



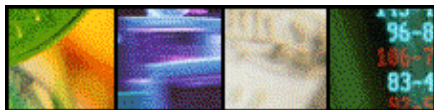
Women from Abroad: Finding a Way through the Maze for Survivors of Domestic Violence: Allan Norman of Celtic Knot responds to 'Women with No Recourse to Public Funds' in The Briefing, Issue 1

*The Briefing, Issue 1 carried an article in which Hamida Dossa and Michael Patterson "try to make sense of a complex situation" where women survivors of domestic violence have no recourse to public funds. As the article reflects, there is no denying the complexity. In this article, I try to impose some structure on that complexity.*

## Terminology

To begin with, there is a need to understand the significance of various terms.

- "No Recourse to Public Funds" is a term that is drawn from a condition that is often attached to the grant of leave to enter or remain in the United Kingdom. Having recourse to public funds is technically a breach of those terms that could prejudice a future immigration application; in practical terms, however, it is not the main problem for women from abroad who experience domestic violence. The main problems are:
- Women "subject to immigration control". This term is defined in section 115 of the Immigration and Asylum Act 1999. Being subject to immigration control has two relevant consequences: (1) making the woman ineligible to claim most state benefits. The public funds rule does not directly make women ineligible, but people with no recourse to public funds will also be subject to immigration control. It is this that makes them ineligible for benefits – and makes other women ineligible, even if they have no conditions attached to their leave to remain at all! Additionally (2) limiting the circumstances



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in which social services can provide assistance to women without children.

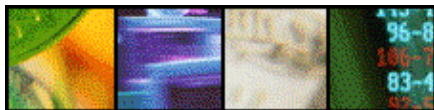
- Women “in an excluded class”. Excluded classes are defined in schedule 3 to the Nationality, Immigration and Asylum Act 2002 as amended . This is the notorious provision under which children may be separated from their parents. Some of the excluded classes – such as European citizens and their dependants – are not “subject to immigration control”, but being in an excluded class further limits their right to social services support.
- Women without a “right to reside”. This test amended social security legislation from May 2004, effectively making a “right to reside” an additional condition of entitlement to means-tested benefits. This group is not identical to any of the three above.

The starting point: determine immigration status

There are fundamental problems with making the “domestic violence rule” the starting point for an analysis of the support rights of women from abroad. The Rule has a narrow application, to women who enter the UK with entry clearance giving them limited

leave linked to their marital status, and who experience domestic violence and a breakdown in their relationship within that period of leave (two years). The fundamental problem: domestic violence directed at women from abroad is by no means restricted to such women, and we need a structured understanding that will also cover:

- Women who enter the country without any form of leave;
- Women whose leave has expired. This is a very significant issue, as it is common for women to already be overstayers when they approach refuges for assistance, and this status makes them unlawfully present and therefore much more vulnerable than those whose leave has not expired;
- Women whose immigration status is unconnected with their marital status. This includes those who entered the country with leave for some other purpose, and those who entered to claim asylum;
- Women whose status is connected with their marital status, but in other ways. In particular many BME women have entered this country



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from other European countries that have granted refugee status or even citizenship to their partners. They will derive their status from European law and the Domestic Violence Rule has no application.

The starting point for accessing support, therefore, has to be to determine immigration status. Specifically, establishing whether the woman is subject to immigration control and/or in an excluded class and/or without a right to reside. Only at this point is it possible to work out what rights to support the woman may have.

Where can survivors of violence look to for support?

Once again, let's remind ourselves of the bigger picture. Too readily, the thought processes of those organisations to whom women turn for accommodation and support go something like this: "we rely on housing benefit income, therefore we need to know that people who turn to us are eligible for housing benefit."

Yet housing benefit is only one of a number of ways in which the costs of supporting women from abroad might be met. A better starting point would be: "this

woman needs accommodation and subsistence support. Is there anywhere she can turn to for that support?" This wider picture will throw up consideration of all of the following:

- **Social Services funding** This article can only scratch the surface of the possibilities of Social Services funding, but the true bottom line is that there is a wide range of circumstances in which Social Services (or whatever they have called themselves these days in your area!) have powers and duties to operate as a welfare state of last resort, including to arrange and fund the full costs of accommodation and subsistence packages. These include obligations to children, families, carers, pregnant mothers, sick, elderly, young, disabled or otherwise vulnerable adults, and sometimes including adults who are vulnerable just because they are destitute.
- **NASS (National Asylum Support Service)** NASS clearly has obligations to accommodate and support asylum seekers. What is less well known (and more problematic, because of the problems of recording claims and of limited knowledge of officials) is that NASS owes duties to people who make a freestanding



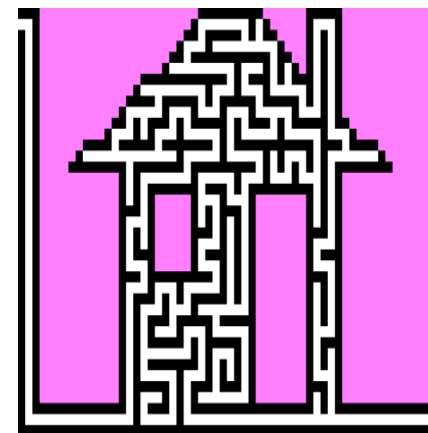
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claim to remain here on human rights grounds, including Article 8 (family life) claims. Potentially this may include, for example, women whose children are British because the father is British even though they themselves have no permission to be here.

- **Supporting People funding** As the article in Briefing, Issue 1 makes clear, there is no limit on the use of Supporting People funding for women from abroad. The proportion of the total costs of support that are met from this source vary hugely, but the larger the proportion of costs borne by Supporting People, the smaller any shortfall for the accommodating organisation...
- **Charitable funding** The Last Resort Fund administered by Women's Aid is probably the best known directly relevant source of funding. It is notoriously inadequate to meet the potential need – the generous rhetoric of Baroness Scotland when launching the Fund was in stark contrast to what she had to say in rejecting Womens Aid's proposed amendments to the Domestic Violence Crime and Victims Bill that would if enacted have rendered the Fund almost obsolete. The Last Resort Fund may be

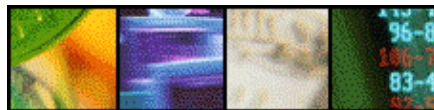
the best known, but it is not the only source of charitable funding...

Finding a way through the maze



Immigration status provides a number of different possible starting points for the journey through the maze; while the possible sources of funding set out above provide a number of possible finishing points.

Whether a person is subject to immigration control and whether they have the right to reside are the first questions to ask. The answers need to be no and yes respectively for the woman to be able to access conventional housing benefit.



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I suggest reviewing whether a claim for international protection (a human rights or asylum claim) has been made or could be made comes next. The details of any such claim will determine the possibility of NASS support.

Even where there is a possibility of NASS support, social services should also be considered, if the woman falls into any of the groups outlined above to whom social services might owe a duty. Being subject to immigration control will change the test for social services support, but will not remove the possibility of support. Being in an excluded class will make it necessary to demonstrate a human rights obligation to provide such support, but "excluded" still does not mean "completely" excluded from support.

Sadly, in between the starting and finishing points are a number of artificial hurdles in addition to the hurdles created by the complexity of the law itself:

- Financial constraints on those implementing the various schemes have resulted in the creation of a number of artificial barriers to the provision of support that are to do with rationing and have no basis in law.
- Ignorance of the law on the part of those who are supposed to implement it is also widespread.
- Racism, prejudice and other forms of discrimination also prevent women accessing support to which they might otherwise be entitled.
- Fear and sometimes threats that the woman's immigration status will be used against her – threats of criminal action and deportation are both common.
- "In interviews with social workers, Duvell and Jordan (2000) found that teams were operating well below the standards seen as acceptable for UK citizens. Their study illustrated the fact that social workers 'will volunteer to do the "dirty work" of social policy, even when this involves intentional and systematic deprivation by official agencies, of the means of dignified existence'..." (Humphries, B "An Unacceptable Role for Social Work: Implementing Immigration Policy" in *BJSW* volume 34 no.1 January 2004)

### ***More information***

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[Southall Black Sisters](#) has recently published a [guide to the law in this area](#).

There is a useful [letter from the Home Office to local authorities](#) to remind them of their powers and obligations.

A sampler from the training course 'Destitution, Immigration Status and the Law' is available on the [Celtic Knot publications page](#), which also has links to articles in Professional Social Work about social workers' obligations. (The fully hyperlinked and updated materials are available as an online resource to course attendees).

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***financial matters to survivors of domestic violence.***

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