



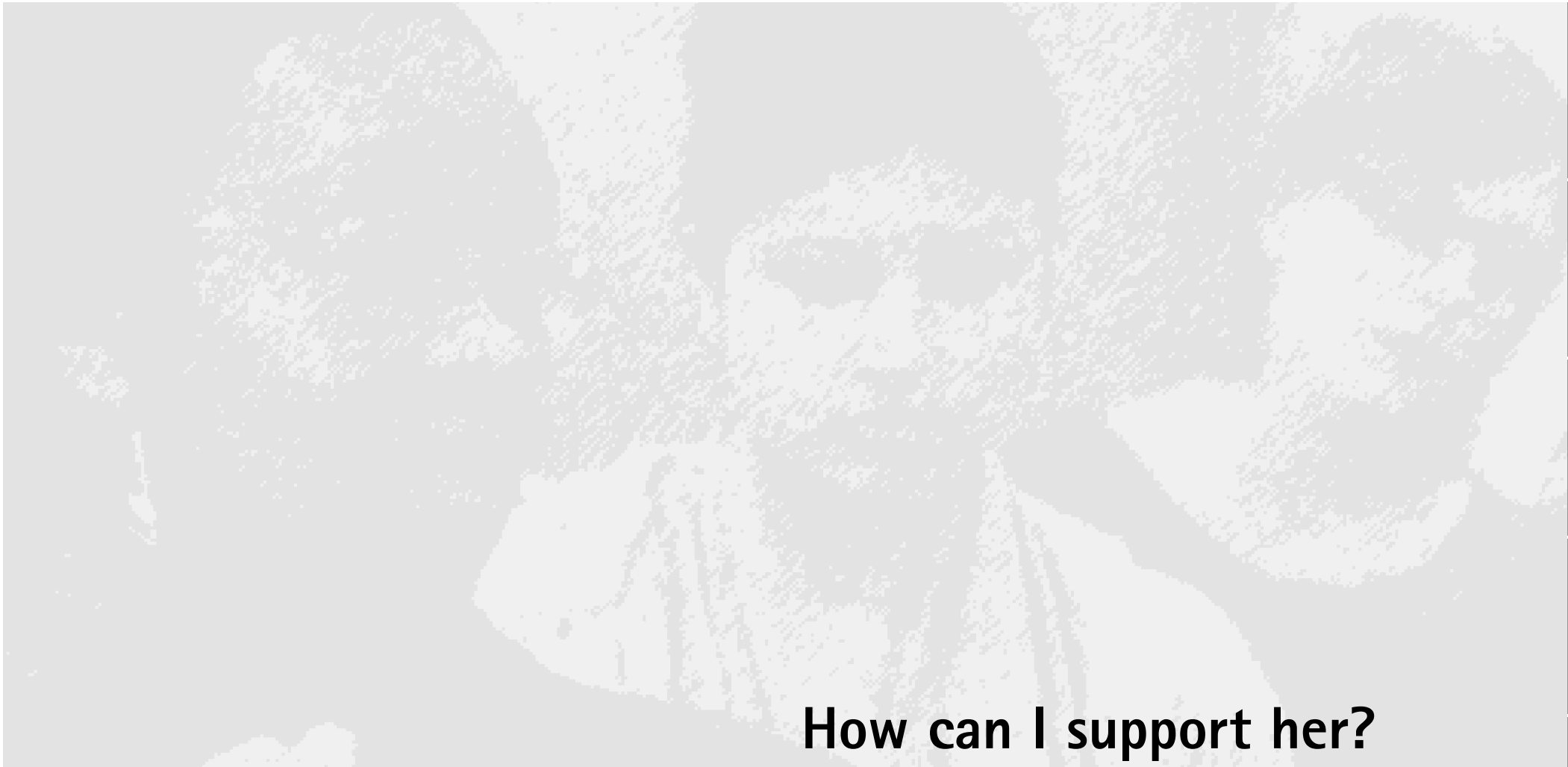
How can I support her?

Domestic violence, immigration
and women with no recourse to
public funds

Southall
Black
Sisters

Women's
Resource
Centre

A resource pack for voluntary and community organisations



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For a copy of this resource pack in large print, audio, Braille or other formats please contact Women's Resource Centre at info@wrc.org.uk or 020 7324 3030.

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Introduction

About this guide

This guide is aimed at voluntary and community organisations and others who work or come into contact with women who are subject to domestic violence and the probationary period, (i.e the 'Two Year Rule') in immigration law.¹ It has been produced jointly by Southall Black Sisters (SBS) and the Women's Resource Centre (WRC).

In June 2004, WRC and SBS held a joint information and training event for voluntary and community sector workers who support women subjected to domestic violence and who are also experiencing immigration problems. As a result of this event, there was an overwhelming demand for further support. This guide provides information and advice on how women with uncertain immigration status who are fleeing domestic violence can be supported.

This guide outlines both the law and practical steps that should be taken to support and secure the right of women to stay in the UK indefinitely under the 'Domestic Violence Rule'.

We hope that this guide will help caseworkers and advisors provide practical support and assistance to women who are eligible to apply for stay in the UK on the basis of domestic

violence. The guide also covers, briefly, other applications that can be made for women who fall outside the Domestic Violence Rule as well as more detailed guidance on how to help women with no recourse to public funds.

Introduction to the issues

Over the last two decades, the UK government has introduced a range of measures and legislation aimed at reducing the incidence of domestic violence, and related homicides, and creating a culture of 'zero tolerance' for such violence. These initiatives do not, however, extend to women with immigration problems, rendering the government's approach to such women as inhumane and discriminatory.

An estimated 600 women every year who have insecure status are subject to domestic violence from their spouse.² However, the combination of immigration and welfare rights legislation ensures that they cannot access safe accommodation or welfare benefits which are necessary to leave a violent relationship. The result is that they are faced with a stark choice: leave and face destitution or stay and risk their lives.

Following extensive campaigning and lobbying by SBS (who demanded changes to the immigration and welfare benefits rules for women facing domestic violence) the government introduced the 'Domestic Violence Concession' (incorporated into the immigration rules in 2002). The purpose of the Concession is to make it easier for women to leave a violent relationship without fearing deportation back to their countries of origin where they risk violence and persecution for being divorced or separated. Initially under the Concession, the evidential requirement was too restrictive and few, if any, women could meet it. Further intensive lobbying by SBS and other women's organisations followed which, in 2002, resulted in an extension of the types of evidence required to prove domestic violence.

Under the current Domestic Violence Rule (which applies both to spouses and partners in a

¹ For those who work in Scotland, the law and policies on domestic violence and child protection may be different. Please refer to the excellent leaflet on 'Domestic Abuse and Two Year Abuse' produced by the Glasgow Violence Against Women Partnership. See the Directory for contact details.

² These figures are taken from SBS surveys between 1999 and 2003. The figures include spouses and unmarried partners of men with British citizenship or Indefinite Leave to Remain leave to remain, 'overstayers', 'failed' asylum seekers, students, permit holders, etc.

same sex relationship), if a person (usually a woman) can prove that she is a victim of domestic violence by providing the requisite evidence, then she is entitled to remain in the UK indefinitely.

Whilst the introduction of the Domestic Violence Rule was a very important step forward, it still fails many women.

What does 'no recourse to public funds' mean?

People with 'no recourse to public funds' are those who, due to their immigration status are allowed to be in this country but are not eligible for many of the public funds that other UK residents can claim, such as benefits and council housing.

Upon entry to the UK as a partner or a spouse of a British national, there is often a condition attached to leave prohibiting 'recourse to public funds'.

Public funds in immigration rules describes those welfare benefits which applicants need to show that they will not claim and that they can be adequately maintained without them.

This is due to the continuing restrictive nature of the Rule, both in terms of the evidence needed and in relation to the category of people who can avail themselves of the Rule. However, the most significant reason why women are not able to make use of the Rule is the existence of the 'no recourse to public funds' requirement.

The Domestic Violence Rule has removed, to some extent, women's fears of being returned to their countries of origin if their marriage/relationship breaks down, but it has not removed their fear of destitution and further violence. The impact of the 'no recourse to public funds' requirement is discussed in more detail below.

The recent overhaul of domestic violence laws, and in particular the enactment of the Domestic Violence, Crime and Victims Act 2004, was a missed opportunity to protect women who do not have settled status. The government claimed it was 'sympathetic' to the plight of women with immigration difficulties, yet refused to use the Act to amend immigration and benefit rules to provide women with a safety net of support so that they can report and leave an abusive relationship.

In response to pressure from SBS and Women's Aid, in February 2004 the government provided

a contribution of £40,000 to the Women's Aid 'Last Resort Fund'. Women's refuges were able to apply to the Fund to enable them to house and financially support women subject to the 'no recourse' requirement. However, the funding was only available for a maximum of eight weeks and by September 2004, as predicted, the funds ran out. In November 2004, the government contributed a further £80,000 to the Fund but this too ran out since it only represented a fraction of the amount needed to support the 600 or so victims of domestic violence who are excluded from benefits each year.

In October 2004, at an SBS conference on violence against Black and minority ethnic (BME) women, the Home Office Minister, Baroness Scotland, announced that the government would bring in new measures to provide support for women. These included yet another extension to the type of evidence required under the Domestic Violence Rule.

During the passage of the Domestic Violence, Crime and Victim Act and since, the government has made it clear that it has no intention of allowing all victims of domestic violence to receive benefit support. Women's and other voluntary and community organisations have expressed that this inconsistency is due largely to the ongoing public hysteria

surrounding immigration and asylum matters.

Campaign to Abolish No Recourse to Public Funds

An ongoing campaign led by SBS, involving WRC and key domestic violence groups, is calling for the abolition of the 'no recourse' requirement for those who experience violence in the context of marriage, employment and trafficking. The campaign is also calling for the Domestic Violence Rule to be extended to all women subject to immigration control.

Voluntary and community organisations are being encouraged to write to their local MPs and the Prime Minister urging them to support the demands of the campaign. It is crucial that adequate, humane support is given to all women who experience violence and who are subject to immigration controls. Information on how to support this campaign is available from SBS and WRC.

Immigration and asylum

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Introduction to immigration and asylum protections

This section contains a summary of the main applications that can be made by women with uncertain immigration status, if their relationship breaks down due to domestic violence. (See page 21 for a flow chart of the the main applications that can be made and the immigration and asylum procedure.).

It is possible, depending on the facts of the case, to make more than one application simultaneously. If a woman is eligible for more than one kind of application she should be advised to make all applications *immediately*, as she may be penalised for not doing this. The applicant's legal adviser will make a full assessment of what is in the best interest of the applicant according to the circumstances of the case.

Example: Ms A entered the UK on a two year spouse visa from Pakistan. Her husband is a UK national. The marriage breaks down due to domestic violence and her husband and in-laws in the UK accuse her of adultery and make threats that they will kill her. Consideration should be given to making a Domestic Violence Rule application, a human rights application and/or possibly an asylum application.

It is imperative that legal advice is obtained in all cases. See the Directory at the end of this pack for details of the Community Legal Service (www.clsdirect.org.uk) and other organisations with lists of immigration solicitors.

Remember an immigration adviser must be registered with the Office of Immigration Services Commissioner (OISC) or an Accredited Immigration Adviser unless exempted. The OISC website of the (www.oisc.co.uk) provides a list of registered or exempted immigration advisers. However, anyone is allowed to make referrals to properly qualified solicitors or advisors and support applicants through the process of regularising their status.

Domestic violence rule

The Domestic Violence Rule allows persons subject to immigration control and domestic violence, Indefinite Leave to Remain in the UK and it applies to both spouses and same sex partners. However, much will depend on the nature and quality of the evidence that is available to demonstrate that they are victims of domestic violence.

Who can apply?

To be eligible applicants must:

- Have entered the UK on a valid spouse or partner visa;
- Be married to or be in a relationship with a person who is a UK national or who has Indefinite Leave to Remain (ILR) in the UK (also known as "settled" in the UK);
- Make the application before their visa has expired (most visas are for a duration of two years);
- Be able to show that their relationship/marriage broke down due to domestic violence and produce evidence of domestic violence during the visa period.

What evidence is required?³

The evidence required falls under two categories. The first category stipulates the evidence that immigration officers will prefer to see. The second category stipulates evidence that will also suffice.

Category 1 - One of the following will be preferable:

- A court injunction, non-molestation order or other protection order (other than an ex-parte or interim order);
- A criminal conviction against the abusive sponsor or;
- A police caution issued to the abusive sponsor.

Category 2 - If the above cannot be provided, the applicant must provide **at least two** of the following:

- A medical report from a hospital doctor confirming that the applicant has injuries consistent with being a victim of domestic violence;
- A letter from a GP who has examined the applicant and is satisfied that the applicant

has injuries consistent with being a victim of domestic violence;

- An undertaking given to a court that the perpetrator of the violence will not approach the applicant who is a victim of domestic violence;
- A police report confirming contact or attendance at the home of the applicant as a result of domestic violence;
- A letter from social services confirming involvement in connection with reports of domestic violence;
- A letter of support or report from a Home Office recognised women's refuge or domestic violence support organisation.⁴

³ The evidence required by the Home Office is set out in the Immigration Directorate Instructions, Chapter 8, Section 4, paras 3.1-3.8. See page 22 of this pack.

⁴ Contact the National Domestic Violence Helpline on 0808 2000247 for refuges and domestic violence support services. See also the Immigration Directorate Instructions on domestic violence website: www.ind.homeoffice.gov.uk Annex AB for a list of Home Office recognised refuges and support organisation approved to provide evidence under the Domestic Violence Rule. If your organisation is not on the list of Home Office recognised domestic violence organisations, you should contact the Home Office to sign a declaration in order to get on the list.

What is the application process?

The legal advisor will need to submit representations to the Home Office setting out the facts of the case and why the Domestic Violence Rule applies to the applicant. The main objective here is to explain that the domestic violence caused a permanent breakdown in the marriage and that at the time of the violence, the marriage was subsisting. The application is made on the appropriate SET (O) form accompanied by full representation with all available evidence enclosed. Those applicants who are without financial means can apply for the fee to be waived, which is a matter for Home Office discretion. Once the application has been received, the Home Office has stated that it will treat the matter as a priority.

How long does the application process take?

The Home Office has stated that they are now fast-tracking applications. A decision can be made within a few weeks or it can take several months. In some cases, despite full representations, the Home Office has been known to take a year or more!

Positive outcome

If the application is successful, applicants and any minor dependants (children) will obtain

'Indefinite Leave to Remain'. Children born in the UK to a British citizen or parent settled in the UK, are automatically British and therefore entitled to remain in the UK. This means that once a confirmation letter has been received, the woman (and her children) will be eligible for social housing and full welfare benefits. Applicants will also be able to travel on an existing passport to their country of origin if they so wish.

Negative outcome

If the application is refused, there is a right of appeal. Appellants (people appealing) should normally have their appeal heard within six months after lodging the notice of appeal.

What is an overstayer, and can an overstayer apply?

An overstayer for the purposes of the Domestic Violence Rule is someone who has not applied for Indefinite Leave to Remain or made a Domestic Violence Rule application before their visa expired. If the visa expired recently (in the last few days or weeks) the Home Office will usually consider applications under the Domestic Violence Rule. However if the applicant's visa has expired by several months (usually six months or more), a legal advisor will have to

consider what immigration or asylum options are available.

Other categories of entrants

The Domestic Violence Rule does not apply to persons with limited leave (other than those subject to a probationary period), those who enter the UK as a fiancé or to those who are the dependants of spouses who are seeking asylum in the UK.

Comments on the Domestic Violence Rule

Definition of domestic violence

Case law suggests that the Home Office must accept that threats of violence can come within the definition of domestic violence. Domestic violence does not just include physical abuse but also psychological and even financial abuse. If problems as to what constitutes 'domestic violence' are anticipated, the general definition of domestic violence adopted by the government and key agencies including the police should be quoted in representations. For example, in the government's National Report on Domestic Violence (March 2005), the following definition of domestic violence (also used by the Association of Chief Police Officers) is given:

“Any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality.”

Violence from whom?

The Domestic Violence Rule does not expressly state what relationship to the applicant the perpetrator must have. An applicant who has been subject to violence not from her spouse but from other family members may still qualify for settlement where the violence has been the reason for the breakdown of the marriage. For example, in some cases where the perpetrator instigates the violence but does not carry it out, remains indifferent and/or fails to offer protection.

Reporting to a GP

Some organisations have noted that the Home Office has rejected reports to a GP on the basis that the medical practitioner has merely reported what the applicant has stated about the domestic violence. **It is vital therefore that the GP also states that the injuries (physical or psychological) that have been noted are consistent with being a victim of abuse. The importance of having as much evidence of domestic violence as possible cannot be underestimated.** If possible ensure that the GP

is registered with the General Medical Council (GMC).

Post-separation violence

Often a victim who separates from a violent perpetrator will continue to be subjected to further violence and harassment. Often the violence will escalate. Those who work with abused women know that post-separation violence is often part of a continuum of violence and abuse experienced within a marriage or relationship. However, where there is only evidence of post-separation violence, it may be difficult to show that domestic violence is the cause of the marital or relationship break up. In such circumstances, it may be necessary to seek an expert report to explain the dynamics of domestic violence and in particular the link between separation and domestic violence. Immigration advisors will usually know of relevant experts to instruct, but often on issues of BME women and domestic violence, members of SBS are often instructed subject to availability and resources.

Reporting violence outside of the marriage/relationship

For reasons to do with fear of further violence and trauma, many women will only report their experiences after they have left a marriage or relationship but their applications are rejected

on the grounds that such reports should have been made whilst in a marriage or relationship. Such a response represents a distortion of the Domestic Violence Rule, which does not stipulate how and when women should report violence but only asks that evidence of violence be provided. It should not, therefore, matter when the report takes place, as long as it can be **shown that the domestic violence occurred within the probationary period and was the cause of the break up of the marriage or relationship.** It is vital that the applicant is encouraged to give a full history of abuse and violence to show that the violence or abuse occurred during the marriage.

Spouses who have left a violent relationship, then reconciled or returned and then left again later

In some cases, an applicant may have left a violent marriage/relationship and then returned or reconciled and then left again some time later. This may be challenging in respect of her immigration status, because to qualify under the Domestic Violence Rule it is necessary to show that it was the domestic violence that led to the breakdown of the marriage⁵. Often the Home Office will argue that if she returned to an abusive relationship previously, it is not the abuse that has led to any subsequent

separation. **Evidence will need to be provided to show that domestic violence was the cause of the break-up and that the abuse took place within the probationary period.** This is why it is crucial to ensure that there is good reporting of domestic violence to a number of agencies. It may also be necessary to instruct an expert who can explain why women, especially Black and minority ethnic women, reconcile with abusive partners.

Outside the Domestic Violence Rule

Where an application falls outside the Domestic Violence Rule, it is still important to consider other avenues for stay if appropriate. For example, if the evidence on domestic violence is not sufficient or the applicant fears persecution if returned to her country of origin as a divorcee, there may be strong human rights, asylum or compassionate grounds.

Refusal of applications

If an application under the Domestic Violence Rule is refused, and the applicant had leave to stay at the time of the application, an appeal can be brought. However, in order to generate the right of appeal, the Home Office will have to cancel the current leave to enter/remain. It is usually the case that the current leave will be curtailed. If an application has strong compassionate grounds but falls outside the

Domestic Violence Rule, it is important to consider whether to request a 'recommendation' (this involves a Judge making a recommendation to the Home Office to use its discretion) or consider an appeal based on human rights grounds. If all avenues are exhausted, where appropriate, it is still worth making full representations to request the Home Office to reconsider on compassionate grounds. If there are sufficient grounds, it may also be necessary to consider a judicial review of the Home Office decision, particularly where there is no right of appeal. An individual campaign may also be necessary in order to gain public support. (See the section on Campaigning below.)

⁵ In one case the Court of Appeal confirmed that even in cases where a woman leaves and then returns to a relationship, as long as it can be shown that the applicant was a victim of domestic violence during the probationary period whilst the relationship was subsisting, *"the normal assumption would be that in those circumstances it was the violence which led to the breakdown of the marriage."*

Practical steps for a successful application to remain in the UK under the domestic violence rule

When an applicant approaches you for assistance, the following steps must be taken to ensure that she has the strongest case possible:

Find a solicitor

Refer her to a reputable immigration lawyer or organisation for legal advice. Remember that **if she has no means, legal aid will be available**. Note that an adviser must be OISC registered or an Accredited Immigration Adviser (see www.oisc.co.uk for guidance). Whatever your position, it is vital that you refer to a legal advisor or lawyer for guidance and assistance.

At the same time, it is also important to refer the applicant to a reputable family solicitor so that she can also obtain advice on protection orders, divorce, maintenance and children matters.

Make Domestic Violence Rule, Asylum and Human Rights applications at the same time

Advise her of the possibility of making one or more applications under the Domestic Violence Rule, Human Rights Act or Asylum law.

Find a safe place for her

Always ensure that the applicant has a safe place of residence pending any legal action including criminal action. Few, if any, women

will contemplate leaving a violent relationship if they have nowhere to go and no means to support themselves. This is a very difficult and frustrating task as the normal routes to safety are not available to such women. (See the section on Financial Support below for further guidance on this)

Strongly encourage her to report the violence to many agencies

Help the applicant to report domestic violence to as many agencies as possible, e.g. the police, social services, her solicitor, GP and other women's organisations.

If the applicant has not reported the violence or sought advice from the police or a solicitor, advise and encourage her to do so immediately because obtaining the type of evidence under category 1 (outlined above) is vitally important to her chances of success in remaining in the UK indefinitely. In the experience of SBS, accurate and appropriate evidence of domestic violence will help in ensuring that the initial representations are robust and that a positive decision is made relatively quickly. This is crucial since the applicant will not usually have any means to support herself until she has Indefinite Leave to Remain in the UK.

It is important that there is little or no delay in

making a report since any delay could work against the applicant's immigration and other interests, for example in relation to entitlements under the civil family law. SBS have often come across refusals of stay under the Domestic Violence Rule by the Home Office on the grounds that the applicant did not report incidents of domestic violence whilst in the marriage, so reports made after the marriage ended are deemed not to be credible. However any delay is better than not reporting the violence at all, so **all applicants should be encouraged to make a report as soon as it is practicable and safe to do so**. Whilst the reasons for not reporting violence in the marriage maybe understandable, it is always advisable to tell the applicant or relatives or friends who may contact you on her behalf, to report the violence or abuse experienced to the police or a solicitor as soon as possible.

You must ensure that any delay and the reasons for it are properly explained by the legal advisor in the representations to the Home Office.

Give her practical help to report the violence

The applicant must be practically assisted in making a report if she or those supporting her do not speak English or are unsure as to how the various legal and criminal justice systems

work. The applicant should be informed that making a report, whether or not she wishes to pursue criminal or civil action, will help protect her following the break up of the marriage and help establish her credibility in relation to any immigration application or criminal or family proceedings. It is likely that many of these women will be unaware of their rights and speak little or no English. It is therefore important they are not merely referred to the police, social services or a solicitor by themselves. They may not get the right advice and their reports may be ignored or minimised. For this reason, where practicable and necessary, the advisor should also act as the applicant's advocate to ensure that any report and action that may follow, is correct and properly taken.

From SBS's experience, advocacy with proper interpretation is often needed in such cases. Over the years, SBS has found that providing an advocacy service, including accompanying women to the police, courts and solicitors, can increase the chances of getting positive results because, when necessary, advocates can intervene on behalf of victims to ensure that they get the services to which they are entitled.

Report to other places, e.g. a new GP

While the type of evidence in Category 1 (see

page 9) is desirable, there is also recognition that applicants are not always able to obtain such evidence. Often they fear further reprisals, destitution or deportation; do not want to face their perpetrators in court; and are ashamed of disclosing the abuse in public. For this reason, it is necessary to encourage an applicant, at the very least, to report the abuse to a GP, social services, hospital (if the injuries warrant a hospital visit), a refuge or a domestic violence agency, so that the experience of violence can be recorded and help given without confidentiality being breached or the applicant being put at risk.

If the applicant's GP is a family GP and she is reluctant to report for fear of breach of confidentiality (i.e because the GP is from the same community as her perpetrator), assist her in reporting the abuse to another GP.

Take full notes of the woman's account of abuse

It is essential that comprehensive notes of the applicant's account of the abuse are taken, irrespective of whether other action is pursued. This includes noting any injuries and the general demeanour when she presents to you. If the applicant appears depressed, it is important to refer her to a trained counsellor or therapist, even if the waiting list is long. Also, encourage

the applicant to obtain proper photographs, or take photographs yourself, of any injuries (SBS caseworkers often keep a camera in the office for such a purpose). However, care must be taken to ensure that any photographs taken are accurately dated and that photographs of an injury are connected to the applicant so that it is obvious that the injury has been sustained by the applicant. All photographs and notes should be passed on to the applicant's immigration representative.

Take evidence from her friends and relatives

Try to ascertain the details of any relatives, friends or neighbours who may have witnessed the abuse or known about it and would be prepared to give evidence for the purposes of an immigration/asylum application. Reassure the applicant that any initial evidence (before appeal) given by such people will remain confidential and relevant only to the immigration/asylum application and will not come to the attention of the perpetrator(s).

Witness statements will bolster any application of stay and may be crucial if other types of evidence are not available. Note however that on their own, they are unlikely to be sufficient. Do not expect the applicant to take statements from witnesses. Pass on any information

regarding witnesses to the legal representative who will decide whether witness statements or letters of support are needed.

Make your own statement

It is also necessary to provide a statement/report of your own contact with the victim to the immigration representative. This is why accurate files and notes must be kept. The applicant's immigration representative can then decide whether or not the statement will be useful.

If an application is refused, consider a fresh application based on new evidence

Where an application has been refused, it is often crucial to explore the reasons for the failure so that a fresh application, if not already considered, can be made. A fresh application can be made on the basis of new evidence and this includes the emergence of a more comprehensive account of domestic violence and other issues that have not been presented or properly presented in previous applications for good reason. Unfortunately, one of the major reasons for the failure of an immigration or asylum application is bad legal advice and representation. In such cases, it is imperative to refer the applicant to a reputable immigration advice agency or solicitor for emergency advice and assistance.

Keep in constant contact with the woman and her solicitor

It is vital that constant contact is maintained with both the immigration representative and with the applicant. It will be necessary for you to liaise between the representative and the applicant to ensure that the applicant is fully informed of her case and knows what is being done on her behalf.

Asylum applications

Who can apply?

Anyone who meets the definition of a 'refugee' under the 1951 Geneva Convention. The Convention 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 fear, is unwilling to avail himself of protection of that country."

How does this apply to women fleeing domestic violence?

Women from certain countries may face harm amounting to persecution in their country of origin due to their status as a separated or divorced woman or for any other reason.

Questions or issues to consider include:

- Has the applicant received threats from her own family or in-laws in her country of origin?
- Has the applicant been accused of adultery? If so, is adultery a criminal offence in her country of origin?
- What is the track record of the courts and police in that country for protecting women against domestic violence?

- If the woman has children, what are the custody laws in that country? Is she likely to lose custody?
- Generally, what are the conditions for single, separated or divorced women in her country of origin?
- Can she relocate anywhere else? If not, why not?
- If she fears harm and persecution in her country of origin not only from family members but from the state (because the police and courts will fail to protect her and may actually also harm or punish her) she may have a claim for asylum for reasons to do with her gender (membership of a social group) or political opinion (i.e. divorced and separated women in Pakistan, women accused of transgressing dress and sexual codes in Iran etc).

If the applicant is dependant on the asylum application of her husband or partner, ensure that she obtains separate legal advice as soon as possible so that she can consider whether she should apply for asylum in her own right.

For more information on gender persecution, see the Immigration Appellate (IAA) Asylum Gender Guidelines November 2000. In March 2004, the Home Office added guidance on gender issues in the asylum claim to its asylum policy

instructions for caseworkers (www.ind.homeoffice.gov.uk). The Refugee Women's Resource Project at Asylum Aid can also be contacted for more information.

How long does the application process take?

This varies. Decisions can be made within a couple of weeks after the interview, but some applicants may wait for months.

Positive outcomes

Humanitarian protection: In gender persecution cases, women are often offered humanitarian protection (formerly called 'Exceptional Leave to Remain') for a period of five years if an applicant is successful under Article 3 (prohibition of torture or inhuman or degrading treatment or punishment). No extension is required after that. At the end of the five year period, the applicant can apply for 'Indefinite Leave to Remain' (ILR). If the applicant is successful under Article 8, it is highly likely that she will be granted Discretionary Leave to Remain in the UK before she is eligible to apply for (ILR). A person granted humanitarian protection (HP) has the right to full welfare benefits, local authority accommodation, education and the right to

work. Until Indefinite Leave to Remain is granted the applicant does not have the right to be joined by dependants or obtain a recognised travel document.

Grant of refugee status: If the application is successful, the applicant and any minor dependants will be recognised as refugees. However, refugee status no longer has an immediate grant of ILR. An applicant granted refugee status will be given leave to remain in the UK for 5 years after which she will have to apply for ILR. Once ILR has been granted and the applicant receives a letter confirming this, she will be eligible for full welfare benefits, housing, education and have the right to work. She will be able to obtain a travel document but will not be able to travel to the country from which she claimed asylum. If she does, she will lose her refugee status.

Negative outcome

There is a right of appeal. The appellant (woman appealing) should lodge her notice of appeal. Within two weeks of lodging the notice, a Case Management Review Hearing will be listed. A full hearing is listed within four weeks of the notice of appeal being lodged. If the appeal is refused, there is a rights of appeal to the Asylum and Immigration Tribunal for a review of the immigration judge's decision.

Human Rights applications

Who can apply?

Anyone who can show that the UK will breach its obligations under the Human Rights Act 1998 by removing a person from the UK.

How does it apply to women fleeing domestic violence?

The key rights that the UK may breach by returning a woman who fears persecution in her country of origin due to her status as a separated/divorced woman are: the right to life (Article 2) and the prohibition on torture or inhuman or degrading treatment or punishment (Article 3). Women may also be able to make an argument that their right to family life (Article 8) may be undermined if they are likely to be separated from their children by, for example, harsh custody laws.

How is this different from asylum?

Article 3 can provide protection even where there is no convention reason (i.e. persecution due to race, religion etc) and does not require that the state be involved in the persecution.

How long does the application process take?

The same period of time as an asylum application - from a few weeks to several months.

Positive outcomes

Humanitarian protection: If an applicant is successful under Article 3, she is likely to be granted humanitarian protection (HP) for a period of five years (if granted after 30 August 2005.) There is no need for a further extension after the five year period expires. At the end of the five year period, the applicant can apply for ILR.

Applicants who have Article 3 cases that do not qualify for HP or are successful under Article 8 are highly likely to be granted Discretionary Leave (DL) to Remain in the UK for a period between 1-3 years after which, extensions can be sought. After 6 years of DL, the applicant can apply for ILR. The Home Office will carry out 'active reviews' for both extension and settlement applications.

A person granted HP has the right to full welfare benefits, local authority accommodation, education and the right to work.

Discretionary Leave to Remain: This is granted either where there will be a breach of human rights other than Article 3 (e.g. Article 8 - the right to family life) or in line with Home Office policy e.g. where a person is also HIV positive or

receiving medical treatment. The length of leave will be at the discretion of the Home Office. Usually it is between one and three years. An applicant must have six years continuous Discretionary Leave before an application for ILR can be made.

Negative outcome

There is a right of appeal. The appellant should lodge her notice of appeal. Within two weeks of lodging the notice, a Case Management Review Hearing will be listed. A full hearing is listed within four weeks of the notice of appeal being lodged. If the appeal is refused, there is a right of appeal to the Asylum and Immigration Tribunal for a review of the immigration judge's decision.

European Economic Area cases

You may have to deal with women who are spouses of EEA nationals who have come to the UK to work or study. In this section, we set out some of the main points that you will need to bear in mind in relation to EEA nationals and A8 nationals. (An A8 national is someone from Slovenia, Slovakia, Hungary, Lithuania, Latvia, Poland, Czech Republic or Estonia.) However, as this is a specialist area of immigration law, you must obtain legal advice in such cases.

If the applicant is also an EEA national, she will be able to stay in the UK independently of her spouse.

A non-EEA national married to an EEA national does not benefit from the Domestic Rule. However, as a result of a recent European Directive, a non EEA national will not automatically lose her residency rights upon termination of marriage.

The Citizens Directive EC 2004/38 came into force on 30 April 2006. The Directive and The Social Security (Persons from Abroad) Amendment Regulations⁶ include a number of new developments, such as (i) the inclusion of civil partners as family members of EU national; (ii) the introduction of an initial right of residence of three months and; (iii) the introduction of a permanent right of residence

after five years residence.

Regulation 10 deals with family members who retain the right of residence. It now includes persons who have been divorced or separated where the marriage or civil partnership had lasted three years or more and there is one year's residence in the UK, the parent has custody of a child EU citizen and victims of domestic violence or other particularly difficult circumstances (Reg 10[5]).

The key things you need to know is whether she is married to someone with extended rights of residence and whether her separation/divorce is due to domestic violence while the marriage/partnership subsisted. If these conditions are met then she will have a right of residence beyond the initial three months granted to EEA nationals.

Whether she is entitled to benefits will depend on whether she has been working and/or whether there is a reciprocal arrangement regarding benefits with her country of nationality.

According to official guidance, it is the Department of Work and Pensions' view that a lone parent who is economically inactive should be refused benefit as someone who has no

prospect of work and is likely to become an unreasonable burden on public funds.⁷

However, the European Court of Justice has held that there may be circumstances where the national authorities should provide some support to migrant citizen on the same basis as nationals of the host State when the individual citizen is experiencing a temporary or unexpected difficulty, so long as the migrant does not become an unreasonable burden on public finances.⁸ It may therefore be possible to argue that the right to refuse an EEA national (or family members) who are victims of domestic violence, any welfare benefit would be incompatible with Community law.

The position on claiming welfare benefits is more complex for A8 nationals as under the

⁶ See the Immigration (EEA) Regulations 2006 (SI 2006/1003) and The Social Security (Persons from Abroad) Amendment Regulations 2006 (SI 2006/1026).

⁷ *HB/CTB Circular A22/2004 and DMG Vol 2, Chp 7, para 071259.*

⁸ See *Grzelczyk v Centre Public d'aide sociale d'Ottignies-Louvain-La-Neuve Case C-184/99*; *Baumbast and R v Secretary of State for the Home Department Case C-413/99*; *Marie-Natalie D'Hoop v Office national de l'emploi Case C-224/98* and *Trojani v Centre public d'aide sociale de Bruxelles Case C-456/02.*

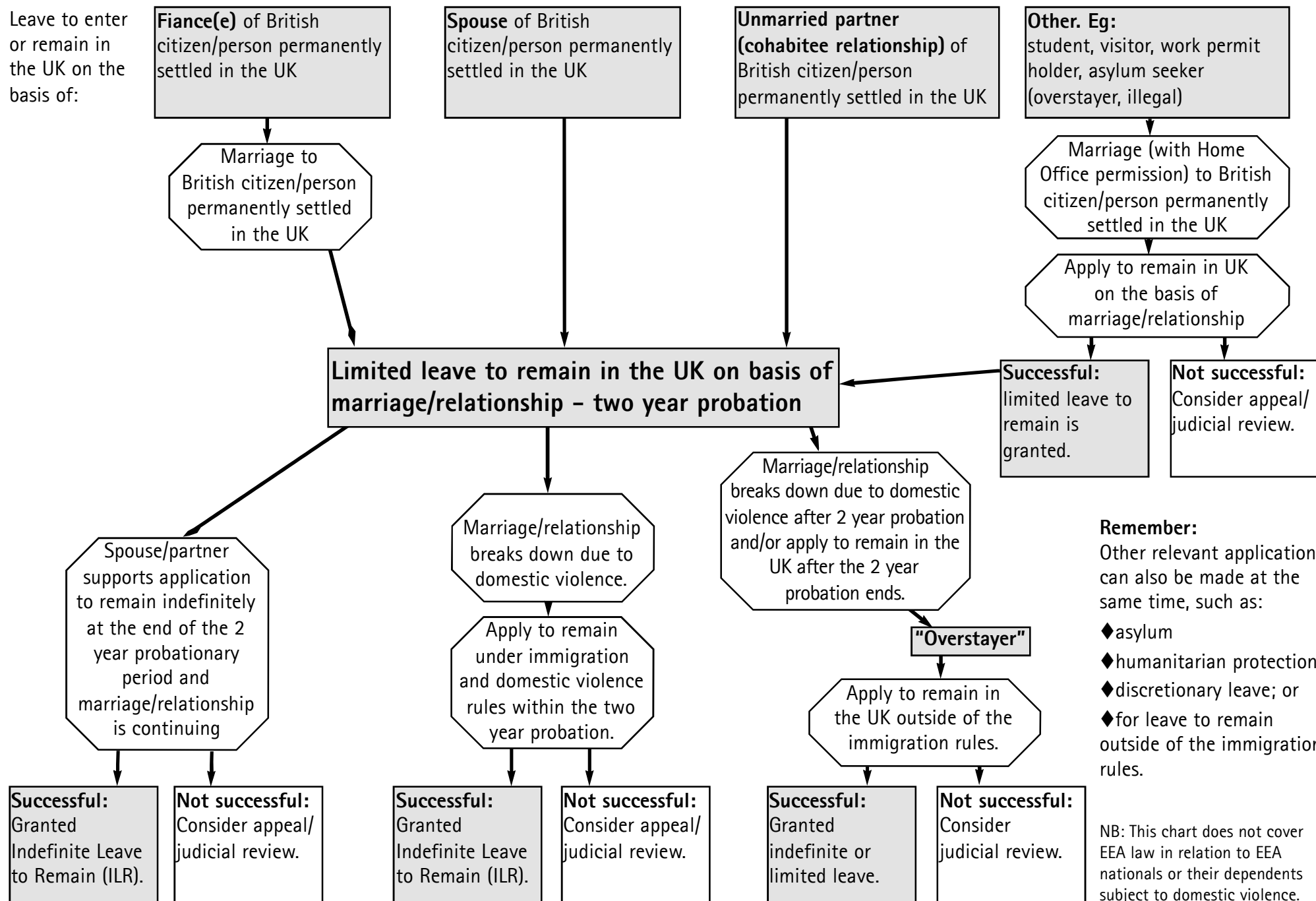
arrangements for the Enlargement of the Union in the Accession Treaty,⁹ Member States are allowed to apply their own national laws for a period of five years. Under this legislation an A8 national can only become a 'qualified person' with a 'right to reside' if they are properly registered with an authorised employer.¹⁰ So long as the A8 national is in registered employment they can access 'in work' welfare benefits for themselves and their children, e.g. tax credits, housing benefit and child benefit. However, if the A8 national loses their job (and cannot find registered employment within 30 days) they are no longer a 'qualified person' with a 'right to reside'. Their registration certificate will expire and their entitlement to benefit will end.

⁹ Treaty on Accession [2003] O.J.L236.

¹⁰ Reg 5(2) of the Accession Regulations.

Flowchart: immigration and asylum applications at a glance

Leave to enter or remain in the UK on the basis of:



Remember:
Other relevant applications can also be made at the same time, such as:

- ◆ asylum
- ◆ humanitarian protection,
- ◆ discretionary leave; or
- ◆ for leave to remain outside of the immigration rules.

NB: This chart does not cover EEA law in relation to EEA nationals or their dependents subject to domestic violence.

Copy of Immigration Directorate Instructions on domestic violence

[This section is copied word for word from the Immigration Directorate's Instructions regarding the Domestic Violence Rule – see www.ind.homeoffice.gov.uk]

From Chapter 8 section 4

VICTIMS OF DOMESTIC VIOLENCE

1. INTRODUCTION

Paragraph 289A of the Rules sets out the requirements for indefinite leave to remain in the United Kingdom as the victim of domestic violence and should be referred to when making a decision.

An applicant who has limited leave to enter or remain in the United Kingdom as the spouse or unmarried partner or registered civil partner of a British citizen or person present and settled in this country and whose marriage or relationship breaks down during the probationary period as a result of domestic violence, may be granted indefinite leave to remain in the United Kingdom, provided that the domestic violence occurred during the probationary period while the

relationship was subsisting and the applicant is able to provide satisfactory evidence that domestic violence has taken place. That the relationship was subsisting when domestic violence occurred would normally be evidenced by the fact that the couple were living at the same address when the incident took place.

The provision in the Rules is intended to benefit only those who have been subjected to domestic violence during the probationary period and who make their application whilst they still have limited leave to enter or remain in the United Kingdom.

The fact that a relationship breaks down due to domestic violence during the very early stages of the probationary period is not to be considered as an adverse factor in reaching a decision. Where an applicant can meet the requirements, the application is to be granted regardless of how much of the probationary period has been completed.

The provision does not apply to persons admitted to the United Kingdom as the

spouse, unmarried partner or registered civil partner of a sponsor who has only limited leave to enter or remain here, or who is a European Economic Area national exercising treaty rights here, as such persons have not been admitted to the United Kingdom for the purpose of settlement. Neither does it apply to fiancé(e) or to those seeking asylum in the UK.

2. DEFINITION OF DOMESTIC VIOLENCE

Domestic Violence:

Any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality.

Definition of injury (legal):

Any harm done to a person by the acts or omissions of another.

2.1. Key points

The main points on which a caseworker needs to be satisfied in cases of domestic violence are:

- the applicant has limited leave to enter or remain in the UK as the spouse, civil partner or unmarried partner of a person present and settled here; and
- the applicant is no longer living with the sponsor; and
- the applicant was the victim and the domestic violence occurred during the probationary period while the marriage or relationship was subsisting; and
- domestic violence was the reason for the breakdown of the marriage or relationship; and
- there is proof that domestic violence took place.

3. STANDARD OF PROOF

In order to establish a claim of domestic violence evidence should be sought in the form of:

- (i) an injunction, non-molestation order or other protection order made against the sponsor (other than an ex-parte or interim order); or

- (ii) a relevant court conviction against the sponsor; or
- (iii) full details of a relevant police caution issued against the sponsor.

3.1 Other acceptable proof of domestic violence

It is often difficult for victims of domestic violence to produce the documentary evidence of violence as set out at 1.2 above, and there is often an unwillingness or insufficient evidence to take the matter to court. Although caseworkers should still try to obtain police or court evidence confirmation of domestic violence, where this is not possible, acceptable evidence may take the form of more than one of the following:

- a medical report from a hospital doctor confirming that the applicant has injuries consistent with being a victim of domestic violence; OR, a letter from a GMC registered family practitioner who has examined the applicant and is satisfied that the applicant has injuries consistent with being a victim of domestic violence;

- an undertaking given to a court that the perpetrator of the violence will not approach the applicant who is the victim of the violence;

- a police report confirming attendance at the home of the applicant as a result of a domestic violence incident;
- a letter from a social services department confirming its involvement in connection with domestic violence;
- a letter of support or report from a domestic violence support organisation which is identified at Annex AB.

The evidence may relate to one incident or a number of incidents and should confirm that domestic violence has taken place. Witness statements from friends or family and letters from official sources that simply relay unfounded reports by the applicant but do not confirm the incident should not be accepted. Where two pieces of evidence have been supplied but concerns remain caseworkers may contact the applicant to ask for further information.

3.2 Court Orders and Convictions

The applicant is required to submit the **original, or a certified copy of, the court order or conviction**. For the avoidance of doubt, the term “interim order” means an order which is made *pending another hearing*. A final court order which has a time limitation ie: where the perpetrator has been found guilty of domestic violence and, as a result, is subject to a prohibition for a certain period of time eg: 3 months or a year, should not be classed as an interim order. Where the applicant is able to produce a court order or conviction which confirms that he or she was a victim of domestic violence during the probationary period while the relationship was subsisting *indefinite leave to remain should be granted without further enquiry*.

3.3. Police cautions

Where an applicant claims that the police have issued a caution against the sponsor or have decided to prosecute him or her, **the applicant will not be able to produce any documentary**

evidence to this effect. The applicant must be asked to provide details of the sponsor’s full name, date of birth, nationality, address (both at the time of the incident and at the time of the application, if different) and the date, time and place where the incident for which the caution was issued, or for which the sponsor is being prosecuted, took place.

Caseworkers will need to make enquiries of the Criminal Records Office (CRO) of the Police Force covering the area where the incident took place. A list of Police Forces and a pro-forma enquiry sheet can be found at Annex E.

Where the police confirm that a caution was issued to the sponsor for domestic violence against the applicant *indefinite leave to remain may be granted*.

3.4. Police prosecutions

Where the police confirm that there is a prosecution pending indefinite leave to remain *must not be granted* until the charge has been proved and the sponsor found guilty. In these cases the applicant should be granted further

leave to remain for periods of 6 months at a time, subject to the same conditions, until the outcome of the prosecution is known. The police have asked us not to make progress enquiries in these cases as this would place an unnecessary burden upon their staff. However, if the applicant provides other acceptable forms of evidence (listed in paragraph 1.4) caseworkers should nevertheless consider the application on this basis.

3.5. Court hearings

Where the applicant claims they are waiting for a court hearing for a Court Order, a decision on the application may be delayed pending the outcome of that hearing, provided evidence is received from the Court confirming the case has been listed to be heard, and the date of the hearing. An ex-parte application is normally heard on the day of application and the date for the full hearing (if there is to be one) is normally within 7 days. Every effort is made by the court to resolve the case on the date set, but where the case is complicated and likely to last a full day it may be re-listed but

will be given priority and will be heard at the earliest opportunity. It is therefore most unlikely that there will be any significant delay.

3.6. Out of time applications

Applications made “out of time” after the expiry of the applicant’s limited leave, where all the other requirements are met, should nevertheless be considered sympathetically. Acceptable reasons for the delay in making an application could be that the sponsor’s passport had been withheld by the sponsor or that the stress of the situation had led the applicant to overlook the need to regularise their immigration status.

Applications from long-term overstayers who claim to have been victims of domestic violence, but are unable to provide the evidence required, should be refused.

4. DOMESTIC VIOLENCE FROM A FAMILY MEMBER OTHER THAN THE SPOUSE

Where an applicant submits evidence to show that he or she has been subjected to domestic violence from persons other than the sponsor, they may still qualify for settlement under the concession. Evidence must clearly show that the violence has been the reason for the breakdown of the marriage - for example: where the persons abusing the applicant are members of the sponsor’s family and against whom the sponsor offers no protection.

Financial support for women with no recourse to public funds

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The problem

One important condition of entry for a person wishing to join their settled spouse or partner in the UK is the requirement that they will be financially maintained by the settled spouse or partner. However, the existence of the restriction on recourse to public funds for dependants who do not have settled status has become the most significant barrier to seeking protection from domestic violence.

Between 2001 and 2003, SBS undertook a survey aimed at monitoring the impact of the domestic violence concession/rule. Over a 100 agencies, mainly refuges responded. The majority of respondents stated that the 'no recourse to public funds' requirement prevented women from reporting domestic violence because they were unable to obtain welfare benefits and emergency local authority accommodation and more importantly, as a consequence, access to women's refuges. The response showed that amongst refuges only a third of all women who had immigration problems were accommodated. Refuges are unable to sustain the severe drain on their resources which is inevitably incurred when accommodating women who cannot access any form of benefits such as housing benefit to pay for rent or income support to cover basic living costs.

The results of the survey confirmed SBS'

experience on the 'no recourse' requirement. Every year, SBS handles on average 40 cases and 180 enquiries on domestic violence and immigration matters. Within this category, almost half of the cases and enquiries are about the 'no recourse' requirement.

The restriction on public funds preserves the economic dependency of abused women on violent spouses/partners or relatives and prevents a significant number of women from escaping violence and even death. Almost all women need safe accommodation and financial assistance to meet their basic needs, without which they cannot pursue their right to protection and justice. Many want their abusers to be held accountable through prosecutions or civil court injunctions but find that without security of accommodation and financial help, they have no option but to remain with their abuser. This often results in the withdrawal of allegations and legal actions. Abusers are thus able to continue their violence and abuse with impunity. Many of the women that attend SBS' offices echo similar stories of domestic servitude, imprisonment, starvation and the most horrific physical, sexual and emotional violence imaginable. Needless to say, mental health problems, depression and suicide attempts also feature strongly in such cases. Other worrying trends include abusers

abandoning women in their countries of origin, following a marriage but within the two year probationary period. In their country, such women are left to face social isolation, discrimination, destitution and further physical and sexual violence without any hope of adequate state protection or support.

The government has acknowledged that welfare benefits and access to housing are essential prerequisites for all victims wishing to escape domestic violence as these provide an initial safety net.¹¹ Yet this recognition is denied to women who have an insecure immigration status and in doing so, the government puts them outside the scope of the protection afforded by domestic violence legislation and policies.

Casework experience shows that the numbers of women who cannot access safe accommodation and funds to support themselves are increasing, resulting in desperate measures being contemplated by individuals and organisations alike.

¹¹ Safety and Justice, The Government's Proposals on Domestic Violence (Home Office: London, 2003)

Example 1: On 1 March 2006, Kent Police contacted SBS desperate to know what to do with an Asian woman who had been subject to violence and who did not have secure immigration status. She came to the UK under a 2 year probationary visa as the spouse of a British national. The police did not want to return her to her marital home to face what they described as 'certain death'. They had no where else to place her. All attempts to find her a place to live, including in women's refuges, had been unsuccessful because she had could not claim benefits to pay her rent or living expenses. In desperation, the police stated that they were minded to contact the Home Office to have her detained as she had no other alternative place to live.

It was pointed out that under the domestic violence rule in immigration law, she was entitled to exercise her right to remain here as a victim of domestic violence. Detention in her case was unlawful. She had not committed any criminal offence or contravened any immigration law. The state had no right to take away her liberty for no other reason than that she could not support herself as a victim of domestic violence.

Example 2: Ms F came to the UK from Pakistan in 2004 on a spousal visa. Her husband and in-laws subjected her to a catalogue of extreme physical and sexual violence. She was repeatedly raped and on one occasion forced to drink her husband's urine. She was isolated and not allowed to make or receive any calls or visitors. She was constantly threatened with deportation if she told anyone about her experiences. In desperation, Ms F attempted suicide by drinking bleach. She was eventually helped by a distant relative who brought her to Southall but left her to wander the streets as she was too afraid of reprisals from Ms F's husband. SBS then arranged accommodation and food for her using their own emergency funds.

The desperate circumstances of such women, places a heavy, indeed impossible, burden on charitable individuals and organisations such as women's groups and churches, temples and mosques to accommodate and support women. An extremely worrying trend observed by SBS, is the sheer dependency that is created on total strangers, many of whom behave compassionately and selflessly. However, as is inevitable, such dependency is a haphazard affair and extremely undesirable since it can expose women to unscrupulous individuals who

Example 3: Ms A came to the UK from India on a spousal visa. Her husband subjected her to repeated physical and sexual violence. She was often beaten with a hockey stick and threatened with a gun. She was told that she would be killed if she dared report the violence to anyone. Eventually whilst pregnant, she managed to escape and report the abuse to the police. A statement was taken but as she had nowhere to stay, the police asked their interpreter to let her stay with him. Ms A tried to seek help from social services but they said there was nothing they could do for her. The fear of destitution forced her to undergo an abortion.

take advantage of their vulnerability, subjecting them to further economic and sexual abuse. Turning to religious institutions for help is also an extremely dangerous step for many Asian women, since they are encouraged to reconcile with abusive partners. However, the situation is so desperate that SBS and others often have no choice but to ask them for help in accommodating and feeding such women.

Many women cannot claim maintenance from their partners because they are not working or

because the marriage has been short lived (except students, overstayers, some asylum seekers). Although there is no restriction against working (except students and overstayers), even if women manage to leave an abusive situation, they are unable to work due to trauma, lack of English or other skills, the presence of young children and the lack of child care. Some cannot obtain an NI number because they cannot prove their identity. In most cases, all documents and immigration papers are retained by abusive husbands/partners and or their families.

The 'no recourse' requirement has an inhumane impact on children too. Many destitute abused women who are pregnant or with young children are being turned away by local authorities who refuse to assist or interpret their duty to protect children under for example the National Assistance Act 1948 or Children Act 1989, extremely narrowly. Often the response is to take the children but not the mother into care or offer to pay for a flight back home to countries of origin, irrespective of the conditions or harm they will face in that country. In one case, a Jamaican woman was told to give her child to the abusive father! Cases in which children are involved can be very difficult to address because there is a real fear that residence may be awarded to abusive fathers if women are destitute and have no

accommodation. It is clearly disturbing to see that the standards of protection for children in the wider society are not being applied in cases where parents have insecure status.

In our view, the continuing restriction on access to social housing and public funds defeats the very purpose for which the domestic violence rule was introduced - to protect victims of domestic violence who have immigration problems, by allowing them to leave an abusive relationship and settle in the UK.¹² Moreover, it forces refugees and other charitable organisations to subvert the very principles on which they are based and instead compels them to perform an immigration control function by denying some black and minority women access to their services.

Despite this state of affairs, it is crucial that organisations or individuals do what they can to try and ensure that women with 'no recourse' are not denied their right to protection due to lack of funds. This includes thinking creatively about funding refuge spaces, meeting living costs and mounting legal challenges where local authorities have a duty to house and financially support such women.

¹² On 26th July 1999, Margaret Moran MP raised a question in the House of Commons about the purpose of the (then) domestic violence concession. In reply the Home Office Minister Mike O'Brien stated: 'The domestic violence concession has been introduced for overseas spouses who wish to remain in the United Kingdom, but who wish to leave their partner because of domestic violence before completion of the 12 month probationary period. The concession allows them to settle in the United Kingdom even if they are no longer living with their sponsor provided they comply with the conditions set out in the concession'.

What financial assistance is available?

As stated above, all persons who enter the UK for settlement on the basis of marriage or relationship, are barred from seeking public funds including local authority housing. This remains the position until they are granted indefinite leave. If an applicant subject to the 'no recourse' requirement breaches the condition, it could lead to the Home Office refusing further leave to remain and the applicant may be accused of committing a criminal offence.¹³ It may also be relevant to the criminal offence under section 24(1)(b)(ii) of the immigration Act 1971 – to knowingly fail to observe a condition of leave.¹⁴ See also the Home Office leaflet on the 'no recourse' requirement which contains useful information.¹⁵

The relationship between immigration and social welfare law is extremely complex. Eligibility to welfare benefits is based on immigration status and the right to residence. It is therefore important that welfare and immigration advice is sought before making any claims for benefits or social housing. (It is lawful to access refuge accommodation if a refuge is willing to provide rent free accommodation and some or all the financial support necessary to meet living costs.)

Definition of public funds for immigration purposes

Public funds¹⁶ are:

- Income Support
- Income based job seekers allowance (JSA)
- Social fund payments
- Housing Benefit
- Accommodation from a local authority as a homeless person
- Allocation of accommodation from the housing register of a local authority
- State pension credit
- Child tax credit
- Working tax credit¹⁷
- State pension credit
- Child tax credit
- Child benefit (except where the spouse/partner is a UK or EU citizen)
- Attendance Allowance
- Carers Allowance
- Severe Disablement Allowance
- Disability Living Allowance

For the purposes of the immigration rules, 'public funds' do not include NHS treatment, state education or community care services. **Legal Aid is also not specifically stated in the above list and therefore does not constitute public funds.**

¹³ See Home Office leaflet "'No Recourse to Public Funds': What does it mean?" Download from: http://www.ind.homeoffice.gov.uk/6353/11464/public_funds.pdf

¹⁴ 'A person who is not [a British citizen] shall be guilty of an offence punishable on summary conviction with a fine of not more than [level 5] on the standard scale] or with imprisonment for not more than six months, or both, in any of the following cases: - (b) if, having only a limited leave to enter or remain in the United Kingdom, he knowingly either - (ii) fails to observe a condition of leave.

¹⁵ See Home Office leaflet "'No Recourse to Public Funds': What does it mean?" Download from: http://www.ind.homeoffice.gov.uk/6353/11464/public_funds.pdf

¹⁶ Immigration Rules HC 395 as amended, para 6.

¹⁷ There are specific rules as to whether or not persons 'subject to immigration control' can claim tax credits. See for example [Tax Credit Act 2002](#) and Working Tax Credit (immigration) Regulations 2003 (SI No 653) (as amended).

The tests for eligibility to welfare benefits based on immigration status and residence can be broken down into the following steps:

Step 1 – The public funds condition: Immigrants with limited leave and with a 'no recourse to public funds' condition¹⁸ have no access to any welfare benefits which are defined as public funds under para 6 of the Immigration Rules.

Step 2 – Are they 'subject to immigration control' as defined in s115 of the Immigration and Asylum Act 1999?

Step 3 – Do they come within any of the exemptions? There are certain limited classes of claimants who, even if they cannot satisfy the subject to control test, can still obtain welfare benefits. These are set out in Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 (SI 636), reg 2, 12 and the Schedule.

Step 4 – Do they satisfy (or are they exempt from) the habitual residence test?¹⁹ The habitual residence test and the exemptions from it are contained in the mainstream benefits including Income Support and Housing benefit.

Step 5 – Do they satisfy the 'right to reside' test? From May 2004, a new requirement was introduced that no person is to be treated as habitually resident unless he or she has a right to reside in the common travel area. This is in addition to meeting the habitual residence test. It affects the same benefits as those covered by the habitual residence test save that a right to reside test has also been attached to child benefit and child tax credits.

Step 6 – Do they need to satisfy any other residence tests? A number of benefits have residence tests additional to those referred to above, for example claimants must be 'ordinarily resident' in Great Britain to receive Attendance Allowance, Carers Allowance, Disability Living Allowance and Tax Credits.

¹⁸ Immigration Act 1971, ss3 and 4. The sections stipulate that an immigration officer when admitting to the UK a person subject to immigration control under that Act may give leave to enter for a limited period and, may impose all or any of the following conditions: a condition restricting employment or occupation in the UK; a condition requiring the person to maintain and accommodate herself, and any dependants, without recourse to public funds; and a condition requiring a person to register with the police. The most common condition is the condition that the couple must be able to maintain and accommodate themselves (and any dependants) without any recourse to public funds.(HC 251 (as amended)). The Home Office's general policy objective is that no additional public funds must be necessary for their support of the applicant who is applying to remain in the UK.

¹⁹ Those exempted are (i) workers for the purposes of Council Regulation (EEC) No. 1612/6; (ii) workers for the purposes of Council regulation (EEC) No. 1251/70; (iii) those with a 'right to reside' in the UK under council Directive No. 68/360/EEC; (iv) those with a 'right to reside in the UK' under Council Directive No. 73/148/EEC and; (v) Accession state workers who are 'qualified' persons under Regulation 5 of the EEA 2000 Regulations read with Regulations 5, 7 of the Accession Regulations.

Eligibility at a glance

We present in table form on the following pages the financial and housing assistance that is available to women with no recourse. Please note that this is not a definitive guide to entitlement and the law is always changing in this area. Often entitlement is not a straightforward matter and much depends on a combination of legislation, regulations and case law in this area. Please always consult a benefits caseworker or immigration representative before considering making any application for social welfare benefits, including social housing to check whether it could have a negative impact on the applicant's immigration case.

It is also important to note that EU law is not addressed here in any detail. If for example, a woman is a spouse of an EU national exercising EC Treaty rights in the UK, she may have additional entitlements even if that marriage has broken down.

A. Funding from lawful employment and social security benefits

	Women who have applied under the DV rule in time	Overstayers	Asylum seekers	Failed asylum seekers
Income from lawful employment	Yes	No	Pre July 2002 - could work if decision not made on claim within 6 months Post July 2002 - only in exceptional circumstances	Yes at discretion of Home Office if already granted permission to work that has not been revoked
Child benefit	Yes - if spouse UK or EU national ²⁰	Yes - if spouse UK or EU national ²¹	No - unless was in receipt as of 6 October 1999	No
Other benefits	If lawfully working at time of marital breakdown and from Turkey, Morocco, Algeria or San Morino; or lawfully present and from Turkey	This is a complicated area. Seek specific advice. See Szoma v SSDWP [2005] UKHL 64 NB: Immigration and Asylum Act 1999 s115 excludes most people subject to immigration control excludes most people from entitlement to benefits.		
Contribution based JSA if working for 2 years	If has paid sufficient National Insurance Contributions	If has paid sufficient National Insurance Contributions	If has paid sufficient National Insurance Contributions	If has paid sufficient National Insurance Contributions
Maternity allowance²²	If meet criteria (see footnote)	If meet criteria (see footnote)	If meet criteria (see footnote)	If meet criteria (see footnote)

²⁰ The applicant and the child must have been in the UK for at least 182 days in the last 52 weeks and in the UK when making the claim.

²¹ As previous footnote.

²² Maternity allowance is not public funds – it is payable on the basis of the applicant's past work record and there must be no prohibition attached to leave.

B. Funding for refuge/hostel spaces [23]

	Women who have applied under the DV rule in time	Overstayers	Asylum seekers	Failed asylum seekers
Supporting People ²⁴	Yes	Yes	Yes	Yes
NASS asylum support	n/a	n/a	Yes - See NASS bulletin no 70 ²⁵	No but consider applying to the local authority if vulnerability other than through destitution. Often in domestic violence cases, the trauma or injuries sustained may require specialist support and care.
NASS Hard Cases Support ²⁶	n/a	n/a	n/a	Yes but this may be difficult to obtain.

²³ Note that Articles 3 and 8 are the most relevant aspects of the ECHR for the provision of accommodation by the local authority, necessary to avoid a breach of human rights.

²⁴ Supporting People is a multi-agency housing strategy for vulnerable people. For information see www.spkweb.org.uk.

²⁵ See Home Office website www.ind.homeoffice.gov.uk for NASS Bulletin No 70 on domestic violence and funding refuge spaces.

²⁶ NASS Hard Cases Support: If your asylum claim is determined, and you previously were eligible for NASS, you can't travel back to your country of origin or have pending application for Judicial Review or pending JR appeal, NASS can provide accommodation and full board.

C. Funding from NASS

	Women who have applied under the DV rule in time	Overstayers	Asylum seekers	Failed asylum seekers
NASS support ²⁷	Yes if also made Human Rights application under Article 3 of the European Convention of Human Rights (ECHR) or at appeal	Yes if made Human Rights application under Article 3 ECHR or at appeal n/a	Single women if apply as soon as reasonably practicable on arrival Women and children will receive asylum support Pregnant asylum seekers will receive NASS even if don't apply for asylum on arrival	Single - will receive hard cases support once case determined - see footnote below on NASS Hard Cases Support Women with children - will continue to receive asylum support until fail to comply with removal directions - then no support other than children can be taken into care under s. 20 Children's Act
NASS Hard Cases Support ²⁸	n/a	n/a	n/a	Single women

²⁷ Introduced by the Immigration and Asylum Act 1999. Includes emergency accommodation which should be provided to asylum seekers with children, but until asylum claim is recorded - in the meantime the local authority should accommodate under s.17 Children's Act.

²⁸ NASS Hard Cases Support: If your asylum claim is determined, and you previously were eligible for NASS, you can't travel back to your country of origin or have pending application for Judicial Review or pending JR appeal, NASS can provide accommodation and full board.

D. Funding and accommodation under Children Act 1989 [29]

	Women who have applied under the DV rule in time aged 18+	Overstayers aged 18+	Asylum seekers Aged 18+	Failed asylum seekers Aged 18+
Section 17 ³⁰	Single women - not eligible Children - where child is "in need" - duty to provide assistance or cash in kind and to make arrangements to provide any services necessary	Single women - not eligible Children - where child is "in need" - duty to provide assistance or cash in kind and to make arrangements to provide any services necessary	Single women - not eligible Children - where child is "in need" - duty to provide assistance or cash in kind and to make arrangements to provide any services necessary	Single women - not eligible Children - where child is "in need" - duty to provide assistance or cash in kind and to make arrangements to provide any services necessary
Section 20 ³¹	Where there is a valid application for leave, parent and child should be accommodated together (Article 8 ECHR)	Only child accommodated where local authority refuse to accommodate child with parent	Where there is a valid application for leave, parent and child should be accommodated together (Article 8 ECHR)	Only child accommodated where refused Hard Cases Support, local authority refuse to accommodate child with parent
Sections 23 & 24	Local authority may have a duty to 'former relevant children' (i.e. women who had previously been accommodated by the authority prior to reaching the age of 18)			

²⁹ Note that there is case law on the division between NASS support and [Children Act 1989](#). E.g. *R (A W & G) v Lambeth and Barnet LBC* [2003] UKHL 57 and *R (O) v LB Haringey and SSHD* [2004] EWCA Civ 535.

³⁰ [S.17 Children Act 1989](#): general duty upon local authority to safeguard and promote the welfare of children in their area who are in need and, so far as is consistent with that duty, to promote their upbringing

with their families - however see case of *R (A W and G) v Lambeth and Barnet* (2003) UKHL 57. The House of Lords considered the nature of the duty arising under section 17 and its relationship with a local authority's housing obligations. By a majority, it ruled that section 17 creates a general 'target' duty rather than a specific, enforceable duty for particular services. The local authority therefore has considerable latitude in how it performs that duty; a local authority may refuse to accommodate a child with

its family, provided it considers that child's individual needs.

³¹ [S.20 Children Act 1989](#): allows a local authority to provide accommodation to a child who is in need as a result of there not being a person with parental responsibility to care for them, them being lost or abandoned or the person caring for them being prevented from providing suitable accommodation.

E. Community Care Services (page 1 of 3) [32]

	Women who have applied under the DV rule in time	Overstayers	Asylum seekers	Failed asylum seekers
<p>Section 21 National Assistance Act (NAA) 1948³³</p> <p>see case of R (Khan) v Oxfordshire CC & Home Office on guidance on domestic violence cases³⁴</p>	<p>Generally excluded (by s.115 IAA 1999 and s.21A NAA) but entitled if they are in need of care and attention not solely for reasons of destitution (eg. ill health, vulnerability etc.)³⁵</p> <p>'Destitution Plus'</p> <p>Will be entitled to residential accommodation and the services that go with it</p>	<p>Only entitled to prevent breach of Article 3 ECHR or EC Treaty³⁶</p>	<p>See NASS v Westminster</p> <p>Yes if require care not just because solely destitute but also due to ill health/disability etc.</p>	<p>Generally excluded but yes if 'destitution plus' test met. HOWEVER:</p> <ul style="list-style-type: none"> ● If with children and failed to take reasonable steps to leave UK; or ● If without children and have failed to cooperate with removal directions and/or who are in the UK unlawfully: <p>Then only entitled to prevent breach of Article 3 ECHR or EC treaty³⁷</p>

³² Adult asylum seekers with community care needs with children may receive support from a number of sources. For example, *R (O) v Haringey and SSHD [2004] EWCA Civ 535*, the Court of Appeal held that the infirm destitute adult was entitled to assistance from the local authority under s.21 NAA 1948, however responsibility for the children remained with NASS by virtue of s.122 IAA 1999. The practical result in this and similar cases be that the family would be accommodated together by the local authority with a financial contribution from NASS for assistance provided to children.

³³ S.21 National Assistance Act 1948: allows local authorities to provide for those who are in need of care and attention not otherwise available to them and who are in need of care and attention by reason of age, illness, disability or any other circumstances/expectant or nursing mothers. Applicant must also be ordinarily resident in the area in which the local authority is situated. No duty

arises under s.21 (1A) of the National Assistance Act 1948 if the need for care and attention arises solely from destitution. The case law has established that if an applicant has a need for care and attention which is made materially more acute by something other than destitution then a duty would arise which is not excluded because of a person's immigration status (eg *R v Wandsworth LBC ex p o and Bhika CA (2000) 3 cclr 237*).

³⁴ *R (Khan) v Oxfordshire CC & ODPM intervener [2004] EWCA Civ 309, Times March 2004, LAG May 27th*: the court found that domestic violence can make need for care and attention more acute. The facts were that Mrs Khan suffered repeated violence and was abducted twice after fleeing violence. She applied for assistance under s.21 and/or s.2 of the Local Government Act 2000 (LGA). Mrs Khan's lawyers argued that she required support in order to be able to protect herself from further violence. The judges found that Mrs Khan could adequately protect

herself by applying for injunctions/pursuing a criminal prosecution. Although a disappointing decision on the facts of this case, the court did uphold the principle that vulnerability as a victim of domestic violence/kidnap is capable of amounting to 'any other circumstance' within s.21 NAA. Therefore for someone who has suffered domestic violence and continues to suffer mental and/or physical consequences of that treatment, a duty will arise under s.21 of the NAA 1948.

³⁵ See: *Westminster CC v NASS [2002] UKHL 38*

³⁶ See s.54 & schedule 3 Nationality, Immigration and Asylum Act (NIAA) 2002.

³⁷ See s.54 & schedule 3 NIAA 2002 and s.9 of the Asylum and Immigration (Treatment of Claimants) Act 2004 see *R (on the application of AW) v Croydon LBC & Others (2005) [2005] EWHC 2950 (QB)*

E. Community Care Services (page 2 of 3)

	Women who have applied under the DV rule in time	Overstayers	Asylum seekers	Failed asylum seekers
Section 29 NAA 1948 – persons who are physically or mentally disabled (which includes services under CSDPA)	Yes – not excluded	Only entitled to prevent breach of Article 3 ECHR or EC Treaty ³⁸	Yes – not excluded	Only entitled to prevent breach of Article 3 ECHR or EC Treaty ³⁸
Section 2 Local Government Act ³⁹	Yes	Only entitled to prevent breach of Article 3 ECHR or EC Treaty ³⁸	Yes	Policy is that failed asylum seekers can be given return ticket and temporary accommodation. Pending return only. ⁴⁰
Section 21 National Health Service Act 1977 – care other than residential care ⁴¹	Yes if meet 'destitution plus' criteria	Only entitled to prevent breach of Article 3 ECHR or EC Treaty ³⁸	Yes if meet 'destitution plus' criteria	Only entitled to prevent breach of Article 3 ECHR or EC Treaty ³⁸

³⁸ See s.54 & schedule 3 Nationality, Immigration and Asylum Act (NIAA) 2002.

³⁹ S.2 Local Government Act 2000: provides a wide power for local authorities to improve the economic, social and environmental welfare of a local area provided it is not specifically prohibited elsewhere in legislation. Elias J in the case of R v Enfield & SSH ex p. J [2002] EWHC 432

(Admin) held that the local authority have a power under the provision to provide financial assistance to a person subject to immigration control to enable them to acquire accommodation. This has been overruled by Khan v Oxford.

⁴⁰ R (Grant) v Lambeth LBC [2004] EWCA Civ 1711, but see R (K) v Lambeth LBC and SSHD [2003] EWCA Civ 1150

[2003] WLR which held that if there is a compelling reason why an immigrant non-asylum seeker needs to stay in the UK and they have no support then there may be an obligation on the State/local authority to assist.

⁴¹ S.21 National Health Service Act 1977: prevention, care and after care, home help and laundry facilities for people suffering from illness, expectant mothers, etc.

E. Community Care Services (page 3 of 3)

	Women who have applied under the DV rule in time	Overstayers	Asylum seekers	Failed asylum seekers
S. 2 Chronically Sick and Disabled Persons Act 1970 ⁴² – provision of services/adaptations etc	Yes	Only entitled to prevent breach of Article 3 ECHR or EC Treaty ⁴³	Yes	Only entitled to prevent breach of Article 3 ECHR or EC Treaty ⁴³
S. 117 Mental Health Act – unlimited services once person detained under this Act	Yes – until authority satisfied no longer in need of those services. Entitlement to wide ranging community care services (including provision of accommodation) once person detained under sections 3, 45A, 47 or 48 of MHA (NB: not section 2 MHA – compulsory admission for assessment)			
Schedule 8 National Health Service Act 1977 ⁴⁴ – post illness services e.g. social service	Yes if meet 'destitution plus' criteria	Only entitled to prevent breach of Article 3 ECHR or EC Treaty ⁴³	Yes if meet 'destitution plus' criteria	Only entitled to prevent breach of Article 3 ECHR or EC Treaty ⁴³

⁴² S.2 Chronically Sick and Disabled Persons Act 1970: for persons who are disabled or suffer from a mental disorder.

⁴³ See s.54 & schedule 3 Nationality, Immigration and Asylum Act (NIAA) 2002.

⁴⁴ Schedule 8: services can be provided to prevent illness, care for people suffering from an illness and to look after them after they have been suffering from illness.

F. Maintenance/Lump Sums under Family Law/Child Support Agency

	Women who have applied under the DV rule in time	Overstayers	Asylum seekers	Failed asylum seekers
Maintenance under Child Support Agency (CSA)	Yes - NB: All parties must be 'habitually resident' in UK for CSA to have jurisdiction	Yes - NB: All parties must be 'habitually resident' in UK for CSA to have jurisdiction	Yes - NB: All parties must be 'habitually resident' in UK for CSA to have jurisdiction	Yes - NB: All parties must be 'habitually resident' in UK for CSA to have jurisdiction
Children Act 1989 s. 15 ⁴⁵ - only available if already have obtained max possible payment under CSA or if CSA does not have jurisdiction	Yes	Yes	Yes	Yes
Interim Maintenance under s. 22 Matrimonial Causes Act 1973 within divorce proceedings	Yes	Yes	Yes	Yes
Income orders, lump sum and transfer of property under MCA 1973	Yes	Yes	Yes	Yes
Applications for maintenance and lump sums outside of divorce proceedings ⁴⁶	Yes	Yes	Yes	Yes

⁴⁵ Applicant can apply for periodical payments, lump sums, transfer of property and transfer of secure tenancy.

⁴⁶ There are various provisions under which applications can be made: s.2 Domestic Proceedings and Magistrates

Court Act 1978 where an applicant can apply for periodical maintenance payments for a fixed duration or lump sum not exceeding £1000, free standing application for Financial Provision Order under Matrimonial Causes Act 1973, s. 27.

Entitlement to healthcare

Is free health care "public funds"?

'Public funds' in the immigration context does not include healthcare or education, therefore someone with no entitlement to public funds may still access health care.

Treatment which is always free:

- Treatment of accidents and emergencies as an outpatient in a hospital casualty department;
- Compulsory psychiatric treatment (i.e. for a person detained under Mental Health Act, or accessing treatment as a condition of a Probation order);
- Treatment for certain communicable diseases such as smallpox, cholera, food poisoning, malaria and STDs;
- Testing for HIV and counselling following a test are both free, but any necessary subsequent treatment and medicines may have to be paid for;
- Community nursing, midwifery, health visiting, emergency ambulance services and family planning (midwifery is contentious as hospitals will usually charge for everything except the basic midwifery service – e.g. use of the hospital bed, drugs, etc.).

Primary care

Primary care includes all those health services we go to first when we need help – the family doctor (GP), optician, dentist or local pharmacist.

Entitlement to primary care depends on a person being 'ordinarily resident' in the UK. 'Ordinarily resident' does not have a strict legal definition but is taken to mean that the person intends to be in the UK (legally) for over six months.

Who qualifies?

Anyone who intends to be here for over six months. This includes spouses within the probationary period; students; asylum seekers; and failed asylum seekers who have already been in the UK for 12 months at the time their application/appeal process comes to an end. Overstayers who came in on valid spouse visa should be ok unless they have not registered previously.

Who doesn't qualify?

- Entrants of less than 6 months (e.g. visitors) and illegal entrants are not entitled to access primary care. However all GPs have discretion to register patients if they wish to. Many practices do this but it is down to individual practice choice.
- Failed asylum seekers who reach the end of the asylum process and have not been here for longer than 12 months are not entitled to primary care. However if an asylum seeker is already registered with a GP, there is no mechanism or obligation on the GP to check that their asylum claim is still in process each

time they attend.

Secondary care

Secondary care is specialist care, traditionally provided from a hospital setting in support of the primary care team; e.g., surgery or specialist medical services, including old age medicine and mental health services.

To be entitled to secondary care, generally you must have been in the UK for 12 months unless you fall into a long list of special categories.⁴⁷

Who qualifies?

- Applicants on a spouse visa who have been in the UK for more than 12 months and are within the probationary period
- Asylum seekers – are entitled whatever period of time unless they become failed asylum seekers who have been in the UK less than 12 months

Who doesn't qualify?

- Overstayers
- Failed asylum seekers who have been in the UK for less than 12 months.

⁴⁷ For example, a national of a country with a reciprocal agreement with the UK, students doing at least 12 weeks work experience in their first year, seamen on UK registered ships, etc.

How to get support from local authorities

In January 2006, the Home Office issued a letter to local authorities stating that they should be 'mindful' that women subjected to domestic violence who have no recourse are vulnerable and should therefore be assisted with accommodation (see page 45 below for a copy of the letter). However, as casework experience from across the country shows, local authorities are very unwilling to assist women with or without children. The main problem encountered is that protection is left to the discretion of the local authorities.

Many local authorities deliberately fail to adhere to their legal duties, whilst others interpret them narrowly. It is therefore vital to use the letter mentioned above to ensure that senior decision makers are aware of their duties to the vulnerable and act in accordance with the spirit of the letter.

Useful strategies and arguments to employ:

- Provide medical evidence from psychiatrists, psychologists, counsellors, GPs or other appropriate professionals, demonstrating that the applicant is in need of support due to ill health including mental ill health problems related to domestic violence. Depression, history of attempted suicide and self harm or

suicidal thoughts are all important factors to highlight together with a future prognosis of the applicant's health if local authority support is not given.

- Insist on a social services assessment to determine that the applicant is vulnerable and consequently in need of support and care. This is necessary to show that the need for care arises from reasons other than destitution. For example, in one case a single woman who was hospitalised as a result of domestic violence was in need of care following discharge. It was argued that social services should undertake an assessment for the purposes of funding a refuge space or supported accommodation since she clearly needed help and assistance in meeting her daily needs.
- Experience shows that local authorities are trying to refuse assistance on a variety of often spurious grounds. Often the argument is that she is not from the locality. However, a woman fleeing domestic violence does not need to be from the area. Be forceful about why women need to stay in the area and need support. You must be ready to present arguments coherently and persuasively. You may have to get funding from the applicant's previous local authority instead. Don't forget

to use the local authority's code of guidance on domestic violence.

- Be creative. Consider judicial review challenges in cases where the local authority is simply refusing to consider any special needs due to disability, age, illness or other vulnerabilities or is being unreasonable in the implementation of its legal duties. It is arguable that women who do not speak English, have no families or communities of support and who have been traumatised by the abuse they have experienced are extremely vulnerable. For the purpose of mounting effective legal challenges, it is important to develop good links with lawyers who specialise in welfare rights and public law so that referral systems, standard letters and protocols between yourself and the lawyer can be set up to avoid unnecessary delays.
- Ensure that all human rights implications are considered. Use all relevant articles (see <http://www.hmso.gov.uk/acts/acts1998/19980042.htm> and <http://yourrights.org.uk/>) For example, use human rights legislation to argue to keep the applicant and her children together. (Degrading and inhuman treatment and right to family life).

- You must be vigilant and negotiate strongly.
- Keep up to date with case questions and precedents set elsewhere – Southall Black Sisters have their fingers on the pulse so contact them and stay up to date.

In addition to the action that can be taken in individual cases, it is essential that you work with your local authority to develop local policies and strategies for supporting women who have no recourse to public funds

The following are some examples of what can be achieved:

- Look at local authority strategies on domestic violence, housing and crime reduction. These can be a helpful tool. You can say 'we recognise that domestic violence is something you want to reduce but such strategies must include all women' – quote their strategies and objectives back to them. You have to do your research first – see what they say on domestic violence and BME women specifically.
- Come to an agreement with your local authority for funding for refuge places for women with no recourse – this can be done

jointly with other refuges or domestic violence organisations in the area. This was a successful strategy pursued by the Asian women's refuge in Bradford. The refuge also managed to obtain living expenses for women with no recourse through the local authority. The local authority also agreed to support women with no recourse in any refuge in Bradford.

- Talk to other local groups. You will be more likely to be able to set a precedent for the local authority providing financial support if you work together.
- Identify the relevant individuals within the relevant departments in local authorities with whom to liaise on a regular basis.
- If running a refuge or hostel accommodation, devise a strategy for claiming support on individual cases, including preparing standard letters to claim rent, living costs equivalent to income support levels etc. Ensure that these letters are acceptable to the local authority.
- Make arrangements with refuge landlords/housing associations and others to allow for the use of one or more free space for no recourse cases. Some refuges have managed to do this.

- Ensure that you have appropriate legal support – law centres, legal firms, legal advice centres, preferably those with a good track record in domestic violence, human rights, family and public law and immigration issues. This will be necessary where challenges on individual cases are necessary.
- Be creative in devising strategies of support. For example, look at setting up a specific local fund to help women with no recourse. Include the police, local authority, voluntary organisations, solicitors and others. It could be administered by the local refuge or another appropriate body. But be careful that the fund does not let the local authority off the hook in respect of its legal obligations. Dipping into such a fund should be a last resort.

Copy of letter from government to local authorities about women with no recourse to public funds

[This text is a reproduction of a letter from a letter from the Home Office to all local authorities on the issue of no recourse to public funds, sent in January 2006.]

To: The Chief Executive
County Councils
Metropolitan District Councils
Shire Unitary Councils
London Borough Councils
Common Council of City of London
Council of the Isles of Scilly

The Director of Social Services

30 January 2006

DOMESTIC VIOLENCE VICTIMS WITH NO RECOURSE TO PUBLIC FUNDS

The purpose of this letter is to:

- (a) raise awareness of domestic violence
- (b) ask local authorities to circulate the enclosed Fact Sheet to all social services and other relevant staff;
- (c) provide further information

regarding safeguards for domestic violence victims and their children in the local area.

Domestic violence is a pernicious crime which blights the lives of individuals, families and communities. The Government is committed to tackling domestic violence, increasing safety and support for victims and bringing offenders to justice. It has therefore passed the Domestic Violence, Crime and Victims Act 2004 and created a National Delivery Plan which co-ordinates all cross departmental work and outlines the plan for local delivery.

As part of this policy initiative, it has come to our attention that while many local authorities are only too conscious of the problem, not all are sufficiently aware of the dynamics and manifestations of domestic violence and how it impacts on individuals, or how existing legislation can be used to respond to the care assessment process for domestic violence victims.

The purpose of this letter is therefore to highlight the plight of a small group of

women who are currently falling through the safety net and being exposed to risk of severe injury or even homicide through domestic violence.

The group of women to which I am referring, will usually have been granted limited leave to enter the United Kingdom as a spouse or fiancé of a person present and settled. This leave will be subject to a condition that she has no recourse to public funds, although those given leave as spouses (or civil partners) are free to take employment.

Under the Immigration Rules (paragraph 298A), a concession is made whereby victims of domestic violence who were admitted with limited leave as spouses or unmarried partners of civil partners may apply for indefinite leave to remain, as long as they can provide evidence that the relationship broke down before the end of their period of limited leave because of domestic violence. However, while this application is pending, and despite its being considered as quickly as possible, their existing immigration status means

they have no access to housing provision. In addition, as the majority of these women are from BME communities, there are often additional barriers such as language which can impede obtaining accurate case histories in the assessment process. Without a place of safety or any means of support, these women are often forced to return to their home to face further abuse and in some extreme cases, homicide.

To reduce the chances of this happening, we are asking local authorities to be mindful that some victims of domestic violence could have specific needs for care and attention and /or have dependent children, which may make them eligible for assistance under section 47 of the NHS & Community Care Act, the Local Government Act s.2, Children Act 1989 or other relevant legislation.

Local authorities may be aware of the case of Khan-v-Oxfordshire and limitations on your use of section 21 NAA and section 2LGA. However, it was clear from that case that there may be instances when a victim of domestic

violence does have a need for care and attention which does not arise solely because of destitution and this will depend on the individual circumstances of each case.

I should emphasise that this summary highlights the current position and does not reflect any policy change.

I am enclosing a Fact Sheet setting out some of the key dynamics making up the nature of the abusive relationship which you may find useful in the assessment process.

If local authorities wish to seek additional training for frontline staff, several agencies can provide assistance. Please note resources in the Domestic Violence Fact Sheet.

Further information on domestic violence can be obtained on the Home Office website at www.crimereduction.gov.uk and on www.info4local.gov.uk (see social issues, domestic violence for further research and other publications).

MISS MARGARET O'MARA

Campaigning

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How to campaign on individual cases

There may be situations where due to limited legal options, the exhaustion of all legal options or the weakness of a particular case, you will need to campaign in order to support an applicant's right to stay in the UK.

If you anticipate major problems in an applicant's case, it is important that you consider campaigning at the same time as making legal representations. If you can help it, don't leave campaigning until the last moment since it may be too late. Campaigning will involve thinking through both the legal and media strategies. The campaigning and legal strategies must be linked closely so that any legal developments are taken into account in the campaigning work.

It is not possible to go through all steps involved in a campaign since each case may demand different strategies or emphasis on one strategy over another, depending on the urgency of the situation. The aim of any campaigning is the need to secure the right of an applicant to stay in the UK. It is therefore important that you consider the following:

- You must check with the applicant first as to whether or not she wishes to campaign. Think through the negative and positive consequences of campaigning for the

applicant, including assessing any risks to her or any children both in the UK and if returned to her country of origin.

- Ensure that you have sound legal advice and that all avenues of legal intervention have been considered. Maintain close contact with the applicant's legal representatives so that you are fully informed of her situation.
- Make contact with the applicant's MP to fully brief her/him of the applicant's circumstances and ask her/him to make representations to the Home Office (and to any detention centre or airline company if there is last minute removal or detention or fear of the same.) Remember that detaining women with or without children who have already experienced abuse, trauma and often physical imprisonment in their homes is unnecessary and discriminatory. After all, we do not lock up women in the wider society who have experienced abuse! These women are not criminals and the majority do not have any history of evading the immigration system.
- Try and brief an MP as soon as you become aware that there may be difficulties in a particular case. Early briefing will make your life easier! When briefing an MP for the first time, you must give clear and comprehensive

background information on the applicant. Legal representations if they exist, are often sufficient for briefing purposes. If not, provide a letter setting out all the details of the case.

- Ensure that there is a good direct link between yourself and the MP. This is necessary for any last emergency steps that may have to be taken.
- If the situation is particularly urgent, you should also ask the MP to make direct representations to the Immigration Minister. This may be necessary to avert last minute removal or detention.
- If an applicant is in detention, remain in regular contact with her and with her legal representatives and other supporters. You will need to consider bail applications and will therefore need to find people who are willing to provide alternative housing and support in order to meet bail conditions. If you are unsure about what to do in relation to bail, contact her legal representative or groups like Bail for Immigration Detainees (BID) for advice and support (see Directory).
- Once legal representations or a letter setting out the facts of the case has been prepared, it can be sent to a number of different places at

the same time, including the Immigration Minister, Home Office, detention centre, Home Secretary, Minister for women and even the Prime Minister and other supporters.

- If an applicant is about to board a plane, it is worth inundating the airline with faxes and calls with questions and protests to prevent removal.
- Contact the media either to publicise the case and so cause maximum embarrassment to the Home Office, detention centre or airline or to make enquiries of them, especially if removal is imminent. Do not give the media, the legal representations or any information without first checking with the applicant and her legal representative. For media purposes, you can always provide a shorter version or a letter setting out the main details.
- The media can be a powerful tool of pressure, so if requested, consider setting up an interview with the applicant with her agreement. You should always be present at such an interview to ensure that it remains sensitive to the applicant. You must always check what the applicant should say with her legal representative before embarking on any media interview.

How to contact your MP

Once elected, an MP's role is to represent the people from their constituency, regardless of whether they voted for him/her. MPs will usually only deal with issues raised by their own constituents, so you need to know who your MP is.

How do I find out who my MP is?

There are a number of ways to find out this information. You can contact the House of Commons Information Office on 020 7219 4272. If you have internet access, go to www.theyworkforyou.com or www.writetothem.com and enter your postcode. You can also ask at your local public reference library or local town hall. www.writetothem.com also has information on your local councillors, Assembly Members and MEPs (Members of European Parliament).

How do I contact my MP?

There are a number of ways to contact your MP.

- Most MPs hold 'surgeries' in their area for constituents to meet and discuss problems with them. Details of the times and venue of these surgeries are usually advertised in

local papers and libraries. Your MP's local party office will also be able to give you information on this.

- Invite your MP to visit your office or centre for a meeting to discuss what they can do for your client.
- You can write to your MP at the House of Commons, London SW1A 0AA. In a letter you should outline your main points and request a written response.
- If you need to phone your MP, you can contact their office at the House of Commons by phoning the switchboard (020 7219 3000) and asking to be connected to the appropriate MP's office.
- Most MPs now use email. You can check the list of MPs on the www.parliament.uk website, which tells you whether an MP has an email address and allows you to send an email message.
- Most MPs have their own website to help constituents find information about them. The MPs' directory on www.parliament.uk links to many MPs' websites. The websites usually contain contact details.

- Prepare leaflets to be sent out by post and electronically and distribute widely for support, including financial support to sustain the campaign. Ask supporters to send/fax letters to the Home Office or if appropriate, detention centre or airline company. Send a copy of your leaflet to the National Anti-Deportation Campaign (NADC) which provides an excellent campaigning service by widely circulating information about individuals and families with immigration and asylum problems.
- Seek support from members of the public to maintain pressure on the Home Office to grant stay and maintain a high a profile as possible by regularly sending out leaflets and updates.
- Try and get personal letters of support from influential members of the community including religious organisations, trade unions, celebrities etc as well as the applicant's relatives and friends to send to the Home Office.
- Ensure that you receive copies of all letters of support sent and the responses received so that you remain informed of all developments on the case and in control of the campaign.
- Be prepared to liaise directly and constantly with the Immigration Minister, MP, Home Office detention centre, the applicant's legal adviser and the applicant herself.
- Be prepared with model letters which you can cut and paste to suit the facts of the case and with a list of useful and relevant numbers for example, list of MPs in the UK, organisations such as BID for further advice etc.
- Be prepared to demonstrate!⁴⁸
- Contact groups like SBS and WRC for guidance on campaigning strategies.

⁴⁸ However, if you are thinking about direct action and you are a registered charity, there are some legal issues to consider. Because public order legislation is complex, demonstrations and rallies can present problems, especially as you may not have complete control over who attends. You need to carefully consider the steps needed to minimise or mitigate any possible risks or harm, such as thorough preparation and good liaison with the police and other authorities. Contact the Charity Commission (details in Directory) for further information.

How to campaign on the wider issues

Getting politicians to support your cause

In order to bring about wider long lasting changes, it is necessary to also focus energies in trying to influence politicians and civil servants who have responsibility for immigration or domestic violence issues. Campaigning on specific issues with support from a wide range of women's and other individuals and organisations including church leaders, trade unions and celebrities, may achieve more than if you try to go it alone. Try to identify those politicians who have a genuine interest in these issues. Write a briefing paper on the issues. This is the best way to clarify your arguments and points. Use the briefing paper or a summary of it to seek support from politicians, the media and the wider public.

How do I find out whether a politician might be interested?

Keep an eye on national newspapers and make a note when an MP speaks on a related issue. You can use websites to keep track of when an MP speaks on your issue. For example, www.theyworkforyou.com, where you can search debates, statements and written answers in the Houses of Commons and Lords since 2001 and get email updates, and www.parliament.uk, where you can read reports of debates, follow legislation, and get regular information

bulletins.

How can I gain their attention?

- MPs receive hundreds of letters per week so you must grab their attention quickly. Be clear what you are asking for (a meeting with them, for them to sign an Early Day Motion, or to intervene with a Minister on your behalf) and why they should do it.
- Provide interested MPs with briefings on issues, particularly if they are current issues.
- Develop clear proposals, including ideas of costs and how it can be done. These should be evidence-based (e.g. based on focus groups with your members) and concentrate on specifics with a clear perspective on what you want to be done. You should give the MP a route to pursue. For instance, encourage them to put down an Early Day Motion.
- Politicians respond to shows of grassroots support so engaging with local people is an effective method of lobbying. Show how your campaign will affect their constituency. Your campaign should be evidence-based and provide the facts. So, for instance, organise focus groups or awareness raising events. Invite your MP to attend and thus provide a link to their constituents and with grassroots.

- Arrange for an MP to meet local charity workers or beneficiaries of your charity's work.
- Work in partnership with other organisations. By channelling many voices in a unified way you can add clout to your campaign. Ensure you are all clear about and agree on the objective/s and key messages.

What can I ask an MP to do?

Depending on what your aims are, there are a number of things you can ask an MP to do.

- In response to your concerns, your MP may write to the relevant department, official or Minister, or make an appointment to see the Minister personally. If they do arrange a meeting, you should prepare a briefing for your MP outlining the main points you want them to raise.
- Your MP can also raise the issue in the House of Commons. There are a number of methods your MP can use to do this. For example:
 - ◆ **Early Day Motions (EDMs):** These essentially work like a petition that MPs can sign to record their views on a subject.

- ◆ **Oral questions:** All backbench MPs get a chance to ask Ministers questions. Ministers answer questions on a rota basis and there is a limit to the number of questions that can be asked. They are a way of putting the relevant Minister on the spot, or to get something on record, as all answers are recorded in Hansard.
- ◆ **Written questions:** MPs can table questions for the appropriate government department. The answers are then published in Hansard. They are a way of forcing the government to give a clear answer, they can generate pressure as part of a concerted campaign, and they can reveal interesting facts which are then on record.
- **Adjournment debates:** An MP can use a motion to adjourn the House of Commons to raise issues relating to his or her constituency or matters of public concern. There is a half-hour adjournment period at the end of the business of the day. An MP wishing to raise a matter during the half-hour adjournment period must notify the Speaker in writing. A ballot is held once a week and four MPs gain the right to

speak during the following week, the Speaker choosing the fifth. Normally only the MP raising the matter and the minister responsible for replying speak during an adjournment debate, but it is a way of getting your issue discussed in more depth than is usually possible.

- You can also ask your MP to support you outside Parliament. For example, you could ask them to speak at an event you're organising, provide a quote for a press release or contribute a foreword to a publication.

Don't forget that building up relationships with MPs can take quite a long time, and they may not agree to your suggestions straight away. If they're making the right noises, then just make sure you keep in contact with them – you may make more progress further down the line.

Directory

Bail for Immigration Detainees (BID)

Tel: 020 7247 3590 (please call between 10am-12, Monday to Wednesday - outside of these times leave a message)

Fax: 020 7247 3550

Email: info@biduk.org

www.biduk.org

BID works with asylum seekers and migrants detained under Immigration Act powers, in removal centres and prisons in the United Kingdom.

Charity Commission

Tel: 0845 300 0218

Email: enquiries@charitycommission.gsi.gov.uk

www.charitycommission.gov.uk

The Charity Commission is a government body responsible for the regulation of registered charities in England and Wales.

Community Legal Service

Tel: 0845 345 4345

www.clsdirect.org.uk

For details of Legal Aid solicitors, Citizens Advice Bureaux, law centres and independent advice centres. They can put you in touch with specialists in immigration law and/or family law. NB This is for England and Wales only. For Scotland contact the Scottish Legal Aid Board on 0845 122 8686 (www.slab.org.uk).

Foundation for Women's Health Research & Development (FORWARD)

Unit 4, 765-767 Harrow Road

LONDON

NW10 5NY

Tel: 020 8960 4000

Fax: 020 8960 4014

Email: forward@forwarduk.org.uk

www.forwarduk.org.uk

FORWARD works for the elimination of female genital mutilation. FORWARD has been a pioneer in promoting innovative strategies and community-orientated approaches towards the prevention and abandonment of FGM. In the UK FORWARD campaigns for legislation against FGM. FORWARD also trains education, health, social service, voluntary sector and other professionals on FGM and Child Protection.

Glasgow Violence Against Women Partnership

c/o Women's Support Project

31 Stockwell Street

Glasgow

G1 4RZ

www.gvawp.org.uk

The Glasgow Violence Against Women Partnership (GVAWP) aims to 'promote a strategic multi-agency response to violence against women in Glasgow'. Their website contains information on 'no recourse' and useful contacts in Scotland.

Imkaan

76 Brewer St

London

W1F 9TX

Tel: 020 7434 9945

Fax: 020 7851 0942

Email: admin@imkaan.org.uk

www.imkaan.org.uk

Imkaan is a second tier national charity, specialising in domestic violence - especially Asian Women's Refuges, who support Asian women and children experiencing domestic violence.

Immigration and Nationality Directorate

Home Office
Lunar House
40 Wellesley Road
Croydon CR9 2BY

Tel: 0870 606 7766

Email:

indpublicenquiries@ind.homeoffice.gsi.gov.uk
www.ind.homeoffice.gov.uk

IND is the government department responsible for immigration.

Immigration Law Practitioners Association (ILPA)

Lindsey House,
40-42, Charterhouse St.,
London
EC1M 6JN

Tel: 020 7251 8383

Fax: 020 7251 8384

Email: info@ilpa.org.uk
www.ilpa.org.uk

The Immigration Law Practitioners' Association was established in 1984 by a group of leading UK immigration practitioners to: promote and improve the advising and representation of immigrants; provide information to members on domestic and European immigration, refugee and nationality law; secure a non-racist, non-sexist, just and equitable system of immigration, refugee and nationality law. ILPA now has more than 1,100 members including lawyers, advice workers, academics and law students. Their website has a directory of their members.

Joint Council for the Welfare of Immigrants (JCWI)

115 Old Street
London
EC1V 9RT

Advice line: 020 7251 8706 (Tuesday and Thursday, 2-5pm)

Tel: 020 7251 8708

Fax: 020 7251 8707

Email: info@jcwi.org.uk
www.jcwi.org.uk

JCWI is an independent national voluntary organisation, campaigning for justice and combating racism in immigration and asylum law and policy. JCWI provides free advice and casework, training courses, and a range of publications. For specific queries on immigration, refugee or nationality issues telephone the advice line.

Kalayaan

St Francis Centre
13 Hippodrome Place
LONDON
W11 4SF

Tel: 020 7243 2942

Fax: 020 7792 3060

Email: info@kalayaan.org.uk

www.kalayaan.org.uk

Kalayaan is a non-profit organisation that aims to improve the quality of life of all migrant domestic workers residing in the UK. Kalayaan recognises that they frequently experience abuse, exploitation, discrimination, racism and social exclusion and aims to reduce these problems by offering advice, services, advocacy, and project work. They also aim to influence policy makers and other key players.

Law Centres Federation

Duchess House,
18-19 Warren Street,
London W1T 5LR

Tel: 020 7387 8570

Fax: 020 7387 8368

Email: info@lawcentres.org.uk

www.lawcentres.org.uk

Law Centres provide a free and independent professional legal service to people who live or work in their catchment areas. They specialise in those areas of law including welfare rights, immigration and nationality, housing and homelessness, employment rights, and sex and race discrimination.

Law Society

Tel: 0870 606 6575 (to search for a solicitor)

www.lawsociety.org.uk

For details of solicitors if the woman you're supporting can't access legal aid. They can put you in touch with solicitors in your local area (England and Wales only). You can also search their website for specialists in immigration law and/or family law.

Medical Foundation for the Care of Victims of Torture

111 Isledon Road,
London N7 7JW

Tel: 020 7697 7777

Fax: 020 7697 7799

www.torturecare.org.uk

Founded in 1985, the Medical Foundation for the Care of Victims of Torture provides care and rehabilitation to survivors of torture and other forms of organised violence.

National Asylum Support Service

Whitgift Centre,
Block B
15 Wellesley Road,
Croydon
CR9 1AT

Tel: 08456021739

NASS is the government body that is usually responsible for looking after people who are seeking asylum in the UK. Women can be referred to the Refugee Council One Stop Shops to make NASS claims.

National Coalition of Anti-Deportation Campaigns

1 Delaunays Road
Crumpsall
Manchester
M8 4QS

Tel: 0121 554 6947
Email: ncadc@ncadc.org.uk
www.ncadc.org.uk

NCADC is a voluntary organisation, which provides practical help and advice to people facing deportation on how to launch and run anti-deportation campaigns. They provide a network for campaigns throughout the country allowing them to support each other. Every year they organise national meetings across the country for campaigns to come together and share their experiences and discuss campaigning tactics.

Office of the Immigration Services Commissioner (OISC)

5th Floor
Counting House
53 Tooley Street
London
SE1 2QN

Helpline: 0845 000 0046
Tel: 020 7211 1500
Fax: 020 7211 1553
www.oisc.gov.uk

The Office of the Immigration Services Commissioner (OISC) is an independent public body set up under the Immigration and Asylum Act 1999. The OISC is responsible for ensuring that all immigration advisers fulfil the requirements of good practice. The OISC regulates immigration advisers, maintains a register of immigration advisers and deals with complaints about immigration advisers. You can find a list of registered immigration advisers on the website. If you are giving immigration advice, you must be registered with the OISC (unless you obtain an exemption) and abide by its Code of Conduct.

Refugee Council

240-250 Ferndale Road
LONDON
SW9 8BB

London advice line: 020 7346 6777
Yorkshire and Humberside advice line: 0113 386 2210
East of England advice line: 01473 297 900
West Midlands advice line: 0121 6221515
Children's Panel advice line: 0207 346 1134

Tel: 020 7346 6700 (general enquiries)
Fax: 020 7346 6701
www.refugeecouncil.org.uk

The Refugee Council provides information, support and advice to refugees directly, and to the support services and community organisations which support them.

Refugee Legal Centre (RLC)

Provides advice from its London and regional offices.

Runs a general and detention advice line.

Advice line: 020 7780 3220 (9.30am to 4pm, closed 1–2pm, Monday, Tuesday, Wednesday and Friday)

Detention Line: 0800 592 398 (9.30am to 4pm.

Closed 1–2pm, on Mondays, Tuesdays, Wednesdays and Fridays.

Removals outside hours: 0783 1598 057 (6pm to 9pm)

Refugee Women's Resource Project at Asylum Aid

28 Commercial St
London
E1 6LS

Tel: 020 7377 5123

Fax: 020 7247 7789

Email: deboras@asylumaid.org.uk
www.asylumaid.org.uk

Refugee Women's Resource Project was set up in April 2000 by Asylum Aid, a registered charity which provides free legal representation and advice to asylum seekers and refugees. It aims to enable women fleeing serious human rights violations to gain protection in the UK.

Rights of Women

52–54 Featherstone Street
LONDON
EC1Y 8RT

Advice line: 020 7251 6577 (Open Tuesday–Thursday 2–4pm and 7–9pm, and Friday 12–2pm.)

Sexual violence legal advice line: 020 7251 8887 (Open Monday 11–1pm and Tuesday 10–12pm.)

Tel: 020 7251 6575 (general)

Fax: 020 7490 5377

Textphone: 020 7490 2562

Email: info@row.org.uk
www.row.org.uk

Rights of Women is committed to informing, educating and empowering women concerning their legal rights. They offer free confidential legal advice to women on their advice line, including specialist advice in family law, divorce and relationship breakdown, children and contact issues, domestic violence, sexual violence, discrimination and lesbian parenting. They also provide training for organisations on essential issues concerning women's rights.

Southall Black Sisters

21 Avenue Road
Southall
Middlesex
UB1 3BL

Tel: 020 8571 9595 (Mon–Fri: 10am–5pm; closed Wednesday)

Fax: 020 8574 6781

Email: southallblacksisters@btconnect.com
www.southblacksisters.org.uk

SBS provides information, advice, advocacy, practical help, counselling, help and a referral service on a wide range of issues including domestic violence, immigration/asylum, housing and homelessness and matrimonial rights. SBS also lobbies, campaigns and conducts policy work in this area.

UK Lesbian and Gay Immigration Group

P O Box 51524
London
SE1 7ZW

Advice line: 020 7620 6010 (Monday, Tuesday and Wednesday)
Tel: 020 7620 6030 (Tuesday, Wednesday & Thursday - office hours)
Email: admin@uklgig.org.uk
www.uklgig.org.uk

UKLGIG is a voluntary organisation providing information and advice on immigration rights for same sex couples and asylum seekers.

Women's Aid

PO Box 391
Bristol
BS99 7WS

24 hour National Domestic Violence Helpline:
0808 2000 247
Tel: 0117 944 4411
Fax: 0117 924 1703
Email: info@womensaid.org.uk
www.womensaid.org.uk

Women's Aid is the national charity working to end domestic violence against women and children. Administers the Last Resort Fund, funding women's refuges to support women with no recourse to public funds.

Women's Resource Centre

Ground Floor East
33-41 Dallington St
London
EC1V 0BB

Tel: 020 7324 3030
Fax: 020 7324 3050
Email: info@wrc.org.uk
www.wrc.org.uk

WRC supports women's organisations and projects working with women through: training and advice on organisational development, policy, media and ICT; policy and lobbying on behalf of the women's voluntary and community sector; providing information sharing and networking opportunities; and publishing research and other information resources on and for the women's sector.

Glossary

Appellant

The person for whom an appeal is being made.

Applicant

The person for whom an application is being made.

Asylum seeker

An asylum seeker is somebody who is waiting for their application for 'refugee status' to be assessed by the government. Terms that have been used incorrectly to describe asylum seekers include economic migrant (someone who voluntarily leaves their own country aiming for a better life in another country) and 'illegal' asylum seeker (by definition, there is no such thing. The UK has signed the 1951 Convention on Refugees, which means that anyone has the legal right to come here, apply for asylum and remain in the UK until the Government makes a final decision on their asylum application).

Discretionary Leave

Discretionary Leave can be considered for people that have not been considered for international protection, or have been excluded. Discretionary Leave may be granted if, for example, the applicant is an Unaccompanied Asylum Seeking Child (UASC) for whom adequate reception arrangements in their country are not available, or if the person is able to demonstrate

particularly compelling reasons why removal would not be appropriate. Discretionary Leave can be granted for a period of three years or less.

Domestic Violence (DV)

The Government defines domestic violence as: *"Any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality."*

The government also recognises specific cultural forms of violence such as forced marriage and other harmful practices within the definition of domestic violence.

Domestic Violence Rule

The Domestic Violence Rule was introduced in 2002 to address some of the problems caused by the impact of immigration rules on victims of domestic violence. It allows some women who are subject to immigration control and domestic violence Indefinite Leave to Remain in the UK as long as they can fulfill a number of conditions.

European Economic Area (EEA)

Includes all EU countries (Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Irish Republic, Italy, Latvia, Lithuania, Luxembourg,

Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden) as well as Iceland, Liechtenstein and Norway.

Failed asylum seeker

Someone whose asylum application is unsuccessful and either whose appeal is also unsuccessful or who hasn't appealed (within 10 days of hearing about their unsuccessful asylum claim).

Hansard

Hansard provides a clear and independent record of all the proceedings in the Chamber of the House of Commons, Westminster Hall, its Standing Committees and certain Select Committees, such as debates, speeches, questions asked of Ministers and their responses, information about Bills before Parliament etc. www.hansard-westminster.co.uk

Human Rights Act

The Human Rights Act 1998 incorporates into UK law the European Convention on Human Rights and is a series of articles and protocols which sets out important human rights principals. If a person believes their European Convention rights have been violated they can ask a court in England or Wales to deal with it. The important articles when working with women subject to domestic

violence and immigration control are:

Article 2: Right to life

Article 3: Prohibition of torture

Article 8: Right to respect for private and family life

<http://yourrights.org.uk/>

Humanitarian protection

There are many cases where the Home Office does not believe that a person meets the UN Convention definition of a refugee, but nonetheless accepts that they should be allowed to stay in the UK. Humanitarian Protection is leave granted to a person who would, if removed, face in the country of return a serious risk to life arising from the death penalty; unlawful killing; or torture or inhuman or degrading treatment or punishment. If a person has been refused asylum they may still be considered for this status. Humanitarian Protection is normally granted for a period of 3 years, after which the person can apply for Indefinite Leave to Remain. A person who is granted Humanitarian Protection is allowed to work and has access to public funds.

Immigration status

This will vary from person to person as it depends on the category (e.g. the type of permit or visa), in which you enter or live in the UK. A person's immigration status can change

depending on their circumstances (e.g. from asylum seeker to refugee), including length of time living in the UK.

Indefinite leave to remain (ILR)

Indefinite leave to remain means you are free from immigration control. There are no restrictions on your work or length of your stay. To qualify for Indefinite Leave to Remain you must have been in the UK for a certain length of time.

Legal representative

A legal representative is someone who is a barrister, solicitor, solicitor's employee or other authorised litigator who has been instructed to act in a claim or case.

National Asylum Support Service (NASS)

NASS is the government body that is usually responsible for looking after people who are seeking asylum in the UK. NAAS is part of the Immigration and Nationality Directorate (IND) at the Home Office and is responsible for the provision of housing and financial support for destitute asylum seekers and their dependants whilst they are awaiting the results of their claim for refugee status.
www.nass.homeoffice.gov.uk

No recourse to public funds

People with 'no recourse to public funds' are those who, due to their immigration status are allowed to be in this country but are not eligible for many of the public funds that other UK residents can claim, such as benefits and council housing.

Upon entry to the UK as a partner or a spouse of a British national, there is often a condition attached to leave prohibiting 'recourse to public funds'.

Public funds in immigration rules describes those welfare benefits which applicants need to show that they will not claim and that they can be adequately maintained without them.

Overstayer

An overstayer for the purposes of the Domestic Violence Rule (see above) is someone who has not applied for Indefinite Leave to Remain (ILR) or made a Domestic Violence Rule application before their visa expired. This may be because her husband had control over the application and immigration status and she was not aware she had to apply. If the visa expired recently (in last few days/weeks) the Home Office will usually consider applications under the Rule. However if the applicant is out of time by

several months or years, the legal advisor will have to consider what other immigration/asylum options are available.

Refugee status

A refugee is someone who has been granted Indefinite Leave to Enter or Remain in the UK after being recognised as a refugee under the terms of the 1951 Geneva Convention. The Geneva Convention refugee definition applies to individuals who flee their home country due to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion. Many refugee and human rights organisations use the term more widely to also apply to groups of people who flee their country as a result of war, civil unrest and environmental devastation, and those who have suffered gender or sexuality oppression.

Stay

When non-EEA nationals are given permission to be in the UK legally although conditions are likely to apply. A person's right to stay in the UK can be curtailed, revoked or expire.

Subject to immigration control

Anybody who is not a British citizen is subject to immigration control, i.e. they may have to apply for permission to come into the UK, or to

stay here, and they are not given the same rights as British citizens, for example to apply for benefits or to travel freely.

Two year rule (formerly one year rule)

The one-year rule was introduced in the early 1980s and required that people coming here to join their spouse must remain in the marriage for at least one year before they can apply to stay here permanently. The application for leave to remain must be supported by both parties. A person from abroad who does not apply at the end of the probationary period automatically becomes an overstayer liable to being removed from the UK even if the marriage is continuing. A person whose marriage breaks down for whatever reason before obtaining settlement is equally vulnerable to removal. In 2003 the Government extended the probationary period to two years.

