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This bulletin details the UKBA's response to the NRPF Network research report; links to the NRPF Network/British Red Cross Conference Report; summarises two new pieces of case law regarding support to single adults; links to the UKBA's new family migration consultation; provides a summary of potential impacts of legal aid cuts on local authorities; provides an update on the UKBA's family returns panel; advertises an NRPF Network event this month in Edinburgh; and provides details of the new North West regional NRPF Network.

UKBA Response to NRPF Network Research Report

The UK Border Agency has responded to the recommendations made in the NRPF Network's March 2011 research report *Social Services Support to People with No Recourse to Public Funds: A National Picture*.

Our report recommended to the UKBA that they should prioritise local authority-supported cases in the same way as those receiving UKBA asylum support; that timely decisions should be made on immigration claims; that they improve their communication with local authority partners; that greater numbers of returns/removals should take place to facilitate a more effective start-to-end process and result in fewer cases

remaining in limbo on local authority support without resolution; and that families who have never applied for asylum but have submitted applications to the UKBA for leave to remain under Article 8 European Convention of Human Rights (ECHR) should be eligible for UKBA Section 4 Immigration and Asylum Act accommodation and subsistence support rather than support from local authorities.

The UKBA welcomed the report and offered to work more closely with the NRPF Network and local authorities regarding the return of families and individuals at the end of the immigration process. Indeed, the UKBA conceded that improvement can be made in their

removals of non-asylum cases when applications are refused. The UKBA have also offered to work with the Network in identifying solutions to the UKBA's practice of refusing Section 4 IAA support on the grounds that an applicant is not destitute if the local authority is providing temporary support.

However, the UKBA stated that they do not have sufficient detailed knowledge of those being supported by local authorities in order to prioritise their resolution. Furthermore, they state that prioritisation is a local decision between local authorities and their Local Immigration Team (LIT). This is in spite of the fact that local authority cases were prioritised as part of the Case Resolution Directorate.

The UKBA rejected the recommendation that families who have never applied for asylum but have submitted applications to the UKBA for leave to remain under Article 8 ECHR should be eligible for UKBA Section 4 Immigration and Asylum Act accommodation and subsistence support rather than support from local authorities. They claim that this would potentially "encourage speculative Article 8 applications from those claiming destitution as a means to access support". This perspective fails to take into account that support is already available to such applicants from social services departments.

The UKBA have also rejected that a funded assisted voluntary return programme for EEA national families is required.

The UKBA's response illustrates that the UKBA is concerned primarily with the costs arising from its own business rather than more general costs to the public purse. They fail to recognise that most costs incurred by local authorities supporting people with NRPf result from delays in UKBA decision-making on immigration claims and the UKBA's failure to remove individuals and families when immigration applications are refused.

The NRPf Network will be discussing the recommendations with the UKBA further with a view to highlighting the importance of these issues.

The NRPf Network would like to thank all the local authorities that provided data for the research report. It is vital to raise the profile of local authorities' work with people with NRPf and to seek strategic solutions to the problems faced by local authorities and the clients they support. Additionally, the research points to the importance of continuing to record and monitor cases as a way of facilitating the resolution of those cases via the UKBA.

To access a full copy of the NRPf Network research report, please see:
<http://tinyurl.com/6kdns2w>

NRPf Network – British Red Cross Conference Report

The *Local Authority Support to People with No Recourse to Public Funds – Reflections on the Past, Looking to the Future* conference, held at the Assembly Hall, Islington on June 15th 2011 was co-hosted

by the NRPf Network and the British Red Cross and addressed specific issues relating to support for destitute people from abroad with no recourse to public funds (NRPf). This report summarises the

presentations and workshops, and outlines the key issues that emerged during the conference.

The purpose of the conference was to evaluate past successes and failures of support to people with NRPF and look forward to what new challenges are facing the different sectors in regards to this support. This is with the intention of identifying emerging solutions to the current and future challenges in this area of work.

The conference was attended by 123 delegates from a range of sectors and organisations: 42% from local authorities, 38% from the community and voluntary sector, 8% from NHS departments, 6% from Local Government representative bodies, 4% from Central Government and 2% from other agencies.

Key issues highlighted at the event included:

- Local authority duties to people with NRPF are complex and require effective communication between local authorities, the UKBA and the voluntary sector. There needs to be sharing of policies and good practice between local authorities to facilitate the consistency of approach across the UK. NRPF Connect (more information in the full report) will be a mechanism to facilitate communication between local authorities and the UKBA in order to help resolve cases and manage NRPF cases securely and effectively.
- It is common that individuals and families with NRPF wait too long for decisions on immigration applications to the UKBA. Furthermore, if a negative decision is made, return to country of origin rarely takes place. As a result of this, people are left in limbo and face

destitution. Local authorities and the voluntary sector in some circumstances are required to fund support to those who are destitute. More financial support and a greater strategic approach to sustainable returns including removal of cases where all appeal rights are exhausted and continued investment in voluntary returns is needed.

- There are concerns regarding the future of provision of legal aid, and cuts in local authority funding for voluntary and community services
- The landscape of NRPF has shifted hugely over the years. There have been important changes in case law and government policies, which have resulted in a shift from support to adults to support provided by local authorities to children & families.
- The UKBA must see local authorities as a stakeholder and should prioritise local authority-supported cases in the same way as those on asylum support so that they do not get left in limbo.

Participant feedback

Feedback on the conference was very positive. Many delegates considered it an excellent opportunity for sharing expertise and networking. 85% of delegates said that the conference had met their expectations and the remaining 15% said that the conference had partly met their expectations. Delegates found both the panel presentations and workshops to be useful. Some participants however would have liked the issues to have been covered in more detail and for similar conferences to be held more frequently.

To view a full copy of the conference report which includes the speakers'/workshop powerpoint presentation slides, please see: <http://tinyurl.com/44nzm6w>

R (Nassery) v Brent LBC [2011] and R (on the application of SL) v Westminster [2011]

R (Nassery) v Brent LBC [2011] EWCA Civ 539

This Court of Appeal case clarified the threshold for support under Section 21 National Assistance Act 1948 (NAA) for adults with mental health needs with NRPF. The appellant in this case had been diagnosed as suffering from an unstable personality disorder (or possibly an adjustment disorder or PTSD), depression, and had a history of self-harming, attempting suicide and assaulting his girlfriend. He challenged Brent Council's decision to refuse support under Section 21 NAA on the grounds that the local authority assessment emphasised his current needs rather than the pattern of his past needs and failed to take into account the continued risk of self-harm or violence arising from his mental health problems.

Brent's assessment held that N did not require 'looking after' because he could perform all essential daily living tasks without great difficulty. He did not need to be 'watched over' as he had appropriate insight into his mental health, he was aware when he needed help and was able to act appropriately in seeking help.

The Court refused the appeal and upheld the council's decision. N's need for counselling and psychotherapy were not relevant to Brent's decision as both were held not to be social services provisions. The case confirms that the emphasis in assessments of need under Section 21 NAA must be on current needs where these are currently under control rather than past or future mental health problems.

To view a full transcript of the judgement, please see: <http://tinyurl.com/4448979>

R (on the application of SL) v Westminster [2011] EWCA Civ 954

The Court of Appeal further clarified the threshold for support under Section 21 NAA for adults with mental health needs with NRPF.

The appellant in this case was an asylum seeker at the time of the local authority's assessment and had been refused support under Section 21 NAA by Westminster Council on the basis that he was independent in all self-care needs and as such did not have a need for 'looking after'. He had been diagnosed as suffering from depression and PTSD and met with his care coordinator (a social worker) on a weekly basis, who provided "advice and encouragement, and generally monitor[ed] the appellant's condition and progress". The care coordinator also put the appellant into contact with independent counselling organisations, a befriender service and local support groups.

The judge accepted the appeal on the basis that the support provided and arranged by the care coordinator qualified as 'care and attention' for the purposes of Section 21 NAA. This is significant for several reasons:

Firstly, 'keeping an eye on' an individual can constitute 'looking after' as the social worker is doing something that the individual cannot do for himself by monitoring his mental state to avoid a possible relapse or deterioration.

Secondly, 'care and attention' is not limited to acts done by the local authority's employees or agents, but can be met by external organisations such as those in the voluntary sector.

Thirdly, Section 21 NAA does not envisage any particular level of intensity of support. This is one reason why FACS criteria cannot be used when assessing eligibility for support for individuals with NRPF. In a FACS assessment there is a consideration of the intensity of support i.e. whether it is substantial, rather than under Section 21 NAA where the existence of monitoring, no matter how limited, could constitute 'looking after' if it prevents relapse. This is why the threshold for support under Section 21 NAA remains below the substantial/critical FACS levels.

Fourthly, in considering whether care can be provided to an individual without also providing Section 21 NAA accommodation, the court held that the correct test is that "care and attention is not otherwise available unless it would be reasonably practicable and efficacious to supply it without the provision of accommodation." This is perhaps easier to understand if it is re-phrased as "care and attention is otherwise available if it would be reasonably practicable and efficacious to

supply it without the provision of accommodation." The court held that it would be absurd to provide a programme of assistance and support through a care coordinator without also providing the obviously necessary basis of stable accommodation. It also confirms that NASS (UKBA) support cannot be considered as 'otherwise available' when looking at eligibility for support under Section 21 NAA.

To view a full transcript of the judgement, please see: <http://tinyurl.com/3mv9o4g>

The two cases, which were both decided by the Court of Appeal three months apart, do initially appear to be at loggerheads. The cases can be distinguished however, as the first applicant's mental health is currently 'under control' and he has sufficient insight to obtain help if it relapses; conversely the second applicant's mental health was not as well controlled and he needed a social worker to oversee him to prevent a relapse from occurring.

UKBA Family Migration Consultation

The UKBA have launched a consultation focusing on family migration to the UK. The UKBA state that the proposals put forward in the consultation intend to prevent and tackle abuse of the immigration system, promote integration and reduce burdens on the tax payer.

The consultation proposals include extending the probationary period for spouses, partners and dependants from two to five years; and introducing a new minimum income threshold for sponsors of spouses, partners and dependants.

Most significantly for local authorities supporting people with NRPF, the

consultation aims to open a debate around Article 8 European Convention of Human Rights (ECHR). The ECHR provides a framework for most local authority assessments of individuals/families with NRPF and applications under Article 8 ECHR are generally a barrier to return and can lead to social services duties being triggered. Policy changes around Article 8 ECHR could therefore have significant implications for local authorities.

A link to the UKBA's consultation can be found here: <http://tinyurl.com/69mvao3>

The NRPF Network will be responding to the consultation, which closes on the 6th of

October and would welcome your views for consideration in our response in regards to the impacts of the proposals on social services support to people with NRPF.

Please send any comments or feedback you have on the consultation to jonathan.price@islington.gov.uk by the 15th September.

Impact of Legal Aid Cuts on Local Authority and Voluntary Sector Support to Migrants

The South East Strategic Partnership for Migration (SESPM), which coordinates the South East regional NRPF Network, has produced a piece of research outlining the potential impacts of legal aid cuts on the support provided to migrants by local authorities and the voluntary sector. This very comprehensive document is useful in identifying the potential impact of legal aid cuts to agencies and provides a platform to identify solutions to mitigating these negative impacts.

Some of the concerns include:

- An increase in the number of households from abroad with unresolved immigration situations and therefore no right to work and no recourse to public funds (NRPF) presenting to the local authority for accommodation
- For those families and vulnerable adults who are supported by local authorities, delays and additional expense might arise as the inability to access independent legal advice makes it more difficult to achieve resolution on their immigration cases and their discharge from local authority care.
- Increased pressures on social workers and legal departments in local authorities to unpick the complex immigration cases of households for which they have accepted a duty - leading, ultimately, to questions about the need to purchase immigration legal advice in order to resolve these situations.
- Complex legal and financial dilemmas will arise for local authorities as they consider whether to provide advice in order to resolve NRPF cases that may otherwise remain in limbo.
- Without access to specialist advisors, those with insecure immigration status may be less likely to approach the authorities for support. The inability of families to submit Article 8 applications may result in Human Rights assessments which conclude that families have no grounds for support and are offered assistance in returning to their countries of origin instead.
- Unaccompanied Asylum Seeking Children (UASCs) and care leavers making applications for further leave on Article 8 grounds will be excluded from assistance under Legal Aid. The Local Authorities' obligations to these children may therefore have to expand to include picking up responsibility for ensuring legal advice and representation.
- The proposed changes to Legal Aid will undoubtedly reduce the already inadequate supply of accredited legal representation and place further strains on front line advice and support services that can provide early help and interventions, often stopping issues reaching crisis point.

To view the SESMP's full memorandum, please see: <http://tinyurl.com/426nz9f>

UKBA Family Returns Process – Update

It has been confirmed by the UKBA that local authority-supported non asylum cases are subject to the new family returns process, which is summarised in our [February 2011 NRPF Network Bulletin](#).

The family returns process was introduced by the Government in order to meet its commitments to end the detention of children. The process may however require the use of pre-departure accommodation in a centre in West Sussex (called Cedars) which will open this month.

Barnardo's will be providing welfare and social care support to families within the

pre-departure accommodation. They have stated that legal advice will be available to families whilst in the pre-departure accommodation.

A pilot project involving some North London boroughs will see local authority cases fed into the family returns process and further roll out is expected nationally.

To see more information on the family returns process, please see the UKBA factsheet: <http://tinyurl.com/4ys637s>

ILPA have provided a recent update on the programme, which can be accessed here: <http://tinyurl.com/3e5ftoj>

Scotland NRPF Event – Edinburgh, 23rd August 2011

In response to the concerns of local authorities around migrant destitution and social services support to people with no recourse to public funds (NRPF), COSLA and the NRPF Network have organised this inception meeting to discuss the possibility of establishing an NRPF Network in Scotland.

The aim of the meeting will be to:

- identify what issues and concerns there are in relation to NRPF in Scotland
- identify how those concerns might be addressed
- establish whether there is a need for a Scotland NRPF Network
- establish how a Scotland NRPF Network might be taken forward

Who should attend:

- Local authority representatives with a responsibility for NRPF – this might include service managers and practitioners in adult social services and children's social services, asylum/immigration teams, legal services, policy managers

The event will begin at 10.30 with registration from 10am. The event will finish by 2pm and lunch will be provided.

You must register to attend and places are limited, to reserve one please contact Mhoraig Green (mhoraig@cosla.gov.uk) by the 16 August.

NEW! North West NRPF Network

The North West of England is the eighth UK region to set up a regional NRPF Network, following a well-attended inception meeting at Manchester Town Hall in July.

The first meeting of the North West Regional NRPF Network will take place on

Wednesday 14th September in Manchester and is open to professionals in the statutory and voluntary sectors.

If you would like to attend the meetings of the North West Regional NRPF Network, please contact Colin Parker on colin.parker@manchester.gov.uk or Tel: 0161 234 5578/Mob: 07940 414 082

Dates for your Diary

East Midlands Regional NRPF Network meeting

Monday 12th September 2011, (10am – 12.30pm)

EM Councils Offices, Melton Mowbray

For more details, please contact

sarah.short@emcouncils.gov.uk

East of England Regional NRPF Network meeting

Wednesday 26th October 2011 (1 – 2.30pm)

EELGA Offices, Flempton House

For more details, please contact

pamusa@menter.org.uk

London Regional NRPF Network meeting

27th September 2011 (2 – 4pm)

For more details, please contact

simon.wadsworth@croydon.gov.uk

North East Regional NRPF Network meeting

Thursday 18th August 2011 (2 – 4pm)

Anderson House, Market Street [East]

Newcastle upon Tyne NE1 6XA

For more details, please contact

nadeem.ahmad@newcastle.gov.uk

North West Regional NRPF Network meeting

Wednesday 14th September 2011 (time tbc)

Manchester Town Hall. For more details, please contact

colin.parker@manchester.gov.uk

South East Regional NRPF Network meeting

Tuesday 18th October 2011 (11am – 2pm)

Church Mission Society in Oxford

For more details, please contact

roy.millard@secouncils.gov.uk

Wales NRPF Network meeting

Monday 3rd October 2011

(10am – 12pm),

Data Unit Wales, 3-7 Columbus Walk, Cardiff. For more details, please contact

selina.moyo@wsmp.org.uk

Yorkshire & Humberside Regional NRPF Network meeting

Date and location TBC

For more details, please contact

David.2.Brown@migrationyorkshire.org.uk

For more details on the regional networks, including who can take part, see:

<http://tinyurl.com/3575qxt>

The NRPF Network is committed to supporting and working with local authorities, the voluntary sector and central government. The Network has over 2,100 members and our website attracts over 1000 web hits per month. The NRPF Network is part-funded by the UK Border Agency (UKBA).

For further information or to unsubscribe, please contact: nrpf@islington.gov.uk or tel 020 7527 7121

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