

Chapter 11:

Supporting survivors with no recourse to public funds

11.1 Introduction

In this chapter, we look at the situation of women who have no recourse to public funds – that is, they are unable to access state benefits, including Housing Benefit, income-based Job Seeker's Allowance, Income Support, and so on⁸⁷, due to their immigration status. Women who have no independent source of income may be financially dependent on their abusers, and may feel they have nowhere they can go to escape the violence. Here we look at the options that might be available to them

to allow them to find safety.

It is a criminal offence for anyone to give immigration advice or services in the UK unless they are regulated by the Office of the Immigration Services Commissioner (OISC), a regulated solicitor, barrister or legal executive or exempted by Ministerial Order. Therefore, this chapter is intended as a general overview only, and is not intended as a resource to give detailed advice on immigration.

11.2 Who is affected by this?

The UK Border Agency (UKBA) controls and manages immigration and those wishing to extend their stay in the UK. Individuals subject to immigration control must show that they can maintain and accommodate themselves without relying on the state, or they might not be permitted to remain in the UK. In such cases, 'No Recourse to Public Funds' will be stamped in their passports. Several different types of visas (giving limited or insecure immigration status) give rise to this condition; for example, women could be on a work permit or a student visa, or have come here as the partner or spouse of someone who is already settled here. Women who come to the UK from countries which are not members of the European Economic Area (EEA) could be affected by this ruling, and their passports will be stamped accordingly. Some of them may wish to apply for further or indefinite

leave to remain in the UK; for example, if they want their work permit to be extended; or if they are on a spousal visa and wish to remain here.

Those who have no recourse cannot access local authority housing, nor are they eligible for help under the homelessness legislation; and they cannot claim any of the following benefits:

- income-based jobseeker's allowance;
- income support;
- income based Employment and Support Allowance
- child tax credit;
- working tax credit;
- social fund payments;
- child benefit;
- housing benefit;

⁸⁷ For a full list of public funds see below.

- council tax benefit;
- state pension credit;
- attendance allowance;
- severe disablement allowance;
- carer's allowance;
- disability living allowance.

However, someone with no recourse to public funds who is in the UK as the spouse of someone who is entitled to claim Tax Credits may be included within their claim.

People with no recourse to public funds

can access free legal advice for help with an application for indefinite leave to remain in the U.K (see below); and they are also entitled to most forms of healthcare free under the NHS. Also their children may receive state education.

There are very serious penalties if people unlawfully claim any type of benefit or support that counts as a public fund. Claiming public funds illegitimately is a breach of the conditions of entry to the UK, and this is a criminal offence. Breach of the conditions of entry might ultimately mean that leave to remain in the UK is revoked, and applications for further or indefinite leave are rejected.

11.3 Concessions for women experiencing domestic violence

Those who have come to the UK in order to marry or join a partner who is already settled here usually have to complete a two year probationary period (during which time they must stay with their partner) before they can make an application for indefinite leave to remain. However, if they can show evidence of domestic violence, they might be able to apply under the domestic violence rule for indefinite leave to remain in the UK (ILR)⁸⁸.

The domestic violence rule states that survivors will be entitled to ILR if all the following apply:

- i. They have been given permission to remain in the UK as the spouse, civil partner or partner of a person present and settled in the UK; (i.e. they are currently, or were recently, on a spousal visa).
- ii. They were in a continuing relationship with their spouse, civil partner or partner; i.e. they were living together when they arrived in the UK or were given the visa.

- iii. They can provide evidence that the relationship with their partner broke down permanently before the end of the probationary period and because of domestic violence.

'Evidence' of domestic violence can be demonstrated in a number of ways; for example, by a court order (such as a non-molestation order), a relevant conviction against the perpetrator; a police caution or a report confirming their involvement in connection with domestic violence, or a letter from a refuge organisation, backed up by medical or social work reports. Even if a woman is supported by a service provider, it is – in the experience of those working in this area - unfortunately very unlikely that her application for leave to remain in the UK will be accepted without the need to appeal, however.

Women who have over-stayed their leave to remain in the UK because they were unaware of their rights under these rules might still

⁸⁸This is set out in paragraph 289 of the Immigration Rules. See www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/

be able to apply on discretionary grounds if their application is submitted not long after the probationary period has expired; they will not, however, have a right of appeal.

From April 2012, migrant women leaving abusive partners and here on a spousal visa will be given access to benefits while their application for ILR is being considered⁸⁹. This will be funded by the Department of Work and Pensions (DWP), and survivors who are eligible should apply for funds from a Job Centre after that date. At the time of writing, it was not clear how long these benefits would last, and whether they would extend to cover time for an appeal, if necessary. For up-to-date information, visit the Home Office and UKBA websites. See www.homeoffice.gov.uk/publications/crime/call-end-violence-women-girls/vawg-action-plan?view=Binary

Prior to the introduction of the new scheme, the Home Office developed a pilot project

(from November 2009, and extended until the end of March 2012) called the Sojourner Project. Women who qualified under this scheme were entitled to 20 working days (4 weeks) of funded accommodation and support to enable them to submit an ILR application under the DV rule; followed by a further 20 working days (4 weeks) of funded accommodation and support whilst waiting for a decision on their application. The woman was also entitled to subsistence payments for herself and her children during this period⁹⁰. Applicants had to be accommodated in a refuge, and staff from the refuge made the application on her behalf.

However, there is as yet no provision for survivors with other immigration statuses; and those who are unable to apply for ILR, or who are refused it⁹¹ will not be able to claim. Also, different immigration statuses offer fewer (or no) options. The UKBA policy on domestic violence is set out in Policy Bulletin 70, available on their website⁹².

11.4 Asylum seekers

Asylum seekers are given financial support for essential living costs while their asylum claim is being considered; however, this ceases if their application is not accepted. Those who have made an application for asylum which is ongoing or has been turned down, and those who were previously dependent on someone claiming asylum, cannot benefit from the domestic violence rule. However, reporting domestic violence should not affect a woman's claim for asylum. Those who report domestic violence as an asylum seeker, and are accommodated with the perpetrator, should be offered alternative safe accommodation by their accommodation provider, and the National Asylum Support Service (part of UKBA) should

pay all reasonable costs for alternative safe accommodation.

If a woman asylum seeker is refused support by UKBA, she has a right of appeal to an Asylum Support Tribunal. The Asylum Support Appeals Project (ASAP) produces a number of factsheets including *Asylum Support for women who are victims of domestic violence* aimed at women who are already living in accommodation provided by the UKBA or in other privately rented accommodation, and need to leave due to domestic violence⁹³.

If the survivor is not herself the principal asylum seeker, but is dependent on the

⁸⁹ See HM Government, 2011; available at: www.homeoffice.gov.uk/publications/crime/call-end-violence-women-girls/vawg-action-plan?view=Binary

⁹⁰ This time limit is quite restrictive, and some refuges are unwilling to take women if there is no guarantee of funding for as long as it is needed, as they feel unable to evict women who still need their support.

⁹¹ e.g. from April 2011, those with unspent criminal convictions are not eligible for ILR.

⁹² See www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylum-support-bulletins/accesstosupport/pb70?view=Binary

⁹³ See www.migrantsrights.org.uk/files/news/ASAP_Factsheet_Domestic_Violence.pdf

perpetrator of abuse, she might now wish to make an independent claim for asylum. In this case, the UK Border Agency should take into consideration the additional risks⁹⁴ in returning

to her country of origin as a woman who has left her partner; for example, she might be at risk of stigmatisation, loss of status, or even – in some cultures – be at risk of an ‘honour killing’⁹⁵.

11.5 Other reasons for insecure immigration status and no recourse

Survivors might also have insecure immigration status for other reasons; for example, they could be migrant workers, on a student visa, or a dependent of a student or migrant worker. They could also have been trafficked into the UK, or have stayed longer than their visa allowed, or come as a domestic worker (and perhaps be experiencing gender-based violence or abuse and exploitation from their employers).

Women in these situations (including asylum seekers) might be able to claim support from their local authority. Local authorities

have discretionary powers under s.21 of the National Assistance Act 1948 to assist victims of domestic violence. However, those who are subject to immigration controls can usually only access these funds if they are particularly vulnerable or have additional special needs, and in any case payment is subject to the discretion of the local authority. Local authorities also have statutory powers under the Children Act 1989 to ensure that children ‘in need’ or ‘at risk of significant harm’ are adequately fed, housed, clothed and cared for; so women who have dependent children with them might be able to access support under this legislation.

11.6 Organisations giving specialist advice

Anyone with immigration problems should ideally be referred to a specialist immigration advisory service. Immigration advice may only be given by a specialist immigration lawyer, and this help would be advisable when applying for ILR. For immigration-related issues, the following organisations might be able to offer help and advice:

Asylum Aid:

Free legal advice and representation for refugees and asylum seekers. Asylum Aid also have a Women’s Project aimed at ensuring that women seeking asylum are treated with fairness and dignity, and respect to their needs.

0207 354 9264

www.asylum.aid.org.uk

Asylum Support Appeals Project (ASAP)

produces a number of factsheets including “Asylum Support for women who are victims of domestic violence” aimed at women who are already living in accommodation provided by the UKBA or in other privately rented accommodation, and need to leave due to domestic violence. See www.migrantsrights.org.uk/files/news/ASAP_Factsheet_Domestic_Violence.pdf

ASAP can also provide free legal representation and advice to the asylum seekers appealing against UKBA’s decision to refuse or withdraw their support, and give support, advice and training to frontline organisations, advice agencies and legal practitioners working with asylum seekers.

⁹⁴ i.e. over and above those given in the original asylum claim.

⁹⁵ See www.ukba.homeoffice.gov.uk/asylum/claimingasylum/ for further information.

ASAP also provides an Advice Line for asylum support issues.

Advice line: **0207 729 3042**.

www.asaproject.org

Note that they do not give immigration advice nor are they able to give advice to individual asylum seekers.

Joint Council for the Welfare of Immigrants:

Provides information on immigration and asylum and produces *The Immigration, Nationality and Refugee Law Handbook*, as well as regular briefings and a quarterly bulletin.

Advice line: **0207 321 8706**

www.jcwi.org.uk

Office of the Immigration Services Commissioner (OISC)

0845 000 0046

<http://oisc.homeoffice.gov.uk/>

Refugee Council:

Provides advice and assistance to asylum seekers and refugees.

0207 346 6777

www.refugeecouncil.org.uk

Rights of Women

Provide an advice line with free, confidential legal advice on immigration issues.

Immigration and asylum legal advice line: **0207 490 7689**

Textphone: **0207 490 2562**;

open Mondays between 2pm-4pm and Wednesdays between 11am-1pm.

email: info@row.org.uk

www.rightsofwomen.org.uk

Southall Black Sisters:

Provides specialist advice, information, casework, and advocacy in several community languages.

Helpline **0208 571 0800**;

General office number: **0208 571 9595**

www.southallblacksisters.org.uk

11.7 Summary

- Women with insecure immigration status might be unable to access public funds, including most mean-tested benefits.
- Those who are in the UK on a spousal visa, but who have left their partner due to domestic violence, can claim indefinite leave to remain (ILR) under the domestic violence rule, and should be able to have access to limited funds and housing assistance while their application is being processed.
- Asylum seekers (including those who have left the principal asylum seeker due to domestic abuse, and then claim asylum independently) are able to access accommodation and financial support for their immediate needs for a limited period.
- Other women with no recourse might be able to access emergency support from their local authorities under the National Assistance Act or (if they have children with them) the Children Act 1989.
- Anyone with immigration problems should be referred to a specialist immigration advisory service or immigration lawyer.