, including who can take part, see: <http://www.nrpfnetwork.org.uk/regionalnetworks/Pages/default.aspx>

*The NRPF Network is committed to supporting and working with local authorities, the voluntary sector and central government. The Network has over 2,800 members and our website attracts over 1,000 web hits per month.*

For further information or to unsubscribe please contact: [nrpf@islington.gov.uk](mailto:nrpf@islington.gov.uk) or

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