



Bedfordshire
county council

Community Services and Children's Services

Policy and Practice Guidance in respect of Asylum Seekers and other persons subject to immigration control

Agreed by: Community Services and Children's Services
Management Teams

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1. INTRODUCTION

Following the Asylum & Immigration Act 1996 and subsequent case law, many asylum seekers and other persons subject to immigration control have been denied access to any form of statutory public assistance other than that which Social Services has a duty to provide under either the National Assistance Act 1948 or the Children Act 1989. As well as meeting the eligibility criteria for all applicants under these Acts, Asylum Seekers and others subject to Immigration control must also meet other statutory requirements in order to qualify for support. Not all do so.

- 1.1 In 1997 Bedfordshire County Council issued the Policy and Procedures on Asylum Seekers which was approved by Committee on 16th September 1997. The original policy (September 1997) has been the guidance and the working procedures and practices have been reviewed and changes implemented regularly.
- 1.2 The developing relationship between the Council, Yarl's Wood Immigration Removal Centre and the UKBA, and the growing understanding of immigration needs within the community, have given the opportunity to consider the policy and procedures for meeting the needs of our ethnic and culturally diverse service user groups.
- 1.3 The community based asylum service and social work posts at Yarl's Wood have been combined enabling a service provision that has the potential to meet the needs of children and families subject to immigration control and to offer a comprehensive advice service to adults within the community.
- 1.4 The current policy has been revised to reflect recent changes in the law and to provide for joint assessment and planning between Community Services and Children's Services when there are children and adults within the same family needing services.

2. LEGAL DUTIES

- 2.1 The Secretary of State has a statutory duty to support most asylum seekers through the National Asylum Support Service. 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, failed asylum seekers.
- 2.2 Where the Local Authority has a duty to support, the principal legislation is the National Assistance Act 1948 in the case of adults,

or the Children Act 1989 in the case of children. For further details of the legal framework (see Practice Guidance: Section 12).

- 2.3 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.
- 2.4 Assessments should then be undertaken by the relevant Service, using the statutory criteria applicable to their status. In the case of a family, where duties may be owed under the National Assistance Act and/or the Children Act, a joint assessment by Adults and Children's Services should be undertaken and, if appropriate, Bedford & Luton Primary Care Trust.

3. POLICY STATEMENT

- 3.1 Bedfordshire County Council will strive to meet the needs of asylum seekers, and persons subject to Immigration Control, within the framework of UK legislation, national policy and the responsibilities of local authorities.
- 3.2 The Council will promote links with other local authorities, voluntary agencies and statutory bodies to ensure asylum seekers, refugees and persons subject to Immigration control are provided with appropriate support.
- 3.3 Bedfordshire County Council will deliver services in a non-discriminatory and consistent manner taking into account race, ethnicity, culture, language and religion.

4. SINGLE ADULTS

- 4.1 Where an individual adult presents to the Asylum Service from abroad, and it appears they may have a right to support under the relevant legislation, they will be referred to the Asylum and Immigration service for their immigration status to be determined. Their eligibility for services will depend on their immigration status.

If they appear to be eligible, Adult services will then carry out an assessment of their needs in accordance with Assessment Guide Appendix 5.

- 4.2 Applicants who are victims of Domestic Abuse will be assessed and supported by the Physical Disability Team in liaison with the Domestic Abuse Team.

- 4.3 Adults with Mental Health needs will be referred to the Bedfordshire and Luton Mental Health and Social Care Partnership Trust for assessment.
- 4.4 Where an eligible need is established services will be delivered through the appropriate care management process as with all social care services
- 4.5 **VULNERABLE ADULTS** – Vulnerable adults who go missing after services are provided will be reported by their social worker to UKBA and the Asylum Team.

5. **ADULTS WITH DEPENDENT CHILDREN**

- 5.1 Where the applicants are a family group and the Asylum team has identified that one or more adults may be entitled to services, the family will be referred for a joint assessment in accordance with Assessment Guidance number 2 (Appendix 6).
- 5.2 Adults and Children's Services social workers will carry out the assessment through a joint visit.
- 5.3 Where accommodation needs for an adult are identified Adult Services will fund accommodation to a level sufficient for that adult. The cost of additional bedrooms for children will be funded by Children's Services.

6. **UNACCOMPANIED ASYLUM SEEKING CHILDREN (UASC)**

- 6.1 An UASC is a person who, at the time of making the asylum application:
- is under 18 or, in the absence of documentary evidence, appears to be under 18
 - is applying for asylum in his or her own right; and
 - has no adult relative or guardian to turn to in this country.
- 6.2 The UKBA is obliged to refer any person claiming to be an UASC to Social Services or the Refugee Council Panel of Advisors.
- 6.3 When a child who appears to be an UASC presents to Social Services the Asylum Service will carry out an assessment of age. Determination of age is one of the most difficult areas of assessment. Lack of documentary evidence, including birth certificates and passports often means that age is purely on physical appearance. The Royal College of Paediatricians advised in 1999 that there can be a five year error in age assessment. It recommends that the child's physical, mental, social and emotional development are all considered.

- 6.4 Unaccompanied Asylum Seeking Children's Information note (paragraph 6.2) states: "where a social services department disagrees with the UKBA's assessment of age, it is UKBA's policy to accept the social services department's professional assessment".

6.5 UASC MISSING FROM CARE

- 6.5.1 Unaccompanied asylum seeking children can be particularly vulnerable when they go missing. This may be due to various forms of exploitation, prostitution, abuse and trafficking combined with sometimes very limited, if any, knowledge of English. If the child that goes missing is UASC, agencies should refer to the [Children Missing from Care Policy](#) and *in addition to* these procedures, refer to the trafficking toolkit: (<http://www.crimereduction.gov.uk/toolkits/tp00.htm>) and consult the Asylum Service, who will register that the child has gone missing on the National Register for Unaccompanied Asylum Seeking Children (NRUC). This database will be checked on a daily basis to see whether the child has appeared in another authority.
- 6.5.2 Any UASC who goes missing must be reported immediately to UKBA. This should be followed up by the social worker responsible for UASC on a regular basis to ensure that the service is informed if the child has been detained or returned to their country of origin.
- 6.5.3 Where a young unaccompanied asylum seeker has been age assessed as under the age of 18 years old and is looked after, that young person will remain looked after but classified as 'missing' until they reach the age of 18 years old. Once they have reached the age of 18 years old a decision may be taken on a case by case basis with the Assistant Director Children in Need and the responsible Head of Service to deregister the young person.

7. FORMER UNACCOMPANIED ASYLUM SEEKING CHILDREN

- 7.1 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 NASS, depending on their immigration status.
- 7.2 A decision needs to be made by Head of Service, Children's Services as to the entitlement from Children's Services no later than 6 months before their 18th birthday. This decision must be made in consultation with the Asylum Service because their entitlement will be determined by their Immigration status at that time.

- 7.3 If it is likely they will meet the criteria for destitute plus and therefore qualify for services under the NAA they will be referred to Adult Services at that stage (17½). Social workers from both Children's and Adult Services will support the individual through transition. Any decision on financial support under NAA or other welfare legislation will be made by Adult Social Care.
- 7.4 If a UASC who has been looked after by Children's Services becomes 18 before his or her application is finally determined, UKBA is unlikely to seek to disperse him/her and will reimburse the authority up to a certain amount for accommodation and support costs. The authority may have to meet any additional costs in respect of education and training.

8. VICTIMS OF DOMESTIC ABUSE

The Council believes that the needs of women from abroad who have been the victims of domestic abuse should be considered separately but within the guidelines of others with no recourse to public funds. The Council is mindful of the needs of this vulnerable group of women and children. (See also Practice Guidance: 12.6)

9. TRAFFICKING

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.

Trafficking of Children

- 9.1 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.

9.2 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 suspect 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.

9.3 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.

9.4 Trafficking of Adults

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

10. PRINCIPLES AND SERVICE STANDARDS

10.1 **Effective service:** Services will be provided in consideration of national policy or local authority duty and legislative requirements.

10.2 **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.

10.3 **Information:** Service users will be given information, both in writing and verbally, 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.

10.4 **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.

- 10.5 **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 clinical assessment.
- 10.6 **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.
- 10.7 **Confidentiality:** Service users are entitled to expect the utmost confidentiality in all issues relating to their support and status. The Council will not pass any personal information to any other individual, organisation or body without prior consent or the service user, unless required to do so by legislation or court order.
- 10.8 **Complaints procedure:** Service users will have recourse to the Complaints procedure of the County Council and also the complaints procedures of the UKBA and OISC. An appeals process is available to service users and may be used if there is dispute about service provision.
- 11.9 **Advocacy and mediation:** The service will provide a mediation and advocacy service between service users and statutory bodies within the framework of Immigration legislation.
- 10.9 **Response:** The service will respond to referrals within the time scales laid down by UKBA policy and/or the policies of the County Council.

11. PRACTICE GUIDANCE

11.1 Legal Framework

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. A summary of the law, containing the principal legislation and case law, is set out in Appendix 3 .

This policy cannot cover all the legal complexities and, where necessary, advice should be sought immediately from the Council's Asylum Service or Legal Services. 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.

The Asylum Service must undertake a status check of every person who is subject to immigration control and who approaches the Council for services.

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 failed asylum seeker (Para 14; Schedule 3; NIA Act 2002).

11.2 Definitions

ARC

Application Registration Card, issued by the UKBA 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; Luxemburg; 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.

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.

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:

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

11.3 Unaccompanied Asylum Seeking Children (UASC)

During 2007, the New Asylum Model (NAM) was introduced by UKBA. After the screening interview, newly arrived UASC and social worker are invited to attend a meeting with the Home Office case worker. Legal representation is required at the next interview (substantive interview) and the decision on the claim for asylum is served to the young person and social worker, usually in person. The Home Office anticipates that decisions will be served within a shorter time frame than previously. Prior to the introduction of NAM if asylum was refused and DLR or HR granted, it was normally until the applicant reached 18 years of age (applications for extension would then be considered). Decisions under the NAM process will normally be until 17½ with final decisions on claims for extension of DLR made by the time the applicant reaches 18. This will impact onto pathway plans for UASC and the department will need to work with the young person in consideration of the possibility of return to country of origin at 18 years of age.

Age dispute – in country:

- An asylum initial assessment will be undertaken by Asylum & Immigration Team; duty social worker or agency social worker (out of hours). If it is clear at this interview that the applicant is 15 or under, the Head of Commissioning will be informed and placement agreed. A full Merton Compliant assessment will then be undertaken and when completed the Area Team Manager informed of the decision.
- If age claimed is disputed, the applicant will be provided with temporary accommodation suited to their needs where they will remain arrival until completion of the full Merton Compliant age assessment.
- If assessed as being under 18 years of age the young person will be provided with appropriate services under the Children Act (1989) and services will include access to health care, legal advice and education.

11.3.2 Age dispute – detainee:

- Referrals must be in writing and will be accepted from UKBA, Refugee Council and legal representatives.
- The referral must contain the name, date of birth (or age claimed), nationality, language spoken (if interpreter required) and Home Office reference number. Any evidence should be provided by the referring agency.

11.4 Assessment Process

Section 20 of the Children Act (1989) imposes a clear and unequivocal duty on Local Authorities to:

“Provide accommodation for any child in need within their area who appears to them to require accommodation as a result of:

- (a) there being no person who has parental responsibility for him/her;
- (b) his/her being lost or abandoned; or
- (c) the person who is caring for him/her being prevented (whether or not permanently and for whatever reason) from providing him/her with suitable accommodation or care.”

Before providing accommodation under the section a local authority must, as far as reasonably practical and consistent with the child’s welfare, ascertain and give due consideration to the child’s wishes and feelings regarding the provision of accommodation. A child of 16 can agree to the provision of accommodation under this section.

A child who is accommodated under s.20 becomes a “looked after child” and is entitled to provision under s.22; 23; 24 and Schedule 2 of the Children Act. Such a child may also qualify for support on reaching 18, under provisions in the Children Act inserted by the Children Leaving Care Act 2000.

Most UASCs will meet the criteria under section 20 and will therefore become a “looked after child” (Barhanu v Wandsworth LB and others 2007). However, if a UASC refuses to become “looked after” and the authority considers that they are able to look after themselves, the Local Authority may provide support under Section 17 of the Children Act, including help with accommodation. In such cases the Local Authority will decide that they do not appear to require accommodation for the purpose of s.20 CA. The LA can only reach such a decision after an assessment and after giving due consideration to the child’s own wishes and feelings (LAC 2003, 13). This assessment must either form part of the initial asylum assessment, or be included in the full Merton Compliant Age Assessment, undertaken by the Asylum Service.

- 11.4.1 The Officers undertaking age assessments will be experienced in this specialist area of work and in working with vulnerable young people from abroad within the community.
- 11.4.2 Evidence provided by all sources will be considered and the Officers will undertake a holistic view during the assessment interviews.
- 11.4.3 At the start of the assessment, the applicant will be interviewed and informed of the purpose of the interview. Notes will be read back to the applicant to enable the applicant to make amendments. The applicant will be informed of any inconsistencies and discrepancies and be given the opportunity to review the responses given.
- 11.4.4 A telephone interpreter may only be used during the initial assessment if no other interpreter is available. In all cases where a full Merton Compliant age assessment is undertaken, a face-to-face interpreter will be provided if English is not the first or preferred language. The applicant should be asked to confirm the language/dialect used is acceptable and that both applicant and interpreter understand each other.
- 11.4.5. The conclusion of the assessor(s) will inform the basis of the services provided.
- 11.4.6 If the decision is disputed by the applicant, the applicant will have 14 days to challenge the decision (see Appeals Process).
- 11.4.7 If the decision of the assessor(s) is disputed by other professionals, the assessment will be reviewed by the lead assessor and Team

Manager or Head of Service. If the decision remains disputed legal advice should be sought.

- 11.4.8 The completed assessments will be held on file and electronic systems.
- 11.4.9 Completed assessments must be signed by the assessors and the Head of Service.
- 11.4.10 Only the conclusion of the assessment will be provided to outside agencies unless the applicant has given written consent to the full assessment being shared.
- 11.4.11 Any request for the conclusion and/or full assessment must be made in writing to the Asylum & Immigration Service at Kingsway, Bedford.
- 11.4.12 The Asylum Service will arrange and undertake age assessments which will be compliant with the Merton Judgement.
- 11.4.13 Assessment decisions: if assessed as 17 or under, the area Team Manager will be informed; if assessed as 18 or over the applicant will be advised to attend ASU at Croydon; if any need above destitution is identified, the area Team Manager will be advised.
- 11.4.14 The Asylum Service will inform UKBA and arrange the screening interview and take responsibility for UKBA liaison.

11.4.15 ADULTS

For a single adult see Assessment Guidance No:1 in Appendix 5.
For an adult or adults with dependent children see Assessment Guidance 2 in Appendix 6.

11.4.16 Who is eligible

An asylum seeker or other person subject to immigration control, and therefore with no recourse to public funds (NRPF), is eligible for support if he or she is:

- Ordinarily resident in the local authority's area, or of no settled resident but in the area and in urgent need.
- In need of community care services. If the need is for accommodation the person must be in need of care and attention not otherwise available to them.
- Destitute plus (unless in need of services under section 29 of NAA).

- Eligible for support under Immigration law or
- Someone who has to be supported to prevent a breach of their Human Rights under the European Convention on Human Rights or their rights under community legislation.

11.4.17 Who is not eligible:

There are five categories of people who are excluded from support by Section 54 and Schedule 3 of the Nationality, Immigration and Asylum Act 2002.

- Nationals of the European Economic Area (other than the UK) and their dependents.
- People with refugee status from an EEA state and any dependents.
- People unlawfully present in the UK (including those whose visas have expired).
- Failed asylum seekers who have refused to co-operate with removal directions.
- Failed asylum seekers with dependent children who fail to take reasonable steps to leave the UK voluntarily.

11.4.18 The Authority is obliged to report to the Home Office, UKBA, the details of any person reasonably suspected to be a failed asylum seeker refusing to leave the UK and/or unlawfully present in the UK.

11.5 Criteria and Evidence

11.5.1 Residence

The individual must demonstrate they are normally resident within Bedfordshire and/or they arrived with the County of Bedfordshire and requested support within 14 days of arrival, or Bedfordshire County Council was contacted within 24 hours of arrival by any statutory or voluntary group.

Applicants previously living outside of Bedfordshire must demonstrate they are now resident in Bedfordshire and give the reasons for moving to the County rather than claiming in the area where they were previously normally resident. If they moved to the County to gain employment, and that has ceased, they should demonstrate that they have made reasonable efforts to find alternative employment and must have been resident in the County for a minimum of 6 months prior to the applications for support.

11.5.2 Care and Attention

Care and attention means being looked after. Looking after means doing something which the person cannot, or should not be expected, to do for themselves. This could include household tasks, personal care, protecting from risks or other things. It does not include providing medical care.

11.5.3 **Destitute Plus**

A person is **destitute** if he/she and any dependents do not have and cannot obtain accommodation, food and other essential items.

A person is **destitute plus** if the need for support is made materially more acute by circumstances other than “mere” destitution. The threshold established by case law is low and such circumstances may include ill-health, disability, old age, domestic abuse, pregnancy etc.

11.5.4 Any person applying for, or receiving support must be destitute of likely to become destitute within 14 days in support is not provided by the Local Authority. The applicant must demonstrate:

- No other income.
- No funds abroad.
- No family or friends to provide accommodation.
- No savings above £300.00.
- No gifts above £300.00.
- No assets above £300.00 (with the exception of personal jewellery or religious items).
- No right to work or inability to find work.
- No means of finding accommodation.

11.5.5 **Acceptable evidence:**

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

11.5.6 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	BANK STATEMENTS/ BUILDING SOCIETY BOOK(S)	PASSPORT	LETTER FROM LEGAL REPRESENTATIVE
TENANCY AGREEMENT	P60/P45	DRIVING LICENCE	REFERRAL FROM VOLUNTARY AGENCY

11.6 Victims of Domestic Abuse

11.6.1 Women from abroad who have been the victims of Domestic Abuse will be assessed within the ordinary legal framework.

11.6.2 The applicant needs to demonstrate that her 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.

11.6.3 In the majority of cases, women will have arrived in the UK on a spousal visa, dependent on their spouse for support, and with no access to welfare benefits until an application for Indefinite Leave to Remain as a spouse is decided by the Home Office. In the event of relationship breakdown during this period, women will find they have no access to housing, health, education and benefits and may be unable to access support from friends or voluntary groups.

- 11.6.4 For lone women, assessment should be made under of the National Assistance Act (1948) and for families there should be a joint assessment under that Act and under the Children Act (1989).
- 11.6.5 Expectant and nursing mothers may qualify for support under Section 21(1) (a) and section 21 (1) (aa) of the National Assistance Act (1948).
- 11.6.6 Victims of domestic abuse are likely to be particularly vulnerable and to meet the criteria for “destitute plus” (see Assessment Guidance).
- 11.6.7 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.
- 11.6.8 The ECHR (European Convention on Human Rights) assessment form will be used and is designed to supplement formats arising from the Framework of Assessment.
- 11.6.9 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.
- 11.6.10 Applicant with child/ren: Whether or not the applicant herself qualifies for support, separate consideration must be given to undertaking an assessment under Section 17 of the Children Act (1989) to establish whether the child has needs over and above the mother’s or whether the child requires accommodating under s.20 of the Children Act. The Local Authority can only assist a child under the Children Act and not under the National Assistance Act.
- 11.6.11 Where a section 17 assessment is required, consideration needs to be given to the child’s right to a family life under Article 8 of the European Convention on Human Rights (ECHR) and to the power of the Local Authority to provide accommodation for the family as well as the child.
- 11.6.12 The Council will require evidence of 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.

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.

11.7 Appeals Process (Against decisions made by the Council)

- 11.7.1 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 Team Manager within 14 days of the date of the letter. The Team Manager will convene the panel which will consist of, at least 2, Team Manager, Head of Service, Welfare Rights Officer, Social Worker (Children / Disabilities / Elderly / Mental Health). An interpreter will be provided if required.
- 11.7.2 The Client may attend the panel meeting. 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.
- 11.7.3 The decision of the panel is final.
- 11.7.4 Any further substantive evidence produced at a later date will be considered if that evidence is validated.

11.8 Financial and Administration Process

- 11.8.1 **Education:** Local Authorities have a duty to provide education for all children within their area. Referrals should be made via MASS based at County Hall. Adults (and over 16's) may undertake ESOL and other courses at College.
- 11.8.2 **Payments:** Payments in must be recorded in the Remittance Register and paid in line with County Council policy. Payments out must be made and recorded in line with County Council policy.
- 11.8.3 **Interpreters:** Social Services will provide interpreters to all asylum seekers that require this service. The department has no remit to provide interpreters for other purposes and all outside agencies should provide their own interpreters.
- 11.8.4 **UKBA Invoices and Support:** To be actioned every 4 weeks in line with Contractual agreement. Final decisions on payment of rent and other costs will be made by UKBA in all cases.
- 11.8.5 **Travel Warrants / Transport:** Will be issued to all or arranged for all UASC visiting legal representatives or attending Home Office interviews. Requests for travel to visit friends or participate in festivals will be considered and approved at the discretion of the team manager.

- 11.8.6 **Access to health care:** All asylum seekers, all dependents of asylum seekers, all refugees and all those with discretionary leave/humanitarian protection leave to enter or remain or any person who is “ordinarily resident” in the UK is eligible to receive free medical treatment.
- 11.8.7 **Exceptions to free health care:** Visitors and some other staying for less than 6 months will not qualify for free treatment. Applicants for Leave to Remain, for example mental health treatment or treatment for HIV/AIDS, may have difficulty in obtaining free treatment. The issue is whether the person is “ordinarily resident”. For EU/EEA citizens there are often reciprocal arrangements.
- 11.8.9 **Hard cases fund:** UKBA operates a Hard Cases Fund for those that have reached the end of the asylum process. Support is restricted to board and lodging. This may be the only form of support available to destitute asylum seekers who cannot be removed for practical or health reasons or where a Judicial Review is pending.
- 11.8.10 **Financial:** Legitimate expenditure on UASC and former UASC (DLR/ILR) may be reclaimed from the Home Office.
- 11.8.11 Funding for support of UASC will be through the Home Office Grant Claim submitted in September and February each year by the Finance Section of the County Council and paid in arrears.
- 11.8.12 Costs and statistical data will be managed by the Asylum & Immigration Team.
- 11.8.13 Verification of the numbers supported will be matched with Home Office records monthly (AcID report). National Register of Unaccompanied Children will be maintained by the Immigration Team. This information is data restricted and may only be accessed by registered individuals.
- 11.8.14 The Maximum Grant Claim is dependent on the number of individuals and amounts reclaimable are set by the Home Office.
- 11.8.15 The Home Office permits up to a maximum 15% of the total maximum Grant Claim available may be used for staffing and administration costs.
- 11.8.16 **Case management:** UASC cases will be held by a social worker and for Immigration issues by OISC case worker.
- 11.8.17 Payments to 16+ will be made at area office weekly.
- 11.8.18 The authority will meet the accommodation costs and provide essential items for UASC living in foster placements, semi-independent or independent living. Costs up to the level of the

Grant claim will be reclaimed from the Home Office using information on restricted data base and the financial procedures of the Council.

- 11.8.19 A clothing allowance of £200.00 per annum will be made in 4 instalments of £50 to children living independently. A one-off allowance of £300 will be made available to cover essential items for independent living.
- 11.8.20 Reviews and visits will be undertaken in line with the policy of department.
- 11.8.21 Final decisions on care and support of UASC will be that of the Head of Service.

11.9 Support Provided by Adult Services

- 11.9.1 Funding will be equivalent to a maximum of the NASS allowance, taking into account any additional support the person may have. This is assessed by the social worker concerned.
- 11.9.2 Funding is provided on the basis that the applicant will inform the social worker of any change in their circumstances that will affect the need for support.
- 11.9.3 In the event of over payment due to failure to notify, collection of the overpayment will be considered.
- 11.9.4 Review of the case by the assessing social worker will take place through a visit or telephone contact depending on the circumstances of the individual concerned. Review of status will be undertaken by the Asylum & Immigration Service. This will be agreed with the applicant following assessment.

12. APPENDICES

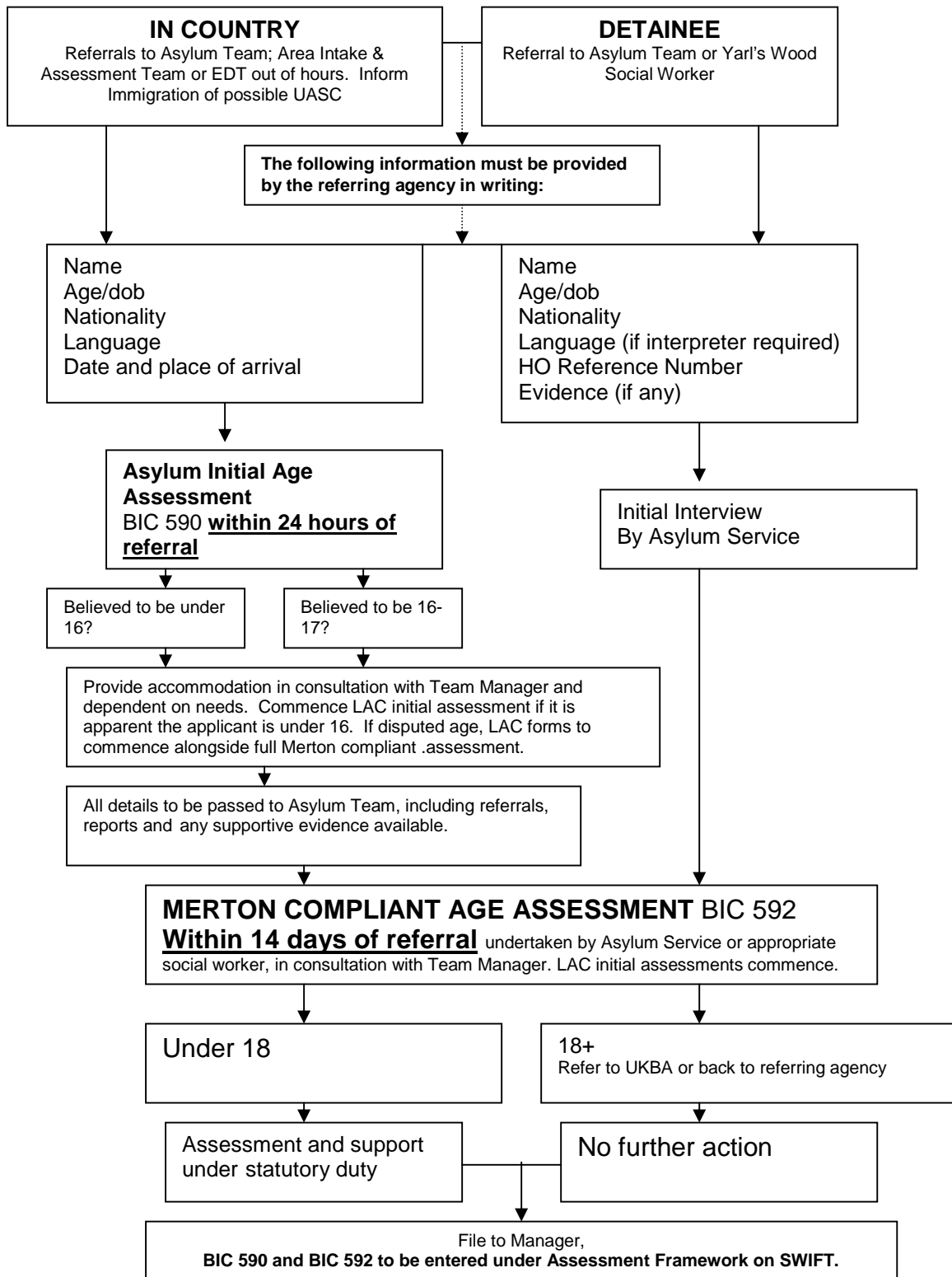
APPENDICES

Appendix

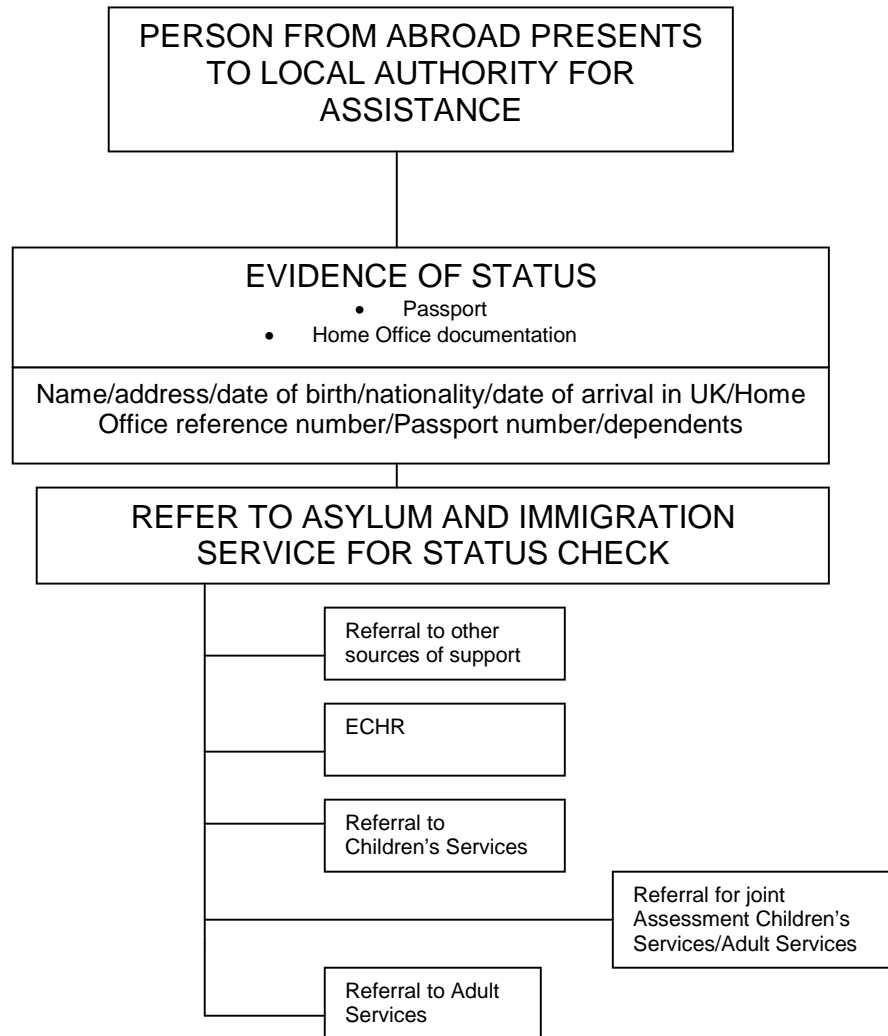
- 1 Referral process UASC
- 2 Referral process persons from abroad
- 3 Summary of legal duties to single adults and families
- 4 Flow chart NRPF
- 4A Flow Chart NRPF
- 5 NRPF assessment guidance No: 1
- 6 NRPF assessment guidance No: 2
- 7 List of EU/EEA states
- 8 List of public funds
- 9 Abbreviations
- 10 Contact Details

Appendix One: Referral process UASC

Referral process in non evidenced or age dispute cases



Appendix Two: Referral process persons from abroad



Appendix Three: Summary of Legal duties, adults and families

Summary of LA's legal duties to provide support for asylum seekers and others unable to claim state benefits (NRPF)

The LA has a duty under S.47 NHS and CC Act 1990 to assess those persons who appear to be in need of community care services that they can provide. Most services are provided to adults under the NAA 1948. Services for children can only be provided under the CA 1989.

ADULTS

National Assistance Act (1948)

S.21 (1) NAA and **Directions** provide that the LA must provide accommodation and services for people aged 18 and over who are in need of care and attention not otherwise available to them. Care and attention means looking after – e.g. by performing household tasks, providing personal care, protecting from risk, etc. It does not include the provision of medical care. The duty is owed to those ordinarily resident in the LA's area, or in the area and in urgent need.

Exceptions

- 1) **S.21 (8)** prohibits the use of S.21 (1) if another body (such as health or housing) is authorised by any other statute to make provision.
- 2) **S.21 (1A) NAA** excludes people who cannot claim state benefits unless their need for care and attention arises for reasons other than solely destitution – i.e. unless they are 'destitute plus'. Such people include asylum seekers and those granted leave to enter or remain but with no recourse to public funds, for example dependent spouses who have separated from a partner.

A person is 'destitute plus' if their need for care and attention is to any material extent made more acute by circumstances other than lack of accommodation and funds; for example, age, chronic illness, mental disorder, physical disability, domestic abuse, pregnancy, etc.

If a person is 'destitute plus' the LA, not NASS, must provide support under S. 21 (1),

- 3) **Schedule 3 NIAA** excludes 5 categories of people from services under S.21 (1):
 - (i) refugees from abroad;
 - (ii) EEA nationals;

- (iii) persons in breach of immigration law (i.e. with no right of abode, leave to enter or leave to remain);
- (iv) failed asylum seekers who do not co-operate with removal or
- (v) failed asylum seekers with a child who do not take reasonable steps to leave voluntarily. (It does not exclude legitimate asylum seekers).

Schedule 3 also excludes these people from all other assistance under welfare legislation and the CA. The only exception is S.117 MHA (the right to after care services following discharge from certain sections of the MHA).

Schedule 3 does not apply to a child or UK citizen, nor if refusing services would breach a person's rights under ECHR or Community law.

It does not remove the powers and duties to promote the welfare of children under the Children Act (1989). However, as amended in 2004, it does remove the right of a parent to support as part of the support provided to the child. If it is likely to be a breach of Human Rights, as determined by assessment, services to the adult may be provided under NAA.

(NB A person not excluded by S.21 (1A) may still be excluded by Schedule 3 and vice versa).

Children in families

Asylum seekers with dependent children qualify for support from NASS and the Local Authority may not assist their children under CA.

If an adult qualifies for support from the LA under S.21 (1) the LA can only provide support for the adult. There is no power under S.21 to support members of the family.

If the adults in a family do not qualify for support from either NASS or the LA, their children may qualify for support from the LA under **S.17 and or S.20 CA**. The LA's duties to a child are not affected by the immigration status of the child or its family.

The LA may support the child's family under **S.17 CA**, subject to Schedule 3 NIAA above.

UASCs

A UASC does not qualify for support from NASS but does as a child under the CA. At 18 they may qualify for continued support from the LA if they are a 'former relevant child' (**S.23C CA**) or a 'qualifying person' (**Ss.24A and 24B CA**). Support can include assistance with accommodation up to the age of 21 and accommodation during vacations for those in full time education or training up to the age of 24. The provisions are subject to Schedule 3 NIAA.

The entitlement to services is otherwise as for adults above.

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

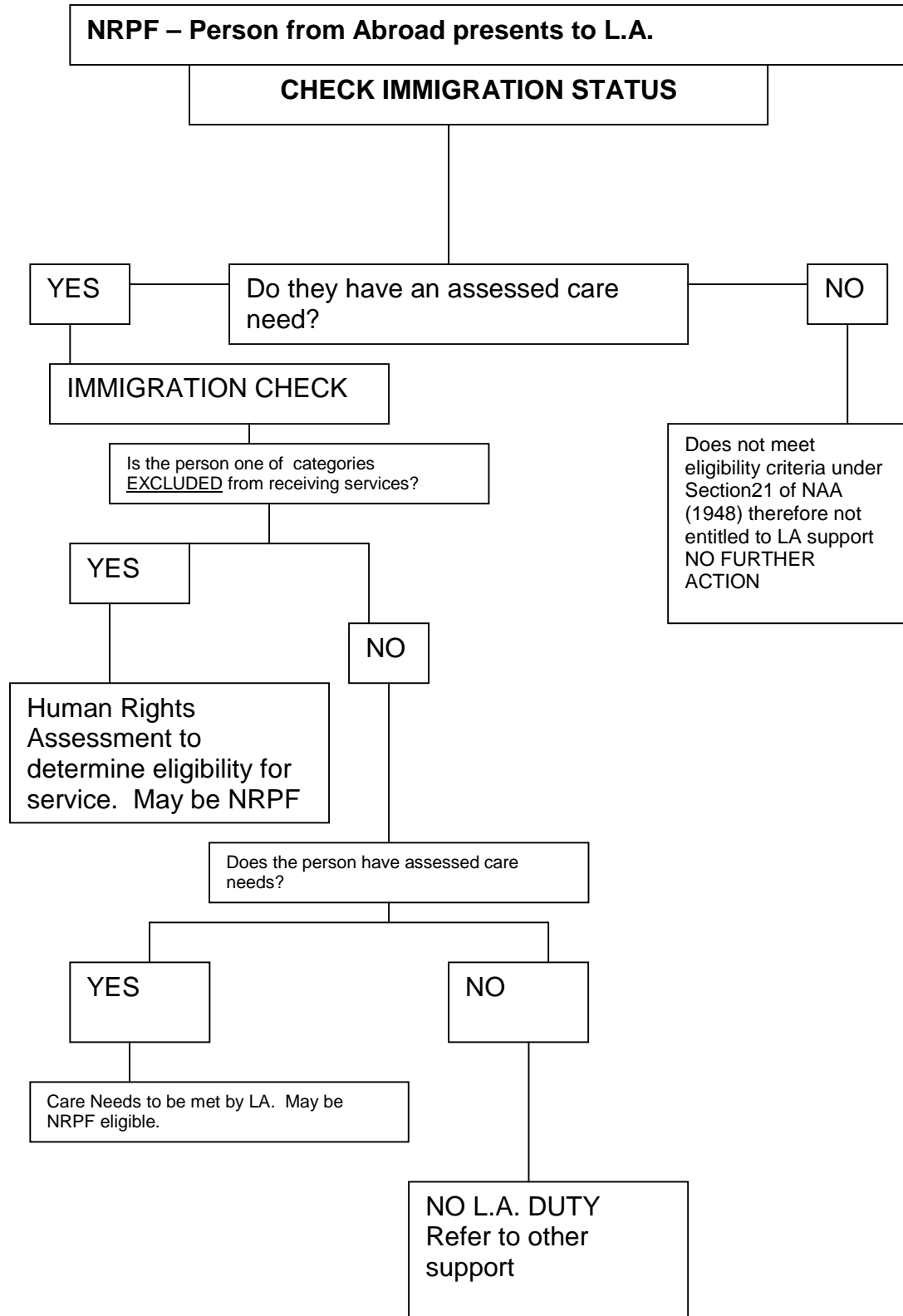
Case law

Hillingdon judgment

Merton judgment

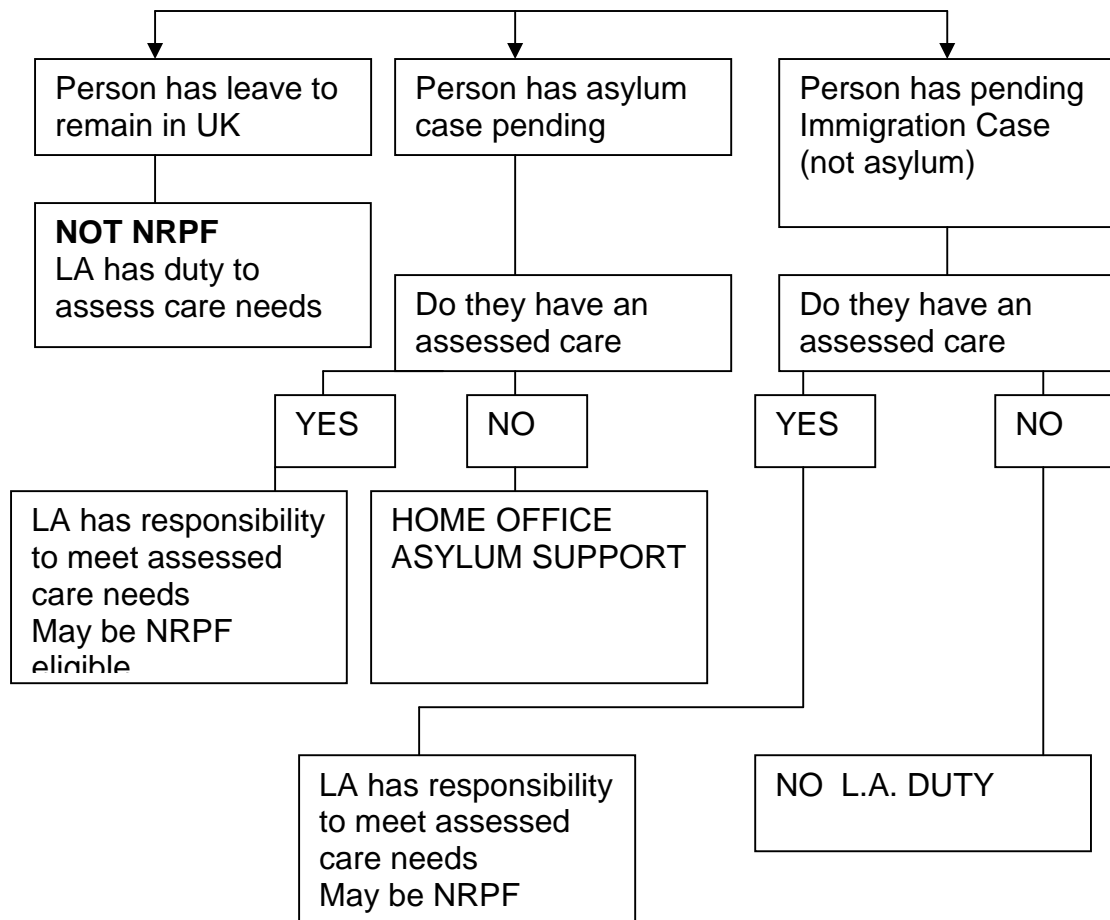
Appendix Four: Flow Chart - No Recourse to Public Funds

Person from abroad presents to Local Authority



Appendix Four A: Flow Chart - No Recourse to Public Funds

Person from Abroad presents to Local Authority



Appendix Five: NRPF assessment guidance No. 1

Non Recourse to Public Funds Assessment Guidance No. 1

For an adult who may be entitled to services under S.21 (1) NAA

Most people in this category will be asylum seekers or adults lawfully in the country but who may not claim state benefits.

Assessment is under S. 47 NHS and Community Care Act 1990. In an emergency, services can be provided before completion of the assessment.

Eligibility test:

(1) Is the adult in need of care and attention not otherwise available to them? Care and attention means something more than just accommodation. It means looking after, for example by doing household tasks, providing personal care, or protecting from risks. It does not include the provision of medical care.

(2) Does the adult's need for care and attention arise for reasons other than solely destitution? i.e. Is the need made more acute to any material degree by circumstances other than destitution? Such circumstances would include pregnancy, chronic illness, physical disability, mental disorder, domestic abuse, etc. A person is destitute if he/she and any dependants cannot obtain accommodation, food and other essential items.

If the answers to (1) and (2) are yes, the adult is 'destitute plus' and entitled to accommodation and services under S.21 (1).

The duty is only owed to the adult. There is no duty owed to other family members.

Action following assessment

Notify the Asylum Team, with the name(s) of whom to contact. The Asylum Team will notify Legal Services where this is necessary.

Appendix Six: NRPF assessment guidance No. 2

Non Recourse to Public Funds Assessment Guidance No. 2

For families where one or more adult may be entitled to services under S.21 (1) NAA and whose dependent children may be entitled to services under Ss.17 and or 20 CA.

This will include failed asylum seekers, overstayers, and those lawfully in the country but who may not claim state benefits.

A joint assessment by Adult and Children's Services needs to be carried out, if possible with a member of the Asylum Team, to determine whether duties are owed by either or both services. If both, they should co-operate to provide services to meet the needs of all family members who qualify for assistance.

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

Adult Assessment

Assessment is under S. 47 NHS and Community Care Act 1990. In an emergency, services can be provided before completion of the assessment.

Eligibility test:

(1) Is the adult in need of care and attention not otherwise available to them? Care and attention means something more than just accommodation. It means looking after, for example by doing household tasks, providing personal care, or protecting from risks. It does not include the provision of medical care.

(2) Is the need for care and attention to any material degree made more acute by circumstances other than lack of accommodation and funds? (e.g. age, chronic illness, mental disorder, physical disability, pregnancy, domestic abuse, or any other circumstances)

If the answers to (1) and (2) are yes, the adult is entitled to accommodation and services under S.21 (1) NAA.

The duty is only owed to the adult. There is no duty owed to other family members.

Children's Assessment

The assessment will be carried out under S.17 CA 1989. The test for eligibility is the same as for any other child – the child's immigration status is not relevant. If the child's family is destitute or threatened with destitution there is likely to be a duty to accommodate the child under S.20 CA, or to assist with accommodation under S.17 CA. The LA also has the power to accommodate the family under S.17, to the extent necessary to avoid a breach of ECHR or rights under Community law.

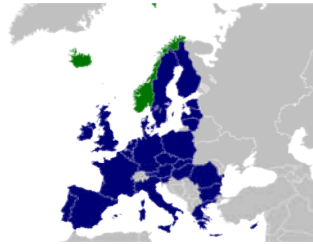
Provision of accommodation and services

If duties are owed by both Adult and Children's Services there should be joint provision for the family. If duties are only owed by Children's Services, the LA must consider whether to exercise its power under S.17 to provide accommodation for the family, or only for the child(ren).

Action following assessments

Notify the Asylum Team, with the name(s) of whom to contact. The Asylum Team will notify Legal Services where this is necessary.

Appendix Seven: List of EU/EEA states



Original Member States of the EU

Austria
Belgium
Denmark
Finland
France
Germany
Greece
Ireland
Italy
Luxembourg
Netherlands
Portugal
Spain
Sweden
United Kingdom

Member states as of May 1st 2004

Cyprus
Czech Republic
Estonia
Hungary
Latvia
Lithuania
Malta
Poland
Slovakia
Slovenia

Member states in 2007

Bulgaria
Romania

Member states of the EEA

The member states of the EU plus Iceland; Liechtenstein; Norway

Appendix Eight: List of public funds

- **Income based Job Seekers Allowance**
 - **Income Support**
 - **Child Tax Credit**
 - **Working Tax Credit**
 - **A Social Fund payment**
 - **Child Benefit**
 - **Housing Benefit**
 - **Council Tax Benefit**
 - **State Pension Credit**
 - **Attendance Allowance**
 - **Severe Disablement Allowance**
 - **Carers Allowance**
 - **Disability Living Allowance**
- **An allocation of Local Authority Housing**
- **Local Authority homelessness assistance**

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 Nine: Abbreviations

CA	Children Act
DLR	Discretionary Leave to remain
ECHR	European Convention on Human Rights
EEA	European Economic Area
EU	European Union
IAA	Immigration and Asylum Act
ILR	Indefinite Leave to Remain
LA	Local Authority
NA	National Assistance Act
NAM	New Asylum Model
NASS	National Asylum Support Service (now part of UKBA)
NIA	Nationality, Immigration and Asylum Act
NRPF	No recourse to public funds
OISC	Office of Immigration Service Commissioners
UASC	Unaccompanied asylum seeking child
UKBA	United Kingdom Border Agency

Appendix Ten: Contact Details

THE ASYLUM & IMMIGRATION SERVICE

Director of Children Services



Assistant Director of Children Services



Head of Service



ASYLUM & IMMIGRATION SERVICE

ASYLUM & IMMIGRATION SERVICE
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