

8. Frequently Asked Questions



Domestic Violence Rule (DVR) and the Destitution Domestic Violence Concession (DDVC)

What is the difference between the DVR and the DDVC?

The Domestic Violence Rule is a provision in the Immigration Rules that allows those who are eligible to apply for indefinite leave to remain (ILR) in the UK as a victim of domestic abuse. Obtaining ILR gives migrants the same entitlement to social housing, welfare benefits, work, renting, and healthcare, as any British citizen.

The DDVC is a form of temporary leave to remain which gives access to public funds for destitute survivors on spousal / partner visas for 3 months while they apply for indefinite leave to remain under the Domestic Violence Rule (DVR). This replaces the survivor's existing leave to remain (spousal/partner visa), meaning that the survivor would be unable to go back to their spousal visa.

How do I assess whether a survivor may be eligible to apply for Indefinite Leave to Remain (ILR) under the DV Rule?

The first point to remember is that it is not your role to determine whether someone is eligible. This must be assessed by a regulated immigration advisor or lawyer. However, the following questions can help to give you an idea of whether a survivor may be eligible:

Question 1: is the survivor's most recent leave to remain a partner or spouse visa?

Yes = Proceed to next question. No = survivor not eligible.

Question 2: does the survivor's spouse or partner have ILR in the UK or British citizenship?

Yes = Proceed to next question. No = survivor not eligible.

Question 3: has the survivor's relationship with the spouse/partner broken down because of domestic abuse under the Home Office's definition of domestic abuse? (remember that domestic abuse can be perpetrated by family members as well as partners/ex-partners)

Yes = Survivor likely to be eligible. No = survivor not likely to be eligible.

I am supporting a survivor who was on a spousal visa who has fled due to domestic abuse but their visa has expired – can they still apply for ILR under the DV Rule?

Yes. It does not matter if the visa has expired – what is considered is the ‘most recent grant of leave’.

I am supporting a survivor who has already applied for the SET(DV) (ILR under the DV Rule) but is destitute and needs to access benefits. Can she apply for the DDVC now?

Yes, it's possible to vary the application, but it is highly advisable to first seek advice from an immigration lawyer / regulated advisor who can advise her on the merits and consequences of withdrawing a SET(DV) application.

What should I do if I think someone I'm supporting may be eligible to apply for Indefinite Leave to Remain (ILR) under the DV Rule?

Support and encourage the survivor to access an appointment with a regulated immigration advisor or lawyer to discuss her options.

Can I give advice to the survivor on her immigration options?

No – it is a criminal offence for anybody who is not a regulated immigration advisor or lawyer to advise someone on their immigration options.

Can I support the survivor to make an application for ILR under the DV Rule and/or an application for the DDVC?

Legally, yes. There is nothing in law prohibiting anybody from supporting applicants to complete their applications (e.g. translating and filling in the form). However, it is advisable to seek support from an immigration lawyer to complete these applications – and this does come under the scope of legal aid. Remember that you cannot advise on which applications the survivor should complete because this would count as immigration advice.

Is the DDVC application long?

No. It is only 9 pages long. You can download the form [here](#).

How much does it cost to apply for the DDVC?

There is no cost attached to this application. It is free.

Does the survivor need formal proof of identity in order to apply for the DDVC?

No. The DDVC application form does not require any identity documents to be submitted.

Applications for ILR are expensive. Will our service have to cover the cost of the application if the survivor is destitute or otherwise cannot afford the fee?

The Home Office [guidance](#) states that a person who is destitute will be exempt from paying the application fee for indefinite leave to remain (ILR) as a victim of domestic violence. A person is considered destitute if they either:

- do not have adequate accommodation or any means of obtaining it (whether or not their other essential living needs are met), or
- have adequate accommodation or the means of obtaining it, but cannot meet their other essential living needs.

The Home Office guidance further states that an applicant who claims to be destitute must:

- submit the application for ILR (SET(DV)) but not submit the specified fee
- *provide evidence* that they have no means to pay the specified fee.

It is very important to provide sufficient evidence of destitution in the initial application – see the Home Office's guidance [here](#).

This is something a regulated immigration advisor or lawyer will be able to advise on.

Social Services Assessment and Support

Do Social Services have to undertake a needs assessment of adult survivors as well as any children?

Yes – the threshold at which social services' duty to assess is triggered is very low for both adults and children. **Adults:** *"Where it appears to a local authority that an adult may have needs for care and support"* (section 19 of the Social Services and Wellbeing (Wales) Act 2014). **Children:** *"Where it appears to a local authority that a child may need care and support in addition to, or instead of, the care and support provided by the child's family"* (section 21 of the Social Services and Wellbeing (Wales) Act 2014). **This duty applies regardless of their immigration status.**

Do Social Services have to fund the care and support needs of survivors while the application is being undertaken?

No – there is no duty to fund the care and support needs of individuals/families while awaiting the outcome of the assessment. However, they do have a **power** to provide this support and should consider whether failing to provide this interim support would be a breach of any of their overarching duties under the *Social Services and Well-being (Wales) Act 2014*, especially that of promoting the well-being of people who need care and support.

Social Services are refusing to undertake a needs assessment of the child(ren)'s mother. What can I do?

Send a letter to the social worker, manager, and the director of adult and/or children social services reminding them of their duties under the *Social Services and Well-being (Wales) Act 2014* (see Part 3 of this support pack for a template).

If you or a colleague have completed DPG's e-learning training on Public Law (see Part 4 of this support pack), and social services do not respond or continue to deny your request for an assessment, complete a Pre-Action Protocol Letter and send to DPG solicitors to check for legal accuracy before sending to the Social Services manager and director(s).

Which local authority is responsible for undertaking the needs assessment?

The local authority of the area in which the person / people requiring an assessment presents. In other words, if a survivor flees from Cardiff to a refuge in Wrexham, and the refuge provider in Wrexham requests a social services needs assessment, it is Wrexham local authority who is responsible for undertaking the assessment. This is set out under sections 19 (2) and 21 (2) of the *Social Services and Well-being (Wales) Act 2014*.

Can social services take a survivor's children into care?

Social services have been known to threaten to take survivor's children into care. However there is no legal basis for them to do this unless it is in the child's best interests (e.g. necessary to protect them from harm where the source of that harm the child's parent/s or carers).

How much should social services provide in meeting care and support needs?

There is no law specifying how much, or in what form, social services need to provide support. However, there is a general expectation that the individual / family's "essential living needs" must be covered. There is a legal judgement (relating to the "essential living needs" criterion in asylum support eligibility) which name the following as essential living needs (in addition to subsistence):

- essential household goods such as washing powder, cleaning materials and disinfectant;
- nappies, formula milk and other special requirements of new mothers, babies and very young children; non-prescription medication;
- and the opportunity to maintain interpersonal relationships and a minimum level of participation in social, cultural, and religious life.

The judgement also set out that the costs associated with travel by public transport to attend appointments with legal advisors, where this is not covered by legal aid; and telephone calls to maintain contact with families and legal representatives, and for necessary communication to progress their asylum claims, might also be considered 'essential living needs'. See summary of the judgement [here](#).

Asylum Claims and Support

What should I do if a survivor I'm supporting has no current permission to be in the UK (e.g. has overstayed a visa and/or entered without permission) but would be at risk of harm if she returned to her country of origin?

If there may be risk of harm e.g. from so-called 'honour-based' abuse if she returned to her country of origin, she may be eligible to make an asylum claim. You can seek advice (for support services) from Asylum Support Appeals Project to consider whether this may be an option, and they can advise you on your next steps to support the survivor (see Part 6 of this support pack).

She may also be able to make a claim under humanitarian protection rules – it is therefore important that she sees a solicitor to explore all possible options.

A survivor I'm supporting has a pending asylum claim. Is she eligible for social services support?

Although she may be eligible for social services support, the local authority will argue that she (and any dependants) should be getting support from the Home Office through their Asylum Support Scheme. If she has been refused s.95 Home Office support and meets the eligibility criteria for social services support, social services may then have to investigate why she was refused Home Office support as part of a needs assessment.

Note that for unaccompanied asylum-seeking children, it is Social Services who are responsible for meeting their needs, not the Home Office.

National Referral Mechanism

What happens if I am already supporting someone because of domestic abuse and it becomes evident that they may be a victim of trafficking/modern slavery?

If you are not a 'first responder' organisation you should contact Bawso or New Pathways (or the Salvation Army) in the first instance, depending on the type of exploitation they've suffered. Because they are 'first responders', they have a duty to make a referral into the National Referral Mechanism if they believe someone may be a victim of modern slavery or trafficking.

Legal Aid

What is Legal Aid?

Legal aid is help given to people who cannot afford to pay for legal assistance. If your case is eligible for legal aid, the government will pay for the cost of advice and representation.

Is legal aid a public fund?

No. Legal aid is not classed as a public fund for immigration purposes.

How do I know if the person I'm supporting qualifies for legal aid in relation to immigration issues?

Survivors of domestic abuse who are eligible for the DV Rule are eligible for legal aid for immigration applications, as are survivors of modern slavery or human trafficking who have received a 'positive reasonable grounds decision'.

Asylum and humanitarian protection cases are eligible for legal aid. Legal aid is also available for cases involving Articles 2 and 3 of the European Convention on Human Rights (as incorporated into the Human Rights Act 1998). In other words, these are applications all based on the risk to an individual/family and their fear of returning to their country of origin.

You can check whether legal aid is available for your type of case by calling Civil Legal Advice on 0345 345 43 45 or by visiting the UK Gov website [here](#).

Can those with NRPF or other forms of immigration control access legal aid for family law (including non-molestation orders and other orders relating to domestic abuse)?

Yes, as long as they can evidence that they lack the financial means to pay the legal costs themselves. Because legal aid is not defined as a public fund for the purposes of immigration, it does not matter whether someone has NRPF.

Do all immigration solicitors offer their services under legal aid?

No – and there is a scarcity of lawyers who offer advice and representation under legal aid.

Where can I find legal aid solicitors?

You can search the UK Government's Legal Aid Finder website [here](#).

You can also join FLOWS as a service provider to get access to their database of other FLOWS partners who include immigration solicitors who provide legal aid (see Part 6 of this support pack).

If you cannot find a legal aid solicitor, **Asylum Justice Wales** provides free legal advice and representation for migrants with insecure immigration status (again, see Part 6 of this support pack).

Additional FAQs

Are children of survivors with insecure immigration status entitled to free school meals?

The Welsh Government's [guidance](#) on eligibility for free school meals provides a list of support payments which, if a child or young person's parents is receiving, entitles them to free school meals. This includes parents who are receiving asylum support, but does not mention those on social services support and/or NRM support. It is generally the case that individual local authorities implement their own policy on this, and this may differ from one area to the next.

The UK Government have temporarily extended eligibility for free school meals to children of some families with NRPF - see guidance on eligibility [here](#).

We have a client who has NRPF but has successfully claimed child benefit and other benefits. What should we do?

Ascertain whether she has lawful access; if she has been claiming by mistake, support her to stop claiming. She will have to pay back the child benefit and continuing to claim could jeopardise future applications for changes to her immigration status / conditions.

Can my client apply to have the NRPF condition on her leave to remain lifted?

Yes, if her leave to remain is on family life / human rights grounds and she can prove that she is destitute or at imminent risk of destitution, she may be eligible to apply. It is important to ensure that this is explored with a regulated immigration advisor or solicitor; there may be other options which are better.