

Appendix 8: Women with ‘no recourse to public funds’ (See Article 9)

The ‘no recourse to public funds’ (NRPF) requirement, under Section 115(9) of the Immigration and Asylum Act 1999,¹ denies people with insecure immigration status access to any ‘public funds’ including Income Support, Housing Benefit, public housing and other benefits and entitlements. Under this requirement, women with insecure immigration status who have experienced domestic violence (DV) cannot access refuges or financial support that would enable them to flee an abusive relationship.

Women who come to the UK to join their spouses/partners on a spousal visa are also subject to a probationary period of residency, during which time they face losing their right to remain in the UK if the marriage breaks down. However, the probationary period was extended from two to five years in July 2012.² In 2002, the Government introduced the Domestic Violence Rule, which enables women on a spousal visa to apply for Indefinite Leave to Remain (ILR) in the UK if they can prove that DV is the cause of the relationship breakdown. In April 2012, the Government launched the Destitution Domestic Violence (DDV) Concession, which allows women on spousal visas access to public funds if they are destitute, have experienced violence and are planning to apply for ILR in the UK under the DV Rule.³

Southall Black Sisters, a London-based NGO, have campaigned to reform NRPF since 1992.⁴ In 2008, it set up the Campaign to Abolish No Recourse to Public Funds (the Campaign), a coalition of over 30 organisations, to exempt women who are victims of gender-based violence from the NRPF requirement and to allow them to access public funds. After extensive campaigning, a published report⁵ and a recommendation from the CEDAW Committee in 2008, in November 2009, the Home Office launched the Sojourner Project, a pilot scheme to assist women with NRPF who are eligible to apply for ILR under the DV Rule. The project funded refuges to support victims while they submitted their applications for ILR to the UK Border Agency (UKBA).

The Sojourner Project was managed by Eaves Housing for Women⁶ and ran until 1st April 2012 when the DDV concession was introduced. Under the concession, migrants on a spousal visa who are planning to apply for ILR under the DV Rule and

¹ Immigration and Asylum Act 1999 <http://www.legislation.gov.uk/ukpga/1999/33/contents>

² UK Border Agency (2012) ‘Changes to the family migration Immigration Rules come into effect on 9 July 2012’, UK Border Agency, 9th July 2012

<http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2012/july/15-family-mig>

³ UK Border Agency (2012). ‘Changes to the family migration Immigration Rules come into effect on 9 July 2012’. UK Border Agency 9th July 2012

<http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2012/july/15-family-mig>

⁴ Campaign to Abolish No Recourse to Public Funds <http://thewomensresourcecentre.org.uk/our-work/no-recourse-to-public-funds/> Accessed: 16/04/13 also see Southall Black Sisters <http://www.southallblacksisters.org.uk/> Accessed: 22/04/13

⁵ Amnesty International and Southall Black Sisters (2008) *No Recourse – No Safety: The UK Government Failure to Protect Women From Violence*. Amnesty International UK: London

http://www.amnesty.org.uk/uploads/documents/doc_18308.pdf

⁶ Eaves <http://www.eavesforwomen.org.uk/> Accessed: 01/05/2013

have no means to support themselves financially are granted three months 'leave outside the rules', with access to benefits and public housing, while a claim for ILR is made. While the concession has been welcomed by the Campaign, the strict eligibility requirements leave many women unable to access support. These include women in the UK on other visas, overstayers, undocumented migrant women and overseas domestic workers, who experience gender-based violence or abuse and exploitation by their employers. Women who have been trafficked into the country are also not adequately protected. (See Article 6)

Monitoring has shown that of the 1,959 women (and two men) referred to the Sojourner Project, 1,522 were accepted for the full service (1,363 were actually accommodated) and 439 were rejected. Of the 439 women rejected, only seven assessments cited lack of evidence of DV – in 386 cases the woman rejected was not on a spousal visa or had already submitted an application for ILR.⁷ Furthermore, monitoring data collected across the UK by the Campaign coalition found that during the period 24th October to 18th November 2011, of 137 women and 74 children looking for accommodation and/or support, 31 (29%) women and 16 children were unable to access any support, and only 48 (35%) were eligible for Sojourner funding. This means that 65% of women were ineligible for help from the Sojourner Project, and were either dependent on limited support elsewhere or destitute. These women face a stark choice: staying in abusive relationships with risk to their lives or facing destitution.⁸

Other government policies also have an adverse impact on women. Despite the existence of the DV Rule, the extension of the probationary period to five years will entrap women in violent relationships for prolonged periods risking their personal integrity and their lives, considering that many victims are from cultures which expect women to stay within a marriage at all costs, and women are scared of deportation or destitution and they are more likely to have children in five years. In addition, immigration rules which require applicants for settlement under the DV Rule to be free of unspent convictions⁹ ignores the fact that many victims act in self-defence or are falsely accused of crimes by abusive partners and family members. Furthermore, most women making immigration applications will not be entitled to legal aid¹⁰, and although DV Rule applications are still within scope, the overall reduction in public funded immigration solicitors will also limit their options. (See Appendix: 28)

⁷ Statistics collected by Sojourner project staff at Eaves Housing for Women <http://www.eavesforwomen.org.uk>

⁸ Campaign to Abolish No Recourse to Public Funds (2012), *Press Release: Campaign to Abolish No Recourse to Public Funds Celebrates Victory; Home Office Concession for Destitute Victims of Domestic Violence*. <http://www.southallblacksisters.org.uk/campaign-celebrates-victory-for-victims-of-domestic-violence/>

⁹ The London Stationary Office (2011), 'Statement of changes in Immigration Rules [HC 908]'. *The Stationary Office*, 31st March 2011 <http://www.official-documents.gov.uk/document/hc1011/hc09/0908/0908.pdf> and Joint Council for the Welfare of Immigrants (2011) 'Happy Mothers Day? Not if you're a victim of domestic violence', *Joint Council for the Welfare of Immigrants*. <http://jcw.org.uk/2011/04/01/happy-mothers-day-not-if-youre-a-victim-of-domestic-violence/>

¹⁰ Hynes, S. (2012) 'Legal aid for domestic violence victims should not be decided on luck', *The Guardian*, 27th April 2012 <http://www.guardian.co.uk/law/2012/apr/27/legal-aid-lords-domestic-violence-luck>

This provision in the immigration rules to assist victims of DV with spouse visas or unmarried partners or civil partners of a British citizen is warmly welcomed. This system on paper gives migrant women access to public funds in specific circumstances. However, it is still unclear how the system will work with the recent changes that have been implemented since April 2012.

One of the difficulties that women are already facing is that the application needs to be filled in online. In reality this has meant that most women have been unable to do it as a result of language and cultural barriers, lack of knowledge of the system and in some cases lack of knowledge or access to information technology facilities. This has added extra pressure to voluntary and community organisations working with Black, Asian and minority ethnic (BAME) migrant women who are already overstretched and also facing funding cuts, which are spending more resources and time in helping women to process these cases. (See Appendix: 5)

Case Study:¹¹

“As a result of the changes in the system, we had a recent case of a woman with two small children that did not have anywhere to go for four days. We helped her filling in her application but we did not receive a response until after four days had passed. In the meantime she and her children, had to sleep in the living room at her friends’ house. She was terrified that her husband might turn up any minute looking for them. According to our 30 years experience of work with domestic violence and migrant women, domestic violence is a matter of life and death. It does not allow for transition.”

(See General Recommendation 19 for more on prevalence and issues around DV)

Case Study:¹²

“One of the other areas that still needs to be addressed by the UK Government is the case of women victims of domestic violence or abuse that do not hold a spouse/partner visa. At Latin American Women’s Rights Service all too often we have cases of older Latin American women with family reunification visas that are victims of domestic abuse from their children or other members of the family, they practically become slaves in the family home taking care of children and doing all the cleaning and cooking unpaid and with severe limitations to their movements. They are on a dependents visa but do not have access to any help. Some of these women are subjected to physical, psychological or financial abuse. They also face cultural and language barriers and find it even harder to ask or access help. These women should also be able to access public funds to protect their lives, integrity and safety.”

Case study:¹³

“We had a 40 year old client with ‘no recourse to public funds’ who was fleeing severe domestic violence, including frequent rape in front of her two children.

¹¹ Southall Black Sisters <http://www.southallblacksisters.org.uk/> Accessed 01/05/2013

¹² Latin American Women’s Rights Service <http://www.lawrs.org.uk/> Accessed 22/03/2013

¹³ FORWARD and Imkaan (2011) *The Road to Sustainability: A review of Black, Asian, Minority Ethnic and Refugee organisations working with women on health and gender based violence in England*. A study commissioned by the Women’s Health and Equality Consortium. WHEC: London <http://www.whec.org.uk/wordpress/wp-content/uploads/downloads/2011/07/TheRoadtoSustainabilityExecSummary2011.pdf>

Social services initially refused to support her, stating that they had read on the internet that she should return to her home country. The solicitor established that this woman and her children had a legal right to support but social services delayed her core assessment from week to week, until about three months had passed despite pressure by the solicitor. They finally agreed to pay £35 per week. If it hadn't been for some emergency donations we raised and from food donations by her only friend in London, this woman and her children would have come close to serious malnutrition. Even after receiving the money from social services, she still needed on-going additional support. In fact her GP stated that the children already showed signs of malnutrition".

The new family migration Immigration Rules¹⁴ (see below) do permit applications for ILR for women who hold (or last held) a partner visa but whose marriage has broken down during the term of that visa because of DV. The UKBA also permits a 'notification' by a woman in that category that she is destitute and needs a short period of access to public funds until her DV application is submitted and granted under the DDV Concession.

However, there is no equivalent to the DDV Concession for women facing DV who are on some other kind of visa. Even where such a woman may wish to return to her country, but cannot do so before sorting out her financial and property entitlements with her partner, or who cannot do so because she has shared custody or contact with a child of that partner, (or because her violent partner has taken possession of her passport) there is no temporary recourse to social assistance. This will inevitably force some women to remain with their violent partners, or accept potentially exploitative offers of accommodation and support, in order to remain in the UK long enough to explore and sort out their legal problems. Some woman may face removal from the UK before they can establish residence or contact with their child, or gain access to any financial share of the marital home.

These women face two interlocking problems:

1. No access to safe accommodation and support while considering and dealing with their situation. Even if the only long-term immigration option would be to leave the UK and return home,¹⁵ most women facing DV will have no money of their own, possibly no access to their passports, legal issues concerning custody of children, etc. and will not be able to pack and leave the UK quickly, even if this were appropriate.
2. From April 2013 there will be no legal aid (See Appendix: 28) to assist those women to understand their immigration situation or choose properly between available options. Legal aid will continue to be available for women who qualify to apply for ILR under the DV Rule, and third-country national women whose marriage breaks down because of DV and who may assert retained rights of residence under the EU Citizens Directive/ Immigration

¹⁴ UK Border Agency, Immigration Rules Appendix FM

<http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/app-family-members/victim-of-dm/> Accessed 08/05/2013

¹⁵ This course of events is envisaged by CEDAW in para 26(l) of General Recommendation no 26 on women migrant workers. Deportation (or removal) may be the eventual outcome, but until that is clear, a safe place, adequate support and legal assistance must be provided.

(EEA) Regulations 2006.¹⁶ But the availability of legal aid is dependent on provision of specific pieces of evidence. This means that a woman who fits one or other of these legal requirements may be denied legal aid to advise and represent her in the event of a refusal.

Legal Aid is to continue for asylum claims, but it is not known how many providers will enter the new legal aid contract process, given the much reduced volume of work available to them now that immigration cases are not included in the contract; and this begs the question of how a woman might know that her claim amounts to an asylum claim.

Case study:¹⁷

“Ms X, from India, is the wife of a man with a tier 1 visa. Her own visa is as a dependant on his visa. He is violent to her, and financially controlling. They have two children. She is not the same nationality as her husband or their children. He has renewed his tier 1 visa, but she does not know whether he has renewed the children’s visas or not. She may face her own visa being curtailed, if (as he has threatened to do) he has informed the UKBA that their relationship has broken down. She can’t leave the family home, as she has ‘no recourse to public funds’. Even if she had a place to go which would also take the children, she needs advice about what application she might be able to make – as, even if the eventual outcome was for her to return to her own country of origin, she would have to be advised about what, if any, applications she would need to make to remain lawfully in the UK while the child custody issues were dealt with. It must surely be inconceivable that the UKBA would expect such a woman to simply pack and leave the country – and she may have insufficient funds even for that.”

Case study:¹⁸

“Ms Y, from Bangladesh, is dependent on a husband holding a tier 1 visa. He is violent to her. He has driven her out of the family home, but because she has ‘no recourse to public funds’, she cannot go into a refuge. She is staying with a friend for a few days. She has just found out that she is pregnant by her husband. She has discussed with her parents about returning home, and her parents have ordered her either to have an abortion or not to return. She is also afraid of his family, as she is sure that the events will have been presented to them as her fault. Arguably she may have an asylum claim, for which she may be able to get legal advice, and if advised that her claim was meritorious, she could access accommodation and support while that claim was processed. But, unless her friend will support her for some time, she must make decisions about these issues within a very short time, (a) because otherwise she may fall foul of s55 NIAA for ‘not claiming asylum as soon as reasonably practicable’ and (b) may end up destitute in any event, if her friend asks her to leave before she is emotionally ready to take the big step of claiming asylum.”

¹⁶ Legal Aid Sentencing and Punishment of Offenders Act 2012 psch 1 paras 28.29

<http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted>

¹⁷ Case studies taken from calls to the Rights of Women immigration and advice line:

<http://www.rightsofwomen.org.uk/adviceline.php>

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New family migration Immigration Rules from 9th July 2012

For those who cannot meet all the new requirements, the Rules¹⁹ provide a new '10-year route' to settlement. To qualify for this, applicants must meet specific 'exceptionality' requirements for granting leave to remain on the basis of Article 8 ECHR²⁰ right to family and private life, and/or the 'best interests of the child' under the UN Convention on the Rights of the Child.²¹ By placing these very precise 'exceptionality' requirements in the Rules, the UKBA has purported to "define the basis on which a person can enter or remain in the UK on the basis of their family or private life".²² But the 'exceptionality' requirements do not properly acknowledge or implement recent UK and European Court rulings on the application of these Conventions. Moreover, it is a general principle of administrative law that such 'exceptionality' requirements cannot just be applied to every applicant without taking into account individual circumstances as required under the Conventions. The new Rules do envisage leave to remain being granted 'outside the Rules' in exceptional cases, but it is clear from the Explanatory Statement accompanying the Rules that only a tiny number of exceptional cases are expected.

Those granted leave to remain in the '10 year route', whether under the new 'exceptionality' requirements or 'outside the Rules', cannot apply for ILR until they have spent four periods of 30 months' leave, with each intervening application requiring a large fee (currently £561 for further leave and £991 for indefinite leave). This lengthy probationary period before settlement, the requirement for repeated applications and the large fees, (coupled with the well-documented inefficiency of the UKBA²³) will inevitably increase the numbers of women with insecure immigration status.

Those granted leave to remain in the '10-year route' will not be given access to social assistance ('recourse to public funds') unless they show, at the time of their application for leave to remain, that they are destitute. The test of destitution is the same as that for asylum seekers.²⁴

The UKBA Guidance states that an assessment of whether a person is destitute must take into account that the person will have permission to work and if they have been granted leave to remain on the basis of a relationship with a partner,

¹⁹ UK Border Agency, Immigration Rules Appendix FM <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/app-family-members/victim-of-dm/> Accessed 08/05/2013

²⁰ European Convention on Human Rights http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/O/Convention_ENG.pdf

²¹ Convention on the Rights of the Child (CRC) www.unicef.org/crc/

²² UK Border Agency (2012) 'Press Release: Family migration changes announced', UK Border Agency, 11th June 2012 <http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2012/june/13-family-migration>

²³ For example, in an inspection report published on 5 July 2012, the Chief Inspector of the UK Border Agency said: "We did find that there are over 150,000 cases nationally of migrants who have been refused an extension of stay in the UK. "The Agency does not know how many of these individuals have left the country or who are waiting to be removed. I also saw no evidence that there is a clear plan in place for the Agency to deal with this stream of work to ensure this does not become another backlog." The report, which gives information about UKBA internal processing of applications, is available at <http://icinspector.independent.gov.uk/wp-content/uploads/2012/06/ICIBI-Inspection-of-Hants-IOW-LIT.pdf>

²⁴ Immigration and Asylum Act 1999 s95(3) <http://www.legislation.gov.uk/ukpga/1999/33/contents>

that partner will be able to support them and/or have access to public funds. This can only increase dependency on abusive partners putting women at increased risk. The UKBA Guidance asserts that very few applicants will be found to be destitute. No exception is made for those granted leave on Article 8 or 'best interests of the child' grounds following a refusal of asylum. No mechanism is proposed for varying the terms of that leave to remain to provide access to public funds in response to a change in circumstances.

These measures will inevitably impact heavily on women, especially women caring for children, because women's pay is generally more than 15% lower than male wages,²⁵ and women with children are more often restricted to part-time and low-paid work, (See Article 11) but, unless found destitute at the time of her application, a woman may face the ensuing 30 months' leave to remain without access to top-up benefits, or access to housing, raising human rights implications. Those who cannot meet the 'exceptionality' requirements but who nevertheless have strong claims under Article 8 ECHR or 'best interests of the child' will have no recourse to legal aid, as legal aid for immigration cases will cease from April 2013. This means that many women (not working or on low wages) will be simply unable to progress their cases.

Finally, the new Rules introduce tougher requirements on spouses and partners applying for settlement (permanent residence) in the UK, that they should be required to understand everyday English.²⁶ However, there is no support or English for Speakers of Other Languages (ESOL) provision for these people despite the fact that access to ESOL is feminised (66% of people accessing ESOL in 2010 were female).²⁷ Since August 2011 only those claimants receiving 'active' benefits can be fully funded to access ESOL provision i.e. only claimants getting: Jobseeker's Allowance (JSA), or Employment and Support Allowance (ESA).²⁸ Concern has been expressed by the National Institute of Adult Education that women, refugees and migrants on very low wages will be the most affected by the cuts and these changes will also have a negative impact on integration.²⁹ (See Appendix: 6)

There is also a need for accessible and affordable interpretation services, for example for older migrant workers,³⁰ to enable them to access services to meet their needs.

²⁵ The Fawcett Society <http://www.fawcettsociety.org.uk/> Accessed 08/05/2013

²⁶ UK Border Agency, *Family Migration – A Consultation*, August 2011 <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/family-migration>

²⁷ Action for ESOL (2011) *ESOL News*, Issue 1, September 2011 <http://esolnews.org/2011/09/12/esol-news-issue-1/>

²⁸ Hubel, S. and Kennedy, S. (2011) *Parliamentary briefing: Changes to funding for English for Speakers of other Languages (ESOL) courses*, House of Commons Library, <http://www.parliament.uk/briefing-papers/SN05946.pdf>

²⁹ Oxley, S. (2011) 'ESOL cuts "not thought through", claims Niece', *TES Connect*, 18th February 2011 <http://www.tes.co.uk/article.aspx?storycode=6070629>

³⁰ National Council of Women of Great Britain: Consultation March 2011, also update from the National Social and Employment Policy Committee and the Nottingham and Nott's Branch, March 2012, in Slater, E. (2012) *NGO Thematic Shadow Report: Older Women's Rights in the United Kingdom*. Older Women's Network, Europe and National Alliance of Women's Organisations <http://thewomensresourcecentre.org.uk/wp-content/uploads/olderwomensrightsukNGOthematic.pdf>