

## 2. Support options: the rights and entitlements of migrant survivors of VAWDASV



## Introduction

Being subject to immigration control often makes it harder for survivors of VAWDASV to seek help, leave an abusive or exploitative relationship, and access support. However, it **does not** mean that there is no statutory support to which they are entitled.

This section sets out the principal routes for sourcing funding for the accommodation and support of migrant survivors who are subject to immigration control. These are:

- Social Services Support
- The Destitution Domestic Violence Concession and the Domestic Violence Rule
- Home Office Asylum Support
- National Referral Mechanism
- Lifting the NRPF restriction through a 'change condition of leave' application

## Temporary Additional Local Authority Powers: COVID-19 and 'Everyone In'

In March 2021 the High Court clarified that local authorities have the power to accommodate a person with NRPF and who is normally ineligible for housing/homelessness assistance and for social services support, in order to save lives by alleviating the effect of the Covid-19 pandemic. This means that, as long as Covid-19 remains a public health emergency, a council housing/homelessness department cannot refuse to accommodate someone on the basis that they do not have legal power to support someone with NRPF.

The judgment is available [here](#); for a full explanation see [NRPF Network](#).

## Social Services Support – a ‘safety net’ for all

At the outset, it is important to highlight the limited awareness of the **additional duty** on social services in Wales (not in England) to meet the care and support needs of single adults (as well as families with children) **where it is necessary to prevent abuse or neglect**. This sets Wales apart from England because it means that the care and support needs which Welsh social services have a duty to meet do not have to arise from the vulnerabilities set out in the eligibility regulations (e.g. mental / physical ill health, age, substance use). **A risk of experiencing abuse or neglect if the support was not provided is sufficient to trigger this duty.**

### Introduction

As stated in [Part 1](#) , social services support is not classed as a public fund. This means that, as long as they meet the relevant **eligibility criteria** and are **not excluded** from accessing social services support under other legislation, people who are subject to immigration control **can access social services support**.

This section sets out the **duties** of local authorities under the *Social Services and Well-being (Wales) Act 2014* (SSWBW Act) to assess and meet the care and support needs of individual adults and families. It also sets out the local authority's **power** to provide interim/ emergency support and accommodation pending the conclusion of the assessment and the creation of a care and support plan.

**Note that the duties and powers specified in the SSWBW Act only apply to Welsh local authorities.** The relevant legislation for English local authorities is the *Care Act 2014 and the Children Act 1989*.

### Assessing needs

Under the *Social Services and Wellbeing (Wales) Act 2014* (SSWBW Act), local authorities **must** carry out an assessment of the adult, child, and/or carer where they **may** have needs for care and support.<sup>1</sup> This is a very low threshold for triggering the duty to assess. This duty is mandatory and arises regardless of their immigration status.

The Welsh Government is clear that “The absence of a pending immigration application must not prevent an assessment being carried out or interim support being provided when this is necessary.” ([Welsh Refugee Coalition and Welsh Government, 2020](#)).

<sup>1</sup> Under Sections 19 [adults], 21 [children], and 24 [carers].

## Provision of Interim Support

Local authorities have the **power** to meet needs whether or not it has completed a needs assessment or a financial assessment.<sup>2</sup> Although this is **not a duty**, there is nothing to prevent them from providing this support.

The Welsh Government is clear that “assistance should not be refused for this reason [insecure or restricted immigration status] alone” (Welsh Refugee Coalition and Welsh Government, 2020).

Moreover, a failure to provide support could breach the family’s rights under the European Convention of Human Rights (ECHR) if they are likely to have no other choice but to return to the perpetrator(s), which would result in further inhuman and degrading treatment contrary to Article 3 ECHR.

## Provision of support following Care and Support Needs Assessment

### Children

Local authorities have a duty to meet the care and support needs of children who meet the criteria specified in the Eligibility Regulations or where it is necessary to prevent (a risk of) abuse or neglect.<sup>3</sup> When considering how best to meet children’s needs, local authorities must have regard to the importance of promoting the upbringing of the child by the child’s family, in so far as doing so is consistent with promoting the well-being of the child.<sup>4</sup> Moreover, there is a duty to maintain family contact insofar as it promotes the child’s wellbeing.<sup>5</sup>

Clearly, failing/refusing to meet the care and support needs of the non-abusive parent of the child would not be in the best interests of the child. This would be contrary to Article 3 of the United Nations’ Convention on the Rights of the Child. It would also risk breaching both the child(ren) and mother’s human right to a family life under Article 8 of the ECHR. Therefore, where a child is assessed as having care and support needs, social services should ensure that support is provided to the child’s mother / carer too, even if the mother is not assessed as having eligible care and support needs.

### Adults

Local authorities in Wales have **duty** to meet the care and support needs of adults who meet the criteria specified in the [Eligibility Regulations](#).<sup>6</sup>

2 Under sections 36 [adults], 38 [children] and 45 [carers] of the SSWBW Act.

3 Under section 37 of the SSWBW Act.

4 Under section 6(4) of the SSWBW Act.

5 Under section 39 of the SSWBW Act.

6 Under section 35 (3) (a) of the SSWBW Act.

However, it is **section 35 (3) (b) of the SSWBW Act** which is most important to note and should ensure that most migrant survivors of VAWDASV can access this safety net of protection and support. This subsection places a standalone **duty** on local authorities to meet the care and support needs of adults **if they consider it necessary to protect the adult from abuse or neglect or a risk of abuse or neglect**.

## Eligibility for Support

The only restrictions on local authorities for providing support are contained within section 46 of the SSWBW Act and Schedule 3 of the *Nationality, Immigration and Asylum Act 2002*. They are as follows:

Section 46 of the SSWBW Act prevents local authorities from meeting need where the need arises solely because of destitution or the physical (or anticipated physical) effects of destitution. This means there must be some extra vulnerability over and above homelessness and lack of money (those listed in the [Eligibility Regulations](#), or a risk of abuse or neglect should the support not be provided).

Schedule 3 of the Nationality, Immigration and Asylum Act 2002 prohibits five categories of persons from receiving social services support:

- a. A person who has refugee status abroad (and their dependants);
- b. Nationals of EEA states other than the UK (and their dependants);  
\*\*since January 1st 2021, this exclusion only applies to an EEA national who is 'in breach of immigration laws'. I.e. this exclusion does not apply when an EEA national has settled status, pre-settled status, or leave to enter as a visitor.\*\*  
(see [NRPF Network](#))
- c. Failed asylum seekers who fail to comply with removal directions (and their dependants);
- d. A person unlawfully in the UK who is not an asylum seeker; and
- e. A person treated as an asylum seeker only by virtue of the fact that they have a dependent child and who has been certified by the Secretary of State as having failed to take reasonable steps to leave the UK voluntarily (also includes the dependant of such a person).

However, there are four exceptions to this prohibition. The prohibition does not prevent:

- a. The provision of support and assistance to a British citizen;
- b. The provision of support and assistance to a child;
- c. The exercise of a power or performance of a duty if, and to the extent that, its exercise or performance is necessary for the purpose of avoiding a breach of:
  - i. the European Convention on Human Rights; or
  - ii. rights under the EU treaties.

In other words, even if the survivor falls into one of the “exempt categories”, local authorities may still be under a duty to meet their care and support needs if it is necessary to avoid a breach of rights under the Convention through the Human Rights Act 1998. It is worth emphasising that the only way for the local authority to find out whether they have a duty is by undertaking a care and support needs assessment – which may then be followed by a Human Rights Assessment.

If these criteria are met (i.e. the need for support arises from more than destitution, AND the survivor’s immigration status is not included in the exemption list OR it is included, but failing to provide support would risk breaching their human rights, then **the duties owed to them under the SSWBW Act are the same as with any UK national. A failure to meet their needs would constitute a failure in the local authority’s duties under the SSWBWA.**

## The Domestic Violence Rule and the DDVC

Some migrant survivors of domestic abuse are eligible to apply for indefinite leave to remain (ILR) in the UK under the Domestic Violence (DV) Rule. This is sometimes referred to as the SET DV application.

A successful application for ILR would regularise the survivor's immigration status and enable them to work, study and access welfare benefits and housing support.

If a survivor is eligible and intends to apply for ILR under the DV Rule, *and is destitute and needs financial help*, they can make an application under the Destitution Domestic Violence Concession (DDVC) for 3 months' temporary leave to remain while applying for ILR. This leave to remain replaces the applicant's previous leave as a spouse/civil partner. During this three-month period, the survivor will be able to access public funds, including homelessness assistance and housing benefit.

**Very important:** If the applicant does not apply for ILR under the domestic violence rule during this three-month period, when the temporary leave expires they will be considered an 'overstayer' with no permission to be in the UK.

### Who is eligible to apply for ILR under the Domestic Violence Rule?

Individuals whose most recent leave to enter or remain was as the spouse, civil partner or unmarried partner of someone who is British or has indefinite leave to remain (it does not matter whether this visa has expired – it just has to be the most recent one); whose relationship was subsisting at the time the visa was issued; and whose relationship has broken down because of domestic violence.

### What should I do if I'm supporting someone whom I think may be eligible for the DDVC under the Domestic Violence Rule?

**Do NOT** tell the survivor that they could make an application for ILR under the DV Rule.

**Only regulated immigration solicitors or barristers are permitted to advise individuals on their immigration options.**

Instead, offer to help the survivor to arrange an appointment with a regulated immigration advisor or solicitor to get advice on their immigration options.

Ensure that any application for a DDVC is e-mailed, not sent via post.

## What happens if the Home Office takes longer than the duration of the DDVC leave to remain to make a decision on the ILR application?

If the survivor submits an application for ILR before the end of the three-month temporary leave to remain, this leave to remain is automatically extended until the Home Office makes a decision on the ILR application. This is called “Section 3C leave” (see [Practical Law: Section 3C Leave](#)). The law on this is defined under section 3C of the *Immigration Act 1971*. Sometimes the Department for Work and Pensions may not understand that the survivor still has a right to claim public funds and might try to terminate their benefits. If this happens, it can help to send them a letter explaining what Section 3C leave is, and what the survivor’s rights are.

### Useful resources on the DV Rule and DDVC:

- Rights of Women: [Domestic violence and immigration law: the DV rule](#)
- Project 17: [Destitution Domestic Violence Concession](#).



## Home Office Asylum Support

Asylum seekers are prohibited from accessing mainstream welfare benefits and housing / homelessness support. In most cases, they are also prohibited from working. If the asylum claim is successful (i.e. the individual is granted refugee status, humanitarian protection, or discretionary leave to remain), they will then usually be entitled to work and claim mainstream benefits.

While their asylum claim is being processed, they may be eligible to access accommodation and/or subsistence support from the Home Office.

### Section 95 Support

Under section 95 of the *Immigration and Asylum Act 1999*, destitute asylum seekers are entitled to apply for accommodation and/or subsistence support from the Home Office while their asylum application and any subsequent appeal is being considered.

For information about the eligibility criteria and duration of section 95 support, see Asylum Support Appeals Project (ASAP)'s factsheet [here](#).

### Section 98 Support

It can take several weeks for the Home Office to process applications for section 95 support. Section 98 support is a form of temporary support that is provided to asylum seekers who appear to be destitute and who are awaiting a decision on their application for section 95 asylum support. See ASAP's factsheet on section 98 support [here](#).

### Section 4 Support for Appeal Rights Exhausted (refused) Asylum Seekers

Destitute asylum seekers who have exhausted all rights of appeal may still be able to obtain Home Office support under section 4 of the *Immigration and Asylum Act 1999*. For information about the eligibility criteria and duration of section 4 support, see Asylum Support Appeals Project's factsheet [here](#).

### Asylum Seekers who are survivors of Domestic Abuse

It is important to note that although the level of subsistence provided through asylum support is low and accommodation is normally provided on a 'no choice' basis, the accommodation provided by the Home Office *must be adequate for the needs of the asylum seeker and their dependants*. Special measures must be taken, therefore, when an asylum seeker discloses domestic abuse.

This [factsheet](#) by Asylum Support Appeals Project (ASAP) identifies some of the key points in the [Home Office Guidance](#) for providing asylum support for survivors of domestic abuse, and highlights that survivors of so-called 'honour'-based abuse, such as FGM and Forced Marriage, are recognised within the definition of domestic abuse. The guidance also specifies that any need for specialist support for children, to help them recover from the impact of DA, should also be taken into account when determining what is suitable.

Some of the key points are set out here, but it is advisable to read ASAP's factsheet and the Home Office Guidance in full.

#### For survivors who are already accessing asylum support

- At point of disclosure to the Home Office, a woman is to be believed, without the requirement for any corroborating evidence of DA.
- Home Office Accommodation providers must **immediately offer safe alternative accommodation.**
- Any alternative accommodation **must be suitable for the needs of the woman and any children.** This may mean that she is accommodated near to specialist services, such as services for Black and minoritised women who have suffered abuse, or a Rape Crisis centre.
- A woman should be referred to a specialist DA service for advice and support.
- The Home Office should **act on the recommendations of any specialist advisor in relation to safe accommodation options.**
- Recognition that a woman may wish to remain in her current accommodation and that the Home Office may need to **consider re-locating the perpetrator.**
- Recognition that a woman may want to remain in her current area because, for example, she has children in local schools and other support networks.
- **Under no circumstances is an accommodation provider permitted to expect a survivor to return to accommodation with the perpetrator of abuse.**

### For survivors who need access to asylum support and have an active claim

- Under no circumstances should a woman be required to provide evidence of their destitution at the initial stage following a disclosure.
- A woman should never be asked to seek destitution evidence from a perpetrator.
- A woman should be believed at the point of disclosure and corroborating evidence of DA should not be required for support purposes.
- Recognition that if a woman's continued occupation of accommodation will lead to a risk of DA, that occupation is not adequate, and the woman will in all normal circumstances be eligible for Home Office funded accommodation.

### For women applying for section 4 support

- There is no explicit Home Office commitment to accommodating women in safe alternative accommodation prior to their eligibility for support being established.
- However, the guidance does specify that if the victim is a failed asylum seeker and not therefore eligible to receive support under section 95 or 98 they may nonetheless be eligible to receive accommodation under section 4(2), which may also be provided in a refuge, or through the provision of initial accommodation as a last resort in an emergency situation (i.e. prior to a full assessment of section 4 eligibility being established).

## Refuge accommodation

The guidance establishes that women who are not currently accommodated by the Home Office, but who are eligible for section 95 support, may be provided with section 98 (interim) support through the provision of refuge accommodation. Similarly, if a woman is a refused asylum-seeker who may be eligible for s4 support, she may also be provided with accommodation in a refuge following disclosure.

**Question:** If a survivor is already in refuge, and while in refuge decides to make an asylum claim and applies for section 95/98 support, would the Home Office be obliged to take over the funding of the refuge space?

**Answer by Asylum Support Appeals Project:** Yes, if the survivor is eligible for s.95/98 support the Home Office would be obliged to take over the funding of the refuge space if this is the most appropriate accommodation for meeting her needs. They would probably commit to doing this from the point at which the original refuge funding was due to end. If the original refuge funding was open ended, the refuge would probably need to advocate that the Home Office take over the funding as soon as possible because the original funding was only an emergency/ interim measure.

### Useful resources on the rights and entitlements of asylum seekers and appeal rights exhausted asylum seekers

- **Asylum Support Appeals Project (ASAP) webinar:** An Introduction to Asylum Support for Survivors of Domestic Abuse. Access here: <https://asaproject.clickmeeting.com/webinar-recording/fRL973aa2>.
- See **Appendix 2** for the training slides used in the webinar, as well as related policy documents and other materials.

ASAP have also produced a series of factsheets on the rights and entitlements of asylum seekers and the asylum processes: available on their website [here](#). In particular, see factsheet [Asylum Support for Survivors of Domestic Abuse](#).

They also have an [advice line](#) – 020 3716 0283 – which operates on Monday, Wednesday and Friday from 14:00 – 16:00.

- **Home Office Guidance:** [Domestic abuse: responding to reports of domestic abuse from asylum seekers](#).
- **Refugee Council factsheet:** [Asylum Support](#)

### **Note: Unaccompanied Asylum-Seeking Children (UASC)**

If an asylum seeker claims or appears to be under the age of 18 and is unaccompanied, they should be supported under the provisions of the *Social Services and Wellbeing (Wales) Act 2014* (see section on Social Services Support ). Home Office support does not apply. See Welsh Government leaflets on supporting unaccompanied asylum-seeking children [here](#).

## Modern Slavery and Trafficking: National Referral Mechanism (NRM)

Survivors of trafficking or modern slavery can apply for discretionary leave to remain (and hence access to benefits, right to work and study) if, following a referral to the National Referral Mechanism, they receive a 'conclusive grounds decision' that they are a survivor of trafficking. While they are awaiting a 'conclusive grounds decision', and for a minimum of 45 days subsequently, they are entitled to specialist support designed to help them to recover.

### The National Referral Mechanism

Suspected survivors of trafficking should be referred to the National Referral Mechanism (NRM). Once referred, the Single Competent Authority (the UK's decision-making body regarding individuals referred as potential survivors of modern slavery) will make a "reasonable grounds decision", normally within five working days of referral. A positive "reasonable grounds decision" means that the SCA "suspects but cannot prove" that an individual is a potential survivor of modern slavery. This enables the individual to access various forms of support, including, but not limited to, accommodation and subsistence. This support will be provided by the Salvation Army and/or partner organisations, and will last until a "conclusive grounds decision" is made (no sooner than 45 days after the "reasonable grounds" decision).

A "conclusive grounds decision" determines whether 'on the balance of probabilities' there are sufficient grounds to decide that the individual is a victim of modern slavery. Following a positive conclusive grounds decision, survivors will receive at least 45 calendar days of support during the move-on support period. During this time they are expected to decide whether to return to their country of origin or apply for discretionary leave to remain.

See the [Home Office Modern Slavery Statutory Guidance](#).

#### **Note that only 'first responder organisations' can make a referral to the NRM.**

They have a duty to make a referral if they believe that the individual is a potential victim of trafficking or modern slavery.

The specialist VAWDASV services who are 'first responder organisations' in Wales are **BAWSO** and **New Pathways**.

**If you have reason to believe that a survivor you are supporting is a victim of trafficking or modern slavery, you can ring Salvation Army's Helpline on 0800 808 3733, which operates 24 hours a day, 7 days a week.**

**Alternatively you can contact BAWSO / New Pathways directly.**

Local authorities, the police, Salvation Army, Migrant Help, Barnardo's, and the Refugee Council are also first responder organisations. A full list of first responder organisations in England and Wales can be found on the Home Office website [here](#).

### Useful resources on the National Referral Mechanism

- Salvation Army - [Supporting Survivors](#)  
Salvation Army 24/7 Helpline - 0800 808 3733
- NRPF Network - [Victims of trafficking and modern slavery](#)
- Unseen - [UK Modern Slavery 24/7 Helpline](#) - 0800 01 21 700
- Rights of Women - Trafficking and the [National Referral Mechanism](#)

## Applying to lift NRPF condition through a 'change condition of leave' application

Migrants with leave to remain under the family and human rights routes can apply to have the NRPF restriction lifted by making a 'change of conditions' application if there has been a change in their financial circumstances that puts them at risk of destitution.

See further information on Project 17's Guide [here](#).

### Hong Kong British National (Overseas) visa holders

In March 2021 the UK Government [changed the Immigration Rules](#) so that residents of Hong Kong who hold a British National (Overseas) visa can apply for a change of conditions to their visa to have the NRPF condition lifted if they become destitute or at risk of imminent destitution.

Further information about the British National (Overseas) status and visa can be found on the [NRPF Network's Website](#).

*Reminder: it is imperative that the survivor obtains legal advice from a qualified lawyer / advisor before making any applications to change the type, or condition, of their leave to remain.*

## Flowchart of support options

Referral accepted for survivor subject to immigration control (often referred to as "having NRPF")

Consider what is known about the survivor's immigration status and arrange an appointment with a regulated immigration advisor or solicitor at the earliest opportunity:

- might they be eligible to apply for ILR under the DV Rule (and therefore for the DDVC), or to lift the NRPF condition?
- have they got a pending asylum claim and are they accessing Home Office Asylum Support?
- might they be eligible to apply for settled or pre-settled status under the EUSS?
- also consider whether there is evidence of modern slavery or human trafficking?

If it appears likely that the survivor may be eligible for the DV Rule and the DDVC, or to lift the NRPF condition, or for Asylum Support, the EUSS, or referral into the National Referral Mechanism, pursue these leads first by:

- contacting Bawso or New Pathways (for the NRM);
- contacting the EU Citizens' Immigration Advice Service (for the EUSS);
- contacting [Asylum Support Appeals Project helpline](#);
- arranging an appointment with an immigration solicitor for the DV Rule / DDVC or lifting the NRPF condition.

**DO NOT** give any advice to the survivor suggesting they may be able to qualify for indefinite leave to remain via the DV Rule, the NRM, or any other route, but encourage and help the survivor to attend an appointment with a regulated immigration advisor or solicitor.

However, if the immigration solicitor ascertains that they are eligible to apply for indefinite leave to remain under the Domestic Violence Rule, and the survivor decides to do so, you can support them with their application for the Destitution Domestic Violence Concession. Similarly you can support them with any asylum support application, but in both cases it is advisable to have the applications checked by a specialist.

In all other cases where it does not appear that they may be eligible for any of the above options, contact Social Services immediately to request a care and support needs assessment and the provision of interim support on a 'without prejudice' basis, citing the relevant legislation (see template letters in Part 3 ). Make sure this is **in writing** (it is fine to make the phone call first but make sure you follow up immediately with an email / letter reiterating what was just requested / agreed to).

**If social services refuse to undertake the assessment, consider completing a pre-action protocol challenge letter as this is likely to be unlawful (see Part 4 - Challenging Public Services ).**

As soon as you have enough information about the survivor's situation, follow up with a letter to social services manager stating what the survivor's needs are (e.g. accommodation – if so, refuge or dispersed; subsistence; any other costs). Cite the relevant duties under the legislation which oblige them to meet those care and support needs (see template letters in Part 3).

**If you do not get a positive decision from social services and/or if they refuse to meet care and support needs (and the survivor has not been referred to the NRM or has been denied Asylum Support), demand a written explanation of the decision. If there does not appear to be any reasonable justification for denying social services support, consider whether social services have breached their duties to assess eligibility and/or provide support under the relevant legislation. If so, you may want to consider completing a pre-action protocol (PAP) letter to challenge them (see Part 4: Challenging Public Services ).**