



NORTHERN
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No Home from Home

Homelessness for People with No or
Limited Access to Public Funds





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September 2009
ISBN 1 903681 80 4

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Foreword

No Home from Home is a response to the Commission's concern about the vulnerability of certain categories of non-UK nationals to destitution. Just as British and Irish people have travelled the globe, people come here for a number of reasons: to find work, to join family, to seek asylum, to study, or to make a better life for themselves and their families. Moving to a new country brings with it many social, cultural and financial challenges and inevitably some people will find themselves in difficulty. This report examines some of the problems which may arise, including domestic violence, ill-health, disability, exploitation and racial intimidation. Asylum seekers and refugees will also experience their own particular problems.

In Northern Ireland, a complex mix of European Union and domestic immigration law means that homelessness assistance is not available to non-UK nationals in a number of situations. The potential for any person to be rendered vulnerable and potentially destitute by legislation is a serious human rights concern. *No Home from Home* examines the law in relation to homeless non-UK nationals living in Northern Ireland. The report also looks in particular at the policy, practice and responses of the Northern Ireland Housing Executive, the Health and Social Care Trusts and the Social Security Agency.

As this report was being finalised, Northern Ireland became the focus of global media attention as a result of the racist attacks against members of the Roma community. However, following the racist attacks, although homeless, the legislation meant that the victims were not entitled to welfare benefits or homelessness assistance. It was too late to investigate the responses as part of this report; however, the Commission is aware that the Northern Ireland Housing Executive and the Health and Social Care Trust worked side by side with the voluntary agencies in providing support and assistance. This is an example of the interagency co-operation that the investigators had hoped to

find during this investigation. On this occasion, the Housing Executive took ownership of a piece of legislation which allowed it to temporarily accommodate the families and financially assist with their return to Romania. However, this episode served as a stark illustration of the urgent need for legislative change and clear guidance on the responsibilities of statutory bodies for non-UK nationals facing homelessness.

No Home from Home is aimed at raising awareness of the complex issues facing certain non-UK nationals and the gaps in terms of assistance available to those who become homeless and who are excluded from statutory support. Ultimately, as the report shows, the barriers exist because of the way in which UK legislation is currently designed. Many of the recommendations are therefore aimed at the Government and, where appropriate, at the Northern Ireland Assembly and Executive. Homelessness and destitution are not the sole remit of any one of the statutory agencies investigated. However, each has a role to play to ensure that all possible avenues to support are explored.

The Commission would like to acknowledge the assistance of the management and staff of the statutory agencies who co-operated in full throughout the investigation. In addition, the Commission is grateful to the voluntary and charitable organisations which contributed greatly, in both time and knowledge, to this investigation. I would also like to thank the authors of this report, Roisin Devlin and Sorcha McKenna, both of whom are experienced investigators in the Commission. Above all, I would like to thank those individuals who shared their personal experiences of homelessness with the investigators. I hope that through their contribution, the Commission can help to secure future recognition and protection of the rights of homeless non-UK Nationals.

Professor Monica McWilliams
Chief Commissioner

Acknowledgements

The authors would like to express their thanks to everyone, both within and outside of the Northern Ireland Human Rights Commission, who contributed to this investigation. Each of the three government agencies involved and their staff were extremely co-operative and obliging throughout the fieldwork.

Appendix 3 includes a list of the wide range of NGOs whose contribution to this report was invaluable. In particular, the authors would like to pay special tribute to the individuals who entrusted them with their personal experiences of homelessness and destitution in Northern Ireland.

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Acronyms

CRC	Convention on the Rights of the Child
DHSSPS	Department of Health, Social Services, and Public Safety
DSD	Department for Social Development
EC	European Community
ECHR	European Convention on Human Rights
EU	European Union
HSS	Housing Selection Scheme
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
IOM	International Organisation of Migration
JCHR	Joint Committee on Human Rights
NFA	No Fixed Abode
NGO	Non-governmental organisation
NIHE	Northern Ireland Housing Executive
PSNI	Police Service of Northern Ireland
SSA	Social Security Agency
UDHR	Universal Declaration on Human Rights
UKBA	United Kingdom Border Agency
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
WRS	Worker Registration Scheme

In this report, the terms, 'UK national' and 'non-UK national' are defined as follows:

- 'UK national' refers to all British and/or Irish nationals residing in the United Kingdom.
- 'Non-UK national(s)' is used to refer to individuals who are not nationals of the United Kingdom and/or Ireland.

To protect confidentiality, the case studies in this report do not use real names.

Executive summary

1. In the context of growing concerns about the potential for destitution among non-UK nationals, the Commission decided in 2007 to conduct an investigation into homelessness and people with no, or limited, access to public funds. It wished to determine the practical impact of existing immigration legislation which limited access to public funds for non-UK nationals living in Northern Ireland. A particular concern was whether the legislation and its day-to-day interpretation were leading to destitution among non-UK nationals.
2. The Commission's investigators therefore looked at all categories of non-UK nationals in Northern Ireland, including people from the European Union, the new accession states, asylum seekers, unaccompanied minors and other people from outside of the European Economic Area. There was a particular concern about the additional vulnerability to destitution for victims of domestic violence, exploitation or racial intimidation. Similarly, the Commission was anxious to learn about the inter-relationship between ill-health and disability and destitution. In an effort to ensure geographical scope, the investigation covered three areas – Belfast, Cookstown and Dungannon. Three government agencies were identified as having greatest responsibility for homelessness and destitution – the Northern Ireland Housing Executive (NIHE), the Social Security Agency (SSA) and the Health and Social Care Trust(s) (the Trust(s)).
3. Terms of reference were issued to the government agencies in May 2008 and fieldwork began in June 2008. Until November 2008, the investigators collected internal agency documents, reviewed case files, observed agency/client interactions and interviewed staff, community/voluntary agencies and homeless non-UK nationals across the three geographical areas.
4. During the write-up of the investigation, using the information gathered, the Commission submitted evidence to the UK Border Agency, outlining concerns about the Worker Registration Scheme (WRS). The main investigation findings, including those relating to the WRS, are presented in this report.
5. The report outlines, in Chapter 2, the human rights standards that apply to homelessness and destitution. While states must realise progressively, to the maximum of their resources, the right to an adequate standard of living, there are certain minimum standards that ought to be met immediately. Therefore, legislation that deliberately excludes individuals from the basic means of shelter and subsistence is difficult to reconcile with basic human rights standards.
6. The investigation findings are presented in two parts. The 'agency findings' discusses the findings that are specific to the three government agencies, as listed above. The 'thematic findings' raise particular concerns, namely, those relating to exploitation, refugee and asylum seekers, domestic violence, ill-health and disability, and racial intimidation.
7. Chapter 3 discusses the legislation that governs the NIHE's response to homelessness and focuses on the day-to-day approach to non-UK national applicants. It finds that the legislative criterion unduly limits the response to homeless and potentially destitute non-UK nationals, meaning that in many cases non-UK nationals are simply ineligible for homelessness assistance. It also finds that,

in many respects, individual staff members work exceptionally hard to ensure that despite the legislative restrictions, non-UK national applicants receive some form of emergency help.

8. However, it is apparent that improvements can be made. For example, the investigation recommends greater human rights awareness among NIHE staff and improved recording of decisions in relation to the eligibility of non-UK national applicants. In addition, the practice of the NIHE could be further improved through development of a more robust referral process, ensuring that ineligible non-UK nationals are directed to the relevant Trust so that they can be assessed to establish if they are entitled to social care assistance.
9. Chapter 4 presents the findings for the Trusts. Again, overall, many of these stem from the restrictive legislative criteria. Nevertheless, unlike the other agencies considered for this investigation, Trusts may have a duty of care to support non-UK nationals, for example, where failure to do so would result in a breach of their rights under the European Convention on Human Rights.
10. The investigation found many examples of good practice from individual staff. However, there was an absence of guidance and training for Trusts in relation to destitute non-UK nationals. The investigation finds that in all cases, and particularly for non-UK national adults, the development of comprehensive guidance would ensure that the Trusts' response is greatly improved.
11. Chapter 5 discusses the outcomes of the investigation relating to the Social Security Agency. Again, as with the other agencies, it is clear that the response of the SSA to destitute non-UK nationals is often limited by legislation barring access to welfare benefits.
12. However, even with the legislative restrictions, there are a number of improvements in relation to day-to-day practices which could better protect the rights of non-UK nationals. For example, interviews with SSA staff revealed the need for greater awareness of human rights. In addition, recording within SSA case files could be improved so that signposting of ineligible non-UK nationals to the NIHE, the Trusts, or to the Social Fund is evidenced.
13. Chapter 6 presents concerns regarding UK immigration rules and the potential for these rules to exacerbate the consequences of exploitation. As a result of restrictive immigration rules, victims of exploitation are made all the more vulnerable because they cannot access homelessness assistance and welfare benefits. Particular issues arise in relation to the Worker Registration Scheme that applies to the majority of A8 nationals who come to work in the UK. The investigation uncovered examples of exploitation, including examples of individuals who had worked in the UK for several months being denied benefit because they did not register on the Worker Registration Scheme.
14. Also, in relation to exploitation, the investigation encountered three incidences of what would appear to be trafficking for labour. In two instances, the victims took part in an interview for this investigation. Their experiences show how UK immigration rules have prevented them from accessing support after escaping their alleged traffickers.

15. The circumstances of refugee and asylum seekers are discussed in Chapter 7. While asylum seekers are generally provided with support, known as NASS (National Asylum Support Service), legislative restrictions state that there are circumstances in which even this basic level of support can be removed. However, as found by the House of Lords in *Limbuella*, this must not occur where it is likely that removal of support will result in destitution to an extent engaging Article 3 of the European Convention on Human Rights (freedom from inhuman and degrading treatment).¹ The Chapter outlines concerns for failed asylum seekers, in particular single persons, who are less likely to be entitled to support on becoming destitute. This situation could be improved if individuals were entitled to work while awaiting travel arrangements to leave the UK.
16. Chapter 7 also discusses the current response in Northern Ireland to unaccompanied asylum-seeking children (UASC). There is evidence that Trusts are providing support in these cases and there are examples of good practice on the part of individual staff in this respect. However, there is a lack of guidance and training on this issue. In addition, in emergency situations, Trusts have on occasion responded by placing these children in interim bed and breakfast accommodation and this raises particular concerns including that of child protection.
17. Domestic violence and specific issues for non-UK nationals with no, or limited, access to public funds are reported in Chapter 8. This shows how victims are financially dependent on their partner due to immigration rules, which restrict non-UK national victims' access to public funds. The investigation outlines the Domestic Violence Rule, which is a concession made for certain visa nationals to ensure that, on proof of relationship breakdown due to domestic violence, the victim is entitled to access homelessness assistance and welfare benefits. While noting the benefits, gaps still exist despite the development of this rule.
18. Among the government agencies, the investigation uncovered a lack of interagency co-operation in relation to non-UK national victims of domestic violence. To improve this, agencies should work together to ensure that 'ineligible' non-UK nationals are referred to Trusts so that they can be assessed for assistance. Again, while there are examples of Trust support, there is an absence of guidance on how social workers should respond to this issue. Although government agencies refer victims of domestic violence to voluntary organisations, there was a lack of recognition regarding potential funding difficulties, where often, voluntary groups are not permitted to put core funding toward supporting 'ineligible' non-UK nationals.
19. The investigation finds that legislation which prohibits access to public funds presents particular difficulties for people with ill-health or who have a disability. These concerns are presented in Chapter 9 and show how illness can lead to a break in Worker Registration and subsequent homelessness due to an inability to access public funds. 'Rough sleeping' due to lack of homelessness assistance has resulted in illness to an extent warranting significant periods of in-patient hospital care. This is further exacerbated by the absence of accommodation and welfare benefits on discharge, which prevents appropriate aftercare.

¹ *R v Secretary of State for the Home Department (Appellant) ex parte Adam; R v Secretary of State for the Home Department (Appellant) ex parte Limbuella; R v Secretary of State for the Home Department (Appellant) ex parte Tesema (Conjoined Appeals)* [2005] UKHL 66.

20. Although there are examples of good practice from individual social workers, there is a need for guidance in relation to destitute non-UK nationals presenting with illness or disability. Moreover, while Trusts have been known to offer ill or disabled non-UK nationals travel assistance to return to their country of origin, guidance is required to ensure transparent and consistent decision-making in relation to this process.
21. Chapter 10 presents findings relating to racial intimidation. Two issues are considered. First, the situation of non-UK nationals who have experienced racial intimidation but are ineligible for homelessness assistance is examined. Here, the report considers if the legislation relating to ineligible non-UK nationals is compatible with international human rights standards and, in particular, adequate to prevent the inherent risk to life. The chapter includes case studies of victims of racial intimidation who are refused homelessness assistance due to the 'no recourse to public funds' rule. Second, the NIHE's approach to racial intimidation is examined. Using information from case files and interviews with NIHE staff, recommendations are made so that, across all district offices, the approach to homelessness claims based on racial intimidation is improved.
22. Chapter 11 concludes the investigation report and finds that, overall, the legislation is unduly weighted towards regulation of immigration without adequate regard for the rights of destitute non-UK nationals. In light of this, the Commission makes a number of recommendations under three main headings:
1. Legislative amendments
 2. Government agency practices, and
 3. Specific areas of concern
 - exploitation and UK immigration rules
 - refugees and asylum seekers
 - domestic violence
 - ill-health and disability, and
 - racial intimidation
23. The main recommendation is that the Government's approach in this area should mirror international human rights standards. Therefore, the Commission recommends that, regardless of nationality or immigration status, everyone within the territory of the UK should have access to an adequate standard of living sufficient for that person and their dependents. It further recommends that public authorities should take all appropriate measures, including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of this right. In particular, no one should be allowed to fall into destitution. For the purpose of ensuring these recommendations, the Government should ensure that everyone has access to appropriate emergency accommodation. In addition, the Commission is of the view that, pending overarching legislative amendments, there are alterations that government agencies can make to their day-to-day practices to better improve the human rights protection of homeless and potentially destitute non-UK nationals.

Introduction

The power to investigate

The Northern Ireland Human Rights Commission (the Commission) was established under the *Northern Ireland Act 1998*. This Act provides the Commission with the power to conduct investigations under section 69(8).

To date, the Commission has carried out investigations into women in prisons, juvenile justice and immigration detention. The current investigation into homelessness and people with no, or limited, access to public funds is the Commission's first in the area of socio-economic rights. In addition, it is the first investigation since the introduction of the *Justice and Security (Northern Ireland) Act 2007*, which, in amending the Northern Ireland Act, provided the Commission with new powers of investigation, to compel evidence and to access places of detention.

Why investigate homelessness?

Having conducted a number of investigations focusing primarily on civil and political rights, the Commission felt that it was important to conduct an investigation into an area of socio-economic rights. Following an initial scoping study, the Commission decided to pursue an investigation into homelessness and, more specifically, people with no, or limited, access to public funds. While recognising that all homeless people are vulnerable, the Commission found that legislation prohibiting access to homelessness assistance and welfare benefits for certain non-UK nationals meant that, as a group, they were particularly disadvantaged. In addition, the investigation was undertaken in the context of growing concerns among community and voluntary groups about the vulnerability of migrants to poverty and homelessness. Clear minimum international protections exist in relation to an adequate standard of living, which includes housing, and the Commission was concerned that anyone living in destitution would be at risk of a potential violation of their human rights.

In Northern Ireland, a complex mix of European Union (EU) and domestic law means that as well as no, or restricted, access to public funds, non-UK nationals are ineligible for homelessness assistance in a number of situations. These situations include:

- Immigration control – section 119 of the *Immigration and Asylum Act 1999* provides that, in general, individuals subject to immigration control are ineligible for assistance under homelessness provisions in Northern Ireland (unless they fall within an excepted category).
- 'Persons from abroad' – the *Allocation of Housing (Eligibility) Regulations (Northern Ireland) 2006*, as amended, provide that, apart from individuals subject to immigration control, a person from abroad is ineligible for housing assistance if they are not habitually resident in the UK, or if the right to reside derives only from their status as a jobseeker or from the Treaty right to reside for an initial period of up to three months after arrival.
- A8 and A2 accession states – for the most part, nationals from these states are denied homelessness assistance if they do not register their employment, or if they do not complete 12 months continuous employment under the Worker Registration Scheme (WRS) or Worker Authorisation for A2 nationals.
- Asylum applicants – asylum seekers and refused asylum applicants may be denied support under asylum legislation (mainly the *Immigration and Asylum Act 1999* and the *Nationality, Immigration and Asylum Act 2002*).
- Family members – often the rights of family members to homelessness assistance can depend on their relationship to, and the employment status of, the main applicant/worker.

At the time of scoping the investigation, a mapping exercise by the Northern Ireland Housing Executive (NIHE) estimated that for the 12 months up to the 31 July 2007, there were 469 homeless applications from migrant workers in Northern Ireland.² In the previous year, a policy paper by Concordia revealed that restrictions on emergency accommodation and housing benefit for migrant workers prevented essential help and support. The report stated "...circumstantial evidence from voluntary organisations supporting migrant workers suggests that this is contributing to considerable hardship in certain cases".³ A more recent (2007) compendium by ANIMATE shows that while the NIHE provides homelessness advice and referrals, the ability to offer housing for the most vulnerable migrants is indeed barred by legislation.⁴ The overall result is that access to housing and homelessness assistance in Northern Ireland is not inclusive. The Commission was therefore concerned with the restrictive legislation and also the impact of day-to-day practices and decision-making by statutory bodies on non-UK nationals who are at risk of destitution.

Causes and consequences of homelessness

From the initial scoping stages of the investigation, the Commission recognised that destitution has a number of interwoven causes and consequences for the individual. In reviewing the literature and conducting initial meetings with community and voluntary organisations, a number of key areas of concern were identified, including:

- restrictive immigration legislation
- exploitation
- relationship breakdown/domestic violence
- ill-health and disability, and
- racial intimidation.

The Commission's investigators designed their research methodology to incorporate and explore these issues.

Geographical scope of the investigation

The investigation focused on three geographical areas – Belfast, Dungannon and Cookstown. The investigators began by including Belfast which, given its ports and airports, is the main point of entry into Northern Ireland. They then used the NIHE's scoping study to identify those areas with higher concentrations of migrants, which included Dungannon and Cookstown. During the course of the investigation, these three areas proved to be additionally useful as it became apparent that the predominant category of migrant differed in each area. In Belfast there were more asylum seekers due to its proximity to the airports than, for example, in Dungannon, where there was a long established Portuguese community, many of whom have been resident in Northern Ireland for up to 10 years. Cookstown, by contrast, had a higher concentration of new A8 nationals who tended to be accommodated in the private rented sector rather than in public sector housing. The use of the three locations allowed the investigators not only to explore the issues facing different categories of migrants, but also to compare and contrast the policies and practices of the three government agencies (described below) operating across Belfast, Cookstown and Dungannon.

The scale of the problem

This report is unable to provide comprehensive figures as to the number of homeless non-UK nationals in Northern Ireland. The data simply does not exist and a significant number of homeless people are undetected by government agencies. Therefore, the investigation relied on a collection of government agency case files and interviews with staff, voluntary agencies and homeless individuals,

2 Northern Ireland Housing Executive (2007) *Black and Minority Ethnic and Migrant Worker Mapping Update*, NIHE, p 43.

3 Concordia (2006) *Migrant Workers in Northern Ireland*, Concordia Partnership for Progress, Dungannon, p 13.

4 Holder D (2007) *Issues Facing Migrant Workers in Northern Ireland: A Research Compendium of Animate and Partner Research 2004-7*, ANIMATE, Dungannon and South Tyrone, p 57.

in order to build a picture of the scale of the problem in Northern Ireland. The information provided at Table 1.1 is by no means comprehensive and is likely to under-represent the scale of the problem. However, the figures illustrate that this is not an insignificant issue for Northern Ireland.

Table 1.1 Voluntary organisation service use by non-UK nationals

Organisation	Time frame	No of homeless clients
Homeless hostel 1	Aug 07 - May 08	164
Advice organisation 1	Sep 07 - Sep 08	10
Advice organisation 2	May 07 - Jan 08	20
Day centre	Jan 07 - Jan 08	29
Homeless hostel 2	Apr 07 - Mar 08	23
Refuge	May 06 - Aug 08	56*

* includes women accommodated with children, and single women

The above table includes only those organisations which provided recorded figures to the investigators. However, in addition, several organisations provided the investigation with an average of six case examples, stating that homelessness and destitution is a significant problem for their non-UK national clients.

Table 1.2 Statutory agency figures on non-UK national homeless cases

Agency	Time frame	Homeless cases reviewed
Social Security Agency	Aug 07 - Aug 08	11*
Housing Executive	Aug 06 - Aug 08**	112
Trusts	Aug 07 - Aug 08	10

* includes only those who were 'No Fixed Abode' or in hostel accommodation at the time of the application and does not take account of those who may, as a result of a negative benefit decision, have been made homeless

**Only two cases were from 2006

The figures (above) include only those case files reviewed by the Commission's investigators in the

three areas of Belfast, Cookstown and Dungannon. The figures are not therefore reflective of the total number of homeless non-UK nationals presenting to government agencies across Northern Ireland. While there is the potential for cases to overlap between the agencies, it was not possible for the investigators to trace a case from one government agency to another. However, the investigators did not detect overlap in the cases reviewed.

Although it is not possible to reflect accurately the scale of homelessness among non-UK nationals, the investigators are of the opinion that the numbers in Northern Ireland experiencing destitution is likely to be in the high hundreds, rather than thousands. While this may be low in comparison to other parts of the UK, the potential for destitution among non-UK nationals in Northern Ireland is of considerable concern.

The agencies

Three government agencies were identified as having the greatest relevance to the issue of homelessness and people with no, or limited, access to public funds. The obvious starting point, in relation to housing crisis, is the NIHE, the body with statutory responsibility for allocating social housing, paying housing benefit and providing homelessness advice and assistance. The Social Security Agency (SSA) is the government agency which provides advice and information on welfare entitlement, and is responsible for the payment of social security benefits. Access to welfare benefits is of importance to this investigation because entitlement to certain benefits can potentially provide a route to homelessness assistance. Similarly, a denial of entitlement to, for example, Jobseeker's Allowance could mean a person is denied access to housing support. Finally, the investigators identified the Health and Social Care Trusts as relevant to the investigation because they may be able to provide assistance under the statutory provisions for 'people in need' and have a clear duty of care to children.

In preparing for the investigation, the Commission found that people with no, or limited, access to public funds can be denied even this basic level of protection and, as a result, non-UK nationals can become homeless and destitute. The Commission recognised that the restrictive nature of the legislation had a strong bearing on whether a non-UK national might become destitute. It also recognised that the interpretation and implementation of the legislation might also have an impact on the extent to which non-UK nationals are assessed for, and/or provided with, assistance. The investigators, therefore, focused on establishing the policy and guidelines in relation to homelessness and people with no, or limited, access to public funds as well as the day-to-day practices and decision-making across the three government agencies.

At present, it remains the case that applications for assistance by homeless non-UK nationals continue to make up a smaller proportion of the workload of the government agencies. However, in general, greater concentrations of applications are received in those areas of Northern Ireland with a higher migrant population.

The report

The investigation is a largely qualitative study. The findings are based on semi-structured interviews with government agency staff, voluntary sector organisations and non-UK nationals. In this respect, the experiences of staff, voluntary sector organisations and non-UK nationals have been fundamental to the findings contained in this report. In addition, to semi-structured interviews, a sample of case files from each government agency was requested and reviewed.⁵

This report is the result of a yearlong investigation which, as the methodology section outlines, included an extensive period of fieldwork with three government agencies across the three locations, as well as interviews with over 30 community and voluntary groups and 14 homeless individuals.

In summary, the investigators:

- conducted over 60 interviews with government staff across 32 offices
- reviewed 132 NIHE case files
- reviewed 124 SSA case files
- reviewed 10 Trust case files
- observed seven agency/client interviews
- interviewed over 30 community and voluntary organisation workers
- carried out telephone surveys with over 20 hostels
- interviewed 14 homeless individuals, and
- collected internal documents, guidance, and policy from all three agencies.

The first chapter of this investigation report is introductory. Chapter 2 examines the human rights standards which are relevant to destitution. The investigation findings are presented in two sections. The first of these looks at the systematic issues (Chapters 3 to 5) with regard to the three government agencies. Each agency is examined in turn, with specific focus on its responsibility with regard to homelessness and the guiding legislation and policy. Individual chapters provide the findings which resulted from interviews with management and staff, case file reviews, observation of staff/client interactions, analysis of internal guidance, case studies and client experiences. The chapters explore the level of training and guidance available to staff, the general practices and decision-making, staff attitudes to non-UK national clients, knowledge of human rights, interagency co-operation and the relationship between statutory and voluntary agencies.

The second section of the findings (Chapters 6 to 10) deals with thematic issues, which were identified as contributors to, or resulting from, destitution – both, in some cases. In each case, the section examines the thematic issue in the context of the role, responsibility and response of

⁵ For a more detailed methodology, see Appendix I.

the relevant government agencies and, where appropriate, identifies problems with existing legislation. Chapter 6 provides an analysis of current immigration legislation as it relates to migrant workers from the European Union and new accession states, as well as to people subject to immigration control. The chapter demonstrates the potential inter-relationship between restrictive work-related legislation and homelessness and includes examples of worker exploitation. Chapter 7 looks at the particular issues facing asylum seekers and refugees and sets out the entitlement to welfare benefits and homeless support at different stages of the asylum process. The chapter also provides an overview of the entitlement and experiences of unaccompanied minors in Northern Ireland. Chapter 8 deals with domestic violence and highlights the barriers to protection and support faced by non-UK national victims as a result of their inability to access public funds. Chapter 9 highlights the problems caused by ill-health and disability, which the investigators found can lead to destitution through an inability to work. In addition, this chapter notes how illness can result from destitution due to the impact of poverty on physical and psychological wellbeing. The last of the thematic chapters looks at racial intimidation as a factor leading to homelessness. Particular attention is given to the decision-making of the NIHE, as it determines whether reported incidents of violence, abuse or threats, amount to 'intimidation' for the purposes of re-housing an individual or a family.

Throughout the report, the investigators identify both good and poor practice and make recommendations to address various issues of concern. In order to avoid overlap of recommendations between the three agencies, the Commission's conclusions and recommendations are contained in the final chapter of this report. In light of the systematic and thematic issues in the report, Chapter 11 provides detailed recommendations to each of the government agencies. It also makes recommendations for legislative change.

Human rights standards and destitution

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention. (Article 1, ECHR)

Introduction

There are many human rights instruments applicable to individuals who are homeless and at risk of destitution. These rights generally apply irrespective of nationality or citizenship, and form minimum standards against which the Commission investigates the treatment of homeless non-UK nationals who are prevented from accessing public funds. This report does not provide an exhaustive account of human rights standards; however, the relevant human rights instruments include, among others, the *European Convention on Human Rights* (ECHR), the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD). The application of these human rights instruments to non-UK nationals, who are homeless and at risk of destitution, is detailed below.

There are other human rights instruments which form the basis for the thematic findings of this investigation, such as the United Nations' *UN Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), the UN's *Convention on the Rights of the Child* (CRC), the Council of Europe's *Convention on Action against Trafficking in Human Beings*, and the UN's *Convention Relating to the Status of Refugees*. These are covered in more detail later in this report.

The ECHR is the only human rights instrument that is directly incorporated into UK law (through the *Human Rights Act 1998*) and is, therefore, the only one that is directly judicially enforceable. In addition, all international treaties to which the UK is a party, including those referenced in this report, are legally binding. It should be noted that as a national human rights institution, the Commission is mandated to consider all international and regional human rights standards when conducting its functions.

Immigration and human rights

It is legitimate for states to seek to regulate immigration and to restrict entry by those who do not have a right of residence. However, international human rights standards are clear that any mechanism to regulate migration, and the consequences of that mechanism, must be clearly set out by law, be proportionate and necessary in a democratic society, and be in pursuance of a legitimate aim.

Additionally, once an individual gains entry to a state, she or he is entitled to full protection by that state of those human rights that cannot be restricted or interfered with. In particular, immigration rules that infringe upon 'absolute' rights, namely, the right to life (Article 2 of the ECHR) or the right to be free from inhuman or degrading treatment or torture (Article 3 of the ECHR), should never be justified by the state's need to regulate migration. Article 2 of the United Nations' *Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live*, states:

Nothing in this Declaration shall be interpreted as legitimizing the illegal entry into and presence in a State of any alien, nor shall any provision be interpreted as restricting the right of any State to promulgate laws and regulations concerning the entry of aliens and the terms and conditions of their stay or to establish differences between nationals and aliens. However, such laws and regulations shall not be incompatible with the international legal obligations of that State, including those in the field of human rights.

Therefore, human rights standards should form the basis against which the state's immigration laws are assessed. Laws that place an absolute prohibition on access to public funds in circumstances where the individual is destitute, or at risk of destitution, are unlikely to be justifiable on human rights grounds.

International standards

Economic, social and cultural rights

State parties to the ICESCR must guarantee the rights contained within the Covenant for “all peoples”. Although Article 2(3) permits restrictions on these rights for those who are not nationals of the State, this applies solely to developing nations and, even then, only in relation to economic (but not social or cultural) rights. States are obliged to progressively realise the rights within the ICESCR, using the maximum of their available resources (Article 2(1)). However, there are minimum obligations that, regardless of resources, the state must protect. For example, in General Comment 3 on the nature of states parties’ obligations under Article 2(1), paragraph 10 states:

[...] a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant.

Consequently, among the core obligations that attract immediate protection, are rights to basic subsistence such as essential foodstuffs, basic shelter, and housing.

Article 2(1) provides for the enjoyment of ICESCR rights without discrimination as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. This right to non-discrimination in the enjoyment of economic, social and cultural rights is not subject to the principle of progressive realisation, nor is it limited according to the state’s resources. This means that discrimination within the state in relation to the enjoyment of economic, social and cultural rights is not justified by

reference to the principle of progressive realisation or lack of resources. Discrimination in relation to the enjoyment of ICESCR rights by non-citizens will only be justified if the measure in question is adequately prescribed in law, in pursuance of a legitimate aim and proportionate in terms of achieving that aim. Measures will generally not be regarded as proportionate if they deny an individual the basic means of subsistence.⁶

All of this must be borne in mind when considering the ICESCR rights that apply to non-UK nationals who are homeless and at risk of destitution. The most relevant right in this context is that to an adequate standard of living, contained in Article 11(1). This includes the rights to adequate housing and to adequate food:

11(1). The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

General Comment 4, on the right to adequate housing, establishes that this right applies without discrimination and should be given a wide interpretation:

[...] the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head [...]. Rather it should be seen as the right to live somewhere in security, peace and dignity. (paragraph 7)

In addition, the Committee makes clear that, even during economic recession, states ought not to regress on measures established to protect the right to adequate housing and must continue to afford particular consideration for those living in unfavourable conditions:

⁶ See: Cholewinski R (1998) ‘Enforced destitution of asylum seekers in the United Kingdom: the denial of fundamental human rights’, *International Journal of Refugee Law*, 10(3), 462-498, at 493.

States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others. The Committee is aware that external factors can affect the right to a continuous improvement of living conditions, and that in many States parties overall living conditions declined during the 1980s. However, [...] despite externally caused problems; the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. It would thus appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant. (paragraph 11)

In addition to Article 11, Article 9 provides the right to social security. General Comment 19, relating to this right, makes it clear that the right to social security, within the meaning of Article 9, includes the right to non-contributory benefits that comprise various forms of state based social assistance. Therefore, Article 9 includes:

Non-contributory schemes such as universal schemes (which provide the relevant benefit in principle to everyone who experiences a particular risk or contingency) or targeted social assistance schemes (where benefits are received by those in a situation of need). In almost all States parties, non-contributory schemes will be required since it is unlikely that every person can be adequately covered through an insurance-based system. (paragraph 4(b))

The right to social security is inextricably linked to the right to adequate housing. Therefore, social assistance should include access to shelter where the individual is destitute. Paragraph 22 of General Comment 19 states:

Benefits, whether in cash or in kind, must be adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care, as contained in articles 10, 11 and 12 of the Covenant.

In relation to non-citizens, the Committee's concluding observations show that social services may be required to ensure a minimum standard of living.⁷ In the concluding observations on the third periodic report of Ukraine, the Committee stated:

The Committee notes with concern that social services are not adequate to ensure a minimum standard of living for the most vulnerable groups, including [...] non-citizens. (paragraph 19).

Civil and political rights

The ICCPR contains numerous human rights provision which apply to homeless non-UK nationals at risk of destitution. As with the ICESCR, the rights contained within the ICCPR apply without discrimination to 'everyone' within the state's territory, including non-citizens. The only exception is in relation to the enjoyment of political rights and free movement rights, which can be limited for non-citizens. The Human Rights Committee's General Comment 15, on the position of aliens, states that, although there is no right for an individual to enter a state, once in the territory of the state, the individual is entitled to the enjoyment of ICCPR rights without discrimination. Paragraph 7 outlines the rights of non-citizens, many of which are relevant to this issue of homelessness and destitution:

Aliens thus have an inherent right to life, protected by law, and may not be arbitrarily deprived of life. They must not be subjected to torture or to cruel, inhuman or degrading treatment or punishment; nor may they be held in slavery or servitude. [...] They may not be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence. [...]

⁷ Office of the United Nations High Commissioner for Human Rights (2006) *The Rights of Non-citizens*, UN, New York, p 25; CESCR Concluding Observations on the Third Periodic Report of Ukraine, 28 December 1995, E/C 12/1995/15.

Their children are entitled to those measures of protection required by their status as minors. [...] There shall be no discrimination between aliens and citizens in the application of these rights. [...]

The rights that may have particular relevance to the UK's domestic rules, which deliberately exclude certain categories of non-UK nationals from homeless support and welfare benefits, include the right to life (Article 6), the right to be free from inhuman and degrading treatment (Article 7), and the right to private and family life (Article 17). In addition, Article 26 of the ICCPR is relevant. This contains a freestanding equality provision, which is not limited to the rights contained in the Covenant.

Elimination of racial discrimination

Although ICERD contains human rights provisions, some of which apply universally and some to citizens only, the UN Committee on the Elimination of Racial Discrimination makes clear that differential treatment between citizens and non-citizens constitutes discrimination unless it is proportional and pursuant to a legitimate Convention aim.⁸ In its General Comment 30, on discrimination against non-citizens, the Committee provides an authoritative statement on the obligations of states parties in relation to the enjoyment of basic human rights by non-citizens. Particularly relevant to the rights of non-citizens to homelessness assistance, the Committee recommends that state parties:

*Review and revise legislation, as appropriate, in order to guarantee that such legislation is in full compliance with the Convention, in particular regarding the effective enjoyment of the rights mentioned in Article 5, without discrimination.*⁹

Article 5 requires state parties to prohibit and eliminate racial discrimination, and to guarantee the right of everyone to equality before the law, in particular in the enjoyment of various civil, political, economic, social and cultural rights as specified in

Article 5(a) to (e). Article 5(e)(iii) guarantees the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the right to housing. Domestic laws prohibiting access to public funds for non-UK nationals have the potential to preclude enjoyment of this right without discrimination. Where exclusion from services in this way leads to the denial of the basic means for subsistence, such differential treatment is unlikely to be viewed as proportionate or legitimate within the meaning of the Convention.

Rights of migrant workers

It is also important to draw attention to the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. Although the UK has not yet ratified this Convention, it contains internationally accepted standards, establishing basic norms to ensure protection of migrant worker rights. Article 43, for example, requires that migrant workers enjoy equal treatment in respect of access to housing.

Regional instruments

European Social Charter

The scheme of the *European Social Charter* of 1961 is that contracting parties must agree to be bound by at least five of the following Articles:

- Article 1, the right to work
- Article 5, the right to organise
- Article 6, the right to bargain collectively
- Article 12, the right to social security
- Article 13, the right to social and medical assistance, and
- Article 19, the right of migrant workers and their families to protection and assistance.

⁸ General Recommendation No 30 (General Comments): *Discrimination Against Non-citizens*, Office of the High Commissioner for Human Rights, 1 October 2004.

⁹ Above, para 6.

There are various other Articles which the state may accept provided that the total number is not less than 10.

The Government has not accepted Article 19 in relation to the special protection for migrants and their families. Nevertheless, the right to social security and the right to social and medical assistance – rights that are binding – apply to migrants who are nationals of a state party to the ESC and are useful in the context of homelessness and potential destitution.¹⁰ Although the right to social security within Article 12 refers to contributory based benefits, the rights to social and medical assistance are to ensure that:

[...] any person [being a national of a Contracting Party to the ESC] who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance.

Notably, the revised *European Social Charter*, which has not been ratified by the Government, adds a new Article 31 on the right to housing. This provides:

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

- 1. to promote access to housing of an adequate standard;*
- 2. to prevent and reduce homelessness with a view to its gradual elimination;*
- 3. to make the price of housing accessible to those without adequate resources.*

This provision would arguably ensure better protection for non-UK nationals who are homeless but currently excluded from various forms of public support.

Domestic law

ECHR and Human Rights Act 1998

The *Human Rights Act 1998* (HRA) incorporates the majority of the provisions of the ECHR into domestic law. The Act states that public bodies must act in compliance with the ECHR rights as interpreted via the developing jurisprudence of the European Court. In addition, when considering primary legislation, the courts must, as far as possible, interpret this to ensure compatibility with the ECHR. If this is not possible, the courts are empowered to issue a ‘declaration of incompatibility’ on the basis that a particular legislative provision contravenes one or more of the rights contained within the ECHR. If an offending provision is contained within secondary legislation, the courts have jurisdiction to override it, provided that this does not interfere with the continuing operation of related primary legislation.

The ECHR does not include a right to adequate housing or food, or the right to social security. Nevertheless, the existence of these rights has been interpreted from the meaning of other provisions within the Convention. Below, the applicability of the ECHR to homeless non-UK nationals, who are excluded from homelessness support and benefits, are outlined.

Article 2: Right to life

- 1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally [...]*

Lack of access to public funds may have serious implications for the wellbeing and survival of those who are homeless and destitute. While a general right to housing, food, or financial subsistence, does not exist within the meaning of Article 2 of the ECHR, it is possible that the state may have positive obligations toward destitute persons requiring it to provide assistance in order to avoid violation of the right to life. In *Osman v UK*, the

¹⁰ The appendix to the ESC states: “Without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4, the persons covered by Articles 1 to 17 include foreigners only insofar as they are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the Contracting Party concerned [...]”.

European Court stated that, in certain circumstances, the right to life requires states to undertake positive obligations:¹¹

The Court notes that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction.

The state is not accountable for all risks to life; however, it may become responsible where there is a real and imminent risk to life in circumstances where the state knows, or ought to know, about the risk.¹² It is, therefore, not inconceivable that, where a homeless non-UK national presents to state agencies, in circumstances where destitution represents a serious risk to her or his life, or to the life of the family, legislative exclusions preventing basic assistance may potentially engage the right to life.¹³

Article 3: Freedom from inhuman and degrading treatment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

The European Court of Human Rights sets a high threshold in order to establish a violation of the state's obligation to ensure against inhuman and degrading treatment. In the case of *Pretty v UK*, the Court stated: "treatment is inhuman or degrading if, to a seriously detrimental extent, it denies the most basic needs of any human being".¹⁴ In the context of homelessness and destitution, the House of Lords held that, in certain circumstances, failure to provide access to support services for destitute asylum seekers constitutes a breach of Article 3:

*As in all Article 3 cases, the treatment, to be proscribed, must achieve a minimum standard of severity, and I would accept that in a context such as this, not involving the deliberate infliction of pain or suffering, the threshold is a high one. A general public duty to house the homeless or provide for the destitute cannot be spelled out of article 3. But I have no doubt that the threshold may be crossed if a late applicant with no means and no alternative sources of support, unable to support himself, is, by the deliberate action of the state, denied shelter, food or the most basic necessities of life.*¹⁵

Although referring to the refusal of support for asylum seekers under Section 55 of the *Nationality, Immigration and Asylum Act 2002*, the logical extension of Lord Bingham's judgment is that in certain circumstances, irrespective of legislation barring access to public funds, the state may be required to intervene to avoid a breach of Article 3 rights. However, as submitted by O'Connell, in order for this to be the case, state responsibility must be engaged.¹⁶ European Court case law has established that there must be some element of responsibility on behalf of the state to engage Article 3; in other words, in this type of case, the state must bear some liability for the individual's destitution. Therefore, the *Limbuella* case demonstrates that destitution caused by the State can constitute inhuman and degrading treatment. On this view, destitution *plus* state imposed exclusion from support may risk breach of Article 3. As highlighted by the findings contained in this report, there are serious risks of violation of Article 3 where individuals are left destitute. Further, the risk of violation may be even more pronounced where destitution is coupled with other vulnerabilities such as physical and/or mental ill-health, or disability.

¹¹ *Osman v UK* (1998) Case No 87/1997/871/1083, 5 November 1998, para 115.

¹² See: *Osman v UK*, above; in the context of health and social care for vulnerable groups, see: *Powell v UK* (2000) 30 EHRR CD363.

¹³ For a similar argument, see: O'Connell C (2008) 'A modest proposal: destitution, state responsibility and the European Convention on Human Rights', 5 *European Human Rights Law Review* 583-605.

¹⁴ (2002) 35 EHRR 1, para 52.

¹⁵ *R v Secretary of State for the Home Department (Appellant) ex parte Adam; R v Secretary of State for the Home Department (Appellant) ex parte Limbuella; R v Secretary of State for the Home Department (Appellant) ex parte Tesema (Conjoined Appeals)* [2005] UKHL 66 (Bingham LJ, para 7).

¹⁶ See: O'Connell C (2008) above.

Article 8: Private and family life

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

The right to private and family life (Article 8, ECHR) encompasses the right to respect for family, private life, and home. Although it does not give individuals the right to be provided with a home,¹⁷ refusal of access to homelessness services has the potential to engage Article 8 if this is demonstrated to constitute an illegitimate and disproportionate interference with the applicant's private or family life. Migrants in the UK without "family" within the meaning of Article 8 can still rely on the protections of the right to private life, insofar as the European Court of Human Rights has held that:

*[...] it must be accepted that the totality of social ties between settled migrants and the community in which they are living constitutes part of the concept of "private life" within the meaning of Article 8.*¹⁸

Whether Article 8 is engaged in the context of homelessness and/or destitution will depend upon an element of state responsibility. Therefore, the state must, in some way, be responsible for the individual's homelessness or destitution. While there may be limited circumstances in which the Government will be directly responsible for an individual becoming homeless, liability might be established if homelessness continues due to domestic legislation, which prevents access to

homelessness assistance and financial support. As O'Cinneide explains:

*The Art. 8 case law requires states to refrain from interfering in an unjustifiable manner with these rights: in addition, states may have positive obligations that arise out of the concept of respect for private, home and family life. Therefore, the possibility must exist that state interference or a failure to discharge positive obligations which generates or contributes to the creation of conditions of extreme poverty may infringe the rights recognised in Art. 8(1): if this occurs, then a state will have to justify its (in) action on the basis that it is a proportionate interference with privacy and family rights and is directed towards achieving a legitimate aim, as required by Art. 8(2).*¹⁹

In order to establish interference with Article 8, there must be a direct link existing between the circumstances alleged and the right to enjoy private, family life or home within the meaning of the Convention.²⁰ The ultimate question in this respect is whether homelessness falls within the ambit of Article 8. The case of *Connors v UK* shows that the negative impact associated with homelessness may, in certain circumstances, fall within the ambit of the right to respect for home, private and family life.²¹ In addition, it is notable that, in the particular context of disability, the domestic courts have held that failure by a local authority to respond to an assessment of the applicant's housing needs amounted to a breach of Article 8.²² Although maintaining that Article 8 does not require the state to provide everyone with a home, the court confirmed that the state may be required to take positive steps to ensure respect for private and family life within the context of housing, particularly for more vulnerable individuals, such as those with disabilities.

¹⁷ *Chapman v UK* (2001) 18 January 2001.

¹⁸ *Maslov v Austria* (2008) (Application No 1638/03), 23 June 2008, para 63.

¹⁹ O'Cinneide C. (2008) above, pp 5-6.

²⁰ *R (on the application of Bernard) v Enfield LBC* [2002] EWHC 2282 (Admin); for detailed consideration of this case law, see O'Cinneide, above.

²¹ *Connors v UK* (2004) (Application No 66746/01), 27 May 2004.

²² *R (on the application of Bernard) v Enfield LBC* [2002] EWHC 2282 Admin.

Finally, if it is shown that the circumstances surrounding an individual's homelessness, or her or his treatment by state agencies, on presenting as homeless, has resulted in interference with the enjoyment of her or his rights under Article 8, the state must show that this is 'in accordance with law and necessary in a democratic society'. It would be difficult to comprehend how, in a democratic society, measures denying access to basic subsistence could be regarded as necessary within the meaning of the Convention.

Article 14: Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Legislative provisions that exclude certain categories of non-UK nationals from public funds could potentially form the basis of a claim for discrimination on grounds of national origin or 'other status' in conjunction with another Convention right. It is of note that, in the case of *R (RJM) v Secretary of State for Work and Pensions*, the House of Lords held that 'homelessness' is a personal characteristic within the meaning of 'other status' in Article 14 of the Convention (freedom from discrimination).²³ In addition, in the case of *R (Morris) v Westminster City Council*, the following characteristics were found potentially to fall within the ambit of 'other status': nationality, immigration control, settled residence, and social welfare.²⁴ This leaves open the possibility that measures excluding access to homelessness assistance or welfare benefits may be deemed discriminatory, in conjunction with one or more of the ECHR rights already discussed, as a result of differential treatment based on homelessness or immigration status.

Article 1, Protocol 1: Protection of property

According to the European Court of Human Rights, welfare benefits can fall within the scope of Article 1 of Protocol 1 to the Convention, which states:

1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest.

Much of the Court's early judgments appeared to suggest that only contributory based social security benefits fall within the remit of Article 1 of Protocol 1 (A1P1).²⁵ In the Court's view, because individuals have an enforceable claim to a contributory benefit, it is clearly a 'personal possession' within the meaning of Protocol 1. However, more recent decisions establish that non-contributory benefits may also fall within Article 1 of Protocol 1. In the case of *Stec*, Protocol 1 was held to encompass a non-contributory reduced earnings allowance.²⁶ In the case of *R (RJM) v Secretary of State for Work and Pensions*,²⁷ the Lords held that the payment of a disability premium, for those in receipt of Income Support, is a personal possession within the meaning of Article 1 of Protocol 1 of the ECHR. Although the substantive claim, alleging discrimination in relation to the enjoyment of 'personal possessions', failed, Lord Neuberger stated:

²³ *R (RJM) v Secretary of State for Work and Pensions* [2008] UKHL 63.

²⁴ [2005] EWCA Civ 1184.

²⁵ *Gaygusuz v Austria* (1997) 23 EHRR 364.

²⁶ *Stec* (2005) 41 EHRR SE295.

²⁷ [2008] UKHL 63, above.

[...] bearing in mind this House's obligation under section 2(1)(a) of the Human Rights Act 1998 to "take into account any [...] judgment [...] of the European Court of Human Rights", [...] I conclude that, as disability premium is part of the UK's social welfare system, RJM does have a sufficient "possession" to bring his claim within A1P1.

Article 1 of Protocol 1 does not provide an unfettered right for individuals to access social security benefits or social assistance. However, once an individual establishes that they satisfy the conditions for receiving a benefit, his or her entitlement to it may create a right falling within the meaning of the Protocol. Potentially, although it would require a determination by the court, the meaning of 'personal possession' may include the duty on the Northern Ireland Housing Executive (NIHE) to provide temporary accommodation, or the duty on Trusts to provide assistance to 'persons in need'.



Agency findings

Northern Ireland Housing Executive

“I think, I was saying to you about that lady from [A8 state]. I mean, that broke my heart; what do you do with that? She had nowhere to go back to.” (NIHE interviewee)

The agency

The Northern Ireland Housing Executive (NIHE) is a non-departmental public body under the responsibility of the Department for Social Development (DSD). While the DSD was established in 1999 as part of the Northern Ireland Executive, the NIHE has been in existence since 1971 following the enactment of the *Housing Executive Act (Northern Ireland) 1971* (the 1971 Act). The 1971 Act transferred housing responsibilities from the previous 26 public authorities and the Northern Ireland Housing Trust to this new, single agency. The *Housing (Northern Ireland) Order 1981* (as amended) outlines the NIHE’s general functions relating to housing. These are detailed and amended according to the Housing Orders (for the most part, the Orders from 1981 to 2003). The Commission’s investigation is primarily concerned with the NIHE’s role as set out in the *Housing (Northern Ireland) Order 1988* (as amended) (the 1988 Order) in relation to ‘housing the homeless’.

Legislation and policy

Homeless or threatened with homelessness

The 1988 Order provides that, if the NIHE has reason to believe an applicant is homeless, or threatened with homelessness, it must make inquiries to establish whether this is the case. A person is homeless if she or he has no available accommodation in the UK or elsewhere.²⁸ ‘Threatened homelessness’ arises if it is likely a person will become homeless within 28 days from the day on which she or he gives written notice to the NIHE. The NIHE has an interim duty to offer temporary accommodation, pending a full decision, if on initial inquiry it is believed that the applicant may be homeless and has ‘priority need’.²⁹ On full inquiry, if the applicant is found homeless, or threatened with homelessness, then the final outcome depends on whether the applicant is in ‘priority need’ and is not ‘intentionally homeless’. Article 10 of the 1988 Order provides:

10(2) Where the Executive is satisfied that the applicant has a priority need and is not satisfied that he became homeless intentionally, it shall secure that accommodation becomes available for his occupation.

Establishing ‘priority need’

The 1988 Order states that a person has ‘priority need’ if they are:

- (a) a pregnant woman or a person with whom a pregnant woman resides or might reasonably be expected to reside;*
- (b) a person with whom dependent children reside or might reasonably be expected to reside;*
- (c) a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside;*
- (d) a person who is homeless or threatened with homelessness as a result of an emergency such as a flood, fire or other disaster;*
- (e) a person without dependent children who satisfies the Executive that he has been subject to violence and is at risk of violent pursuit or, if he returns home, is at risk of further violence;*
- (f) a young person (defined as a person who has not attained the age of 21) who satisfies the Executive that he is at risk of sexual or financial exploitation.*

The criteria for priority need are considered in more detail later in this chapter. It is important to point out that, unless an applicant is assessed as falling within one of the six categories for priority need, she or he is not entitled to housing assistance even if deemed homeless.

²⁸ Article 3 of the 1988 Order as amended by Article 135 of the *Housing (Northern Ireland) Order 2003*.

²⁹ Above, Article 8.

Intentional homelessness

A person is deemed intentionally homeless if she or he:

[...] deliberately [does] or fail to do anything in consequence of which [she or he] cease to occupy accommodation, whether in Northern Ireland or elsewhere, which is available for occupation and which it would have been reasonable for [she or he] to continue to occupy.³⁰

To an extent, the question of whether it is reasonable for a person to continue to occupy accommodation is a subjective one, dependent on the facts of the case. However, in certain circumstances, leaving accommodation abroad may result in a finding of intentional homelessness by the NIHE if it is determined that it would have been reasonable for the applicant to remain there. Therefore, a key inquiry for this investigation was in what circumstances would leaving accommodation abroad mean that homelessness was 'intentional'.

'Full duty applicants'

If, on inquiry, the NIHE finds that the applicant satisfies Article 10(2)(a) of the 1988 Order, that is, she or he is homeless or threatened with homelessness, in priority need, and not intentionally homeless, then the applicant is awarded 'full duty status' (FDA) for the purposes of the NIHE Housing Selection Scheme (HSS). The HSS is a scheme produced by the NIHE, and approved by the DSD, which is used to determine the order in which eligible applicants are awarded accommodation. The number of points determines the applicant's place on the social housing waiting list and, therefore, the speed with which she or he is likely to get accommodation. Accordingly, accommodation is generally offered to individuals with the highest number of points. The HSS points are attributed according to four different sections:

- Section 1: intimidation
- Section 2: insecurity of tenure
- Section 3: housing conditions, and
- Section 4: health and wellbeing.

If an individual is awarded FDA, she or he receives (70 points) under Section 2 of the HSS, with a corresponding place on the social housing waiting list. Although FDA status generally attracts the highest number of re-housing points, if the reason for homelessness is intimidation, an exceptional award of 200 points is made under Section 1 of the HSS.

(In)eligibility for homelessness assistance

Even if Article 10(2) of the 1988 Order is satisfied, and it is established that an applicant is homeless or threatened with homelessness, various regulations exist so that a homeless and vulnerable applicant is deemed 'ineligible' for housing assistance. This affects individuals who are subject to UK immigration laws that either prohibit access to homelessness assistance, or make access conditional on satisfying additional criteria. As immigration is an 'excepted' matter, many of these regulations emanate from the Government at Westminster, leaving no opportunity for amendment by the devolved Northern Ireland Executive. In addition, it should be noted that, because the regulations are enshrined in legislation, there is no discretion for agencies like the NIHE to depart from the homelessness criteria. Homeless non-UK nationals are ineligible for homelessness assistance due to various statutory provisions. These are laid out in more detail in Table 3.1, overleaf.

³⁰ Article 6(1) of the 1988 Order.

Table 3.1 Homelessness assistance: legislative exclusions

Applicant	Homelessness assistance: legislative exclusions
A8 nationals	The <i>Allocation of Housing and Homelessness (Eligibility) Regulations (NI) 2006</i> and the <i>Accession (Immigration and Worker Registration) Regulations 2004</i> , as amended, provide that often A8 nationals are ineligible for accommodation and housing assistance from the NIHE unless they satisfy additional criteria. In effect, this means that from the date of coming into force of the Regulations, nationals from the A8 accession states are denied homelessness assistance if they are out of work, or not in registered work, and have not yet completed 12 months of continuous employment under the Worker Registration Scheme (WRS). There are exceptions, for instance, for students or self-employed persons.
A2 nationals	In general, A2 nationals (Romania and Bulgaria) travelling to the UK after 1 May 2006 are entitled to homelessness assistance only if they meet the requirements of the Worker Authorisation Scheme (see <i>Allocation of Housing and Homelessness (Eligibility) Regulations (NI) 2006</i> and the <i>Accession (Immigration and Worker Authorisation) Regulations 2006</i>). There are exceptions, for example, for students or self-employed persons.
EU15 nationals	The <i>Allocation of Housing (Eligibility) Regulations (NI) 2006</i> , as amended, provide that, in general, EU15 nationals are ineligible for housing assistance if they are not habitually resident in the UK or if the right to reside derives only from their status as a jobseeker. In practice, this means that EU15 nationals (and returning UK nationals) must satisfy the habitual residence test. ³¹ EU15 nationals will also have to show that they are more than a jobseeker, that is, that they are, or have been, a 'worker' in the UK. Again, there are exceptions, for example, for self-employed persons.
Non-EEA (Subject to immigration control)	Section 119 of the <i>Immigration and Asylum Act 1999</i> provides that individuals subject to immigration control are ineligible for assistance under homelessness provisions. This includes individuals with limited leave to remain in the UK, for example, those who have entered the UK on a spousal or student visa. However, there are circumstances where those subject to immigration control can be eligible for assistance, if they belong to a group specified by the Secretary of State.
Asylum seekers	The <i>Nationality, Immigration, and Asylum Act 2002</i> provides that access to homelessness assistance and financial subsistence can be refused where a person seeking asylum does not make a claim for asylum as soon as reasonably practicable following arrival in the UK.
Refused asylum seekers	Where an application for asylum is refused, the individual is generally ineligible for housing assistance unless they qualify for 'hard case' support under Section 4 of the <i>Immigration and Asylum Act 1999</i> .
Non-UK national family members	Entitlement to housing assistance for non-UK nationals residing in the UK as the family member of either a British national or a non-UK national may be dependent on their relationship with the spouse or partner. However, on relationship breakdown, depending on immigration status, the family member may become entitled to homeless assistance in his or her own right. For example, if from an A8 state, the family member can gain entitlement to homeless assistance by completing the WRS.

31 See: Glossary for the definition of 'habitual residence'. See also: Chapter 5, Findings relating to the Habitual Residence Test.

Findings

Whereas Chapters 6 to 10 of this report focus on thematic issues relating to homelessness for those with no, or limited, access to public funds, such as domestic violence, illness, disability and intimidation, the findings presented in this chapter are crosscutting and relevant to all the circumstances in which non-UK nationals present to the NIHE for homelessness support.

Human rights awareness

The investigators found that human rights awareness was generally quite limited among the NIHE staff interviewed. The NIHE states that its full-day equality awareness training includes a human rights specific session for which staff are provided with accompanying literature. However, when asked about human rights training, interviewees indicated that they had received no specific training, or referred to their attendance at diversity training but did not recall any human rights:

“I am trying to think back because there was training about five years ago, but it was more around political correctness of expressions of groups of people.” (NIHE interviewee)

A few interviewees were of the view that staff do not need to be aware of human rights because this is accounted for in the development of NIHE policy. In complex cases, it was felt that the NIHE legal advice should take account of any human rights concerns. The Commission accepts that this may be the case. However, frontline staff should receive basic human rights training. In practice, frontline staff are the gatekeepers in terms of whether human rights issues reach the legal department. Staff cannot be expected to refer a case for advice if they do not know about human rights and are unable to identify potential concerns. Indeed, a number of staff were keen to develop their knowledge of human rights:

“I mean, I get it quoted to me all the time. If you are on the phone, you know - ‘you are infringing my

human rights’; and I don’t know which bit you mean, so, and it is quite a long... If you look at it on the Internet, it is too heavy for me to read, you know. I would sort of need it in layman’s terms.” (NIHE interviewee)

At times, despite the lack of human rights training, the NIHE staff expressed an awareness of the human rights concerns for ineligible non-UK national applicants. Some recognised that in terms of homelessness assistance, this was the only group of persons for whom the NIHE could offer only limited help. One interviewee hoped that as a result of the Commission’s investigation there would be better protection of human rights for homeless non-UK nationals:

“I just feel, looking at this, if something is going to come out of this, [it has to be] human rights, because it is about human people.” (NIHE interviewee)

Nevertheless, the absence of human rights training was perhaps reflected by an inability, among some NIHE interviewees, to identify potential human rights concerns for non-UK nationals ineligible for homelessness support. Often, interviewees felt that human rights are the remit of the voluntary sector:

“I would say to them – ‘look this is where you should go, Citizens Advice and they will give you the best advice on how to take on your landlord, your private landlord’; that is all you can do, but in terms of human rights, the legislation, that is not my field.” (NIHE interviewee)

Similarly, it was felt that human rights concerns for ineligible applicants do not exist because ‘everyone is treated the same’. For example, when asked if there are any concerns when an applicant is homeless and vulnerable but ineligible, one interviewee replied:

“No more than anyone else. To me, someone from Lithuania or Poland or Portugal would have the same human rights as anybody living over here.” (NIHE interviewee)

The Commission accepts that NIHE staff cannot act outside the legislation so as to offer homelessness assistance to an individual who is 'ineligible'. However, staff should still have basic awareness of human rights standards and how these apply in the context of homelessness. This will ensure that when a homeless ineligible applicant presents, staff can identify potential human rights concerns and refer to senior NIHE staff and on to the Health and Social Care Trust where the applicant can be assessed for assistance.

Training on eligibility

There was a mixed response in terms of the training received regarding eligibility. While, in some offices, it was important that all staff attended eligibility training, in others it was felt that, due to low numbers of non-UK nationals, only one or two members of staff ought to be trained. Interviewees indicated that, in all offices, senior housing officers were available to offer assistance in difficult cases. In addition, for more complex advice, housing officers would go beyond district office level and contact the centralised legal and policy unit within the NIHE. In most instances, interviewees felt satisfied with this level of support:

"[...] it is brilliant, you know that there is that support." (NIHE interviewee)

During the period of the investigation, the structure of the NIHE was undergoing significant change. This meant altered staffing arrangements and changes to the location of district offices. For example, in Belfast, most district offices either had relocated, or were in the process of moving, to one central office in Great Victoria Street in the city centre. In many instances, staff had undertaken new roles and required various levels of training. In the interim, staff felt confident that they could approach senior level staff for help. However, while training courses were useful, a number of interviewees preferred 'on the job' learning. As one interviewee explained:

"It is just that you could be taught it and trained it, you know, every day, but it is when you go to put it into practice..." (NIHE interviewee)

Given the complexity of the law on eligibility, it is important that the NIHE encourages appropriate forms of training, and on the job learning, particularly during organisational change. This will be beneficial for staff, many of whom revealed that they were anxious about 'getting it wrong'. To an extent, this was expressed as an anxiety that arises in all cases, but heightened in cases involving non-UK nationals due to the complexity of legislation around eligibility:

"...there is an awful lot of stress because you are so afraid to get something wrong, you know." (NIHE interviewee)

Attitude of staff toward non-UK national applicants

The NIHE currently provides intercultural awareness training which does challenge racist stereotypes and has, to date, been undertaken by over 300 members of staff. It is important to stress that the views expressed by the vast majority of NIHE interviewees revealed a positive attitude toward non-UK national applicants. Moreover, interviewees often conveyed their concern about the 'ineligible' cases where they had been unable to help. Therefore, eligibility criteria could have a negative impact on the NIHE staff, as one interviewee recalled:

"I think, I was saying to you about that lady from [A8 state]. I mean, that broke my heart; what do you do with that? She had nowhere to go back to." (NIHE interviewee)

Where applicants had been deemed ineligible, the investigators also came across many examples where staff went above and beyond their normal duties to help:

"I used to phone up every couple of weeks to see how she was getting on and how is she, where is she, where are we going, and I would say, 'look, we need to get this help and assistance'." (NIHE interviewee)

Nevertheless, in a small number of instances, interviewees expressed a negative attitude, being critical about the reasons why certain non-UK applicants had presented for support. For example, one staff member stated:

“One woman presented pregnant with a three-year-old, so obviously, she wasn’t here to work.” (NIHE interviewee)

In another instance, it was felt that because of a reluctance to travel to different areas of Northern Ireland, non-UK nationals were not making genuine homelessness claims:

“If someone is genuinely homeless and they have nowhere to go, they should be prepared to accept other towns; but a lot of them say ‘no, I can’t go to [X town], I can’t go to [X town]’.” (NIHE interviewee)

For a minority of interviewees, the fact that certain categories of non-UK nationals are entitled to homelessness support resulted in elements of resentment and a ‘them’ and ‘us’ approach. A number of comments were made in this respect and were perhaps indicative of a more negative attitude towards non-UK national claimants. In one case, the interviewee referred to the NIHE’s approach to individuals who were granted asylum, revealing a misinformed view that ‘they’ have more rights than ‘us’:

“I think sometimes, maybe its not right to say, but sometimes the people have more human rights than some of the people here because we have got a lot of duty to them... I know they are more vulnerable... but we would be placing [them] before somebody who had been down here every day for months and months with kids and all, and we would be placing people from abroad – because they have got all of those difficulties and because of their vulnerability – before them and, so, sometimes our rights are overlooked.” (NIHE interviewee)

As further evidence of this, the investigators noted that a few statements had been made in a rather accusatory manner. For example, it was felt by one

interviewee that applicants asked for an interpreter only if they did not accept what the housing officer was saying:

“But some of them know, and they may not like what I’m asking with some of the questions.” (NIHE interviewee)

In another example, it was felt that non-UK nationals had been coached to make false homelessness claims:

“Sometimes they say they’re homeless, but they’ve been told to come in and say that and they’re not really homeless.” (NIHE interviewee)

It is of serious concern that, in a small number of instances, these negative attitudes were expressed at senior level. Senior staff are relied upon for oversight and direction on complex cases, particularly those around eligibility. As such, negative attitudes expressed by senior staff can have a wider impact on how other frontline staff respond to non-UK national applicants. If not addressed, this type of attitude could risk an unhelpful approach to non-UK nationals by the NIHE. In the longer term, it may discourage homelessness applications or, in extreme cases, lead to outcomes that are based on individual prejudices rather than legislative criteria.

The NIHE informed the investigators that where negative attitudes are expressed by staff it is of serious concern and that, in particular, the Housing Executive’s ‘intercultural awareness’ training deals with staff attitudes, behaviour, discrimination, and prejudice. In addition to this training, however, the Commission is of the view that it is important for staff to receive anti-racism training that is updated and reinforced.

Homeless claims by non-UK nationals

It is important to emphasise that this investigation does not aim to highlight the numbers of homeless non-UK nationals in Northern Ireland but, rather, the circumstances and human rights implications for those who are at risk of homelessness and

excluded from government support. In interviews, NIHE staff explained that homelessness applications by non-UK nationals make up a smaller proportion of their workload overall.

However, from the investigators’ contact with the NIHE’s district offices and a review of the case files, it became apparent that the need for homelessness assistance among non-UK nationals in Northern Ireland is not insignificant. The case files give an indication of the number of non-UK nationals applying to the NIHE for homelessness support in the three geographical areas covered. However, given that the district offices do not record homelessness applications by nationality and that the investigators did not view all homelessness case files, this does not represent a comprehensive figure of homelessness among non-UK nationals in these areas.

Based on a review of 127 case files, 88 per cent (112) related to claims for homelessness assistance. Table 3.2, below, reveals that the majority, 68 per cent, did not receive FDA status, while only one third (32 per cent, or 36 out of 112) were granted FDA.³²

Table 3.2 NIHE case files reviewed by district, type of application and outcome (date of application to NIHE, August 2006 – August 2008)

District Office	Number of case files reviewed	Number of homeless applications	Outcome: FDA not granted	Outcome: FDA granted
HSU	46	46	30	16
Belfast East	10	10	6	4
Belfast North	18	16*	9	6
Belfast South	15	10	5	5
Belfast West	0	0	0	0
Shankill	9	1	0	1
Dungannon	27	27	24	3
Cookstown	2	2	1	1
Total	127	112	75	36

* One homeless application was withdrawn by the applicant before the final decision was made.

The greatest number of refusals for ‘full duty’ status occurred in the Homelessness Services Unit Belfast and Dungannon. The fact that an applicant did not receive full duty status did not necessarily mean that they were denied Housing Executive accommodation. The applicant, if eligible, was placed on the social housing waiting list. The investigators found that, in nine out of the 75 cases denied full duty status, the applicant was placed on the waiting list. Again, this occurred in Dungannon (eight cases) and the Homelessness Services Unit (one case).

In terms of the 112 case files, 59 applicants had dependent children and 13 were pregnant. Only one applicant was under the age of 18 years at the time of application. Table 3.3 shows the main reasons for homelessness claims.

³² Initially, the investigators considered 132 case files, with the date of application to NIHE ranging from 2004 to August 2008. However, it was decided to exclude case files with a date of application prior to August 2006. This was due to the historical nature of the files and the fact that, since 2004, the rules relating to homelessness assistance for non-UK nationals have been subject to change. As such, the 127 case files analysed for this investigation ranged from August 2006 to August 2008, with the majority relating to 2007 and 2008.

Table 3.3 Reason for homeless claims by non-UK nationals

Reason for claim	Number
Notice to quit	24
No fixed abode	16
New arrival	15
Asylum granted	15
Intimidation	12
Neighbourhood harassment	7
Domestic violence	6
Overcrowding	6
Property detrimental to health	3
Can't afford rent	2
Relationship breakdown	2
Loss of tied accommodation	2
Not clear from case file	2

The most common ground for claiming homelessness was due to a 'notice to quit'; that is, a notice requiring the individual to leave their accommodation within 28 days from the date of notice. Rather worryingly, the next most common reason was that the applicant had 'no fixed abode' (NFA), meaning that they had no available accommodation. In addition, as can be seen from the table, a significant proportion related to intimidation (12 cases) and domestic violence (six cases), which raises particular concerns for the Commission, as detailed later in this report.

Refusals due to ineligibility

In terms of refusals for NIHE assistance, 79 (62.04 per cent) of the 127 cases considered were refused. Out of these, the majority (43 or 54.5 per cent) were refused due to ineligibility. The reasons are contained in Table 3.4.

Table 3.4 Reason for ineligibility

Reason for Ineligibility	Number
No WRS certificate	19
>30 day break in WRS	4
No Worker Authorisation	5
Not habitually resident	2
No recourse to public funds	11
Not accepted as a 'worker'	1
Refused asylum	1
Total	43

For the most part, refusals due to ineligibility as a person from abroad occurred in Belfast and, within the Belfast offices, most often in the Homelessness Services Unit (29 out of 43 refusals).

For the purposes of determining an applicant's eligibility for assistance, the NIHE homelessness application form contains a specific section asking if the applicant is a person from abroad and, if so, whether the applicant is eligible or ineligible for assistance. This is an important part of the form because it shows how the NIHE has arrived at its decision regarding eligibility. It requires the housing officer to consider particular NIHE guidance, which sets out the circumstances in which a person from abroad is entitled to homelessness assistance. On considering the guidance, the housing officer must then fill out the requisite section of the form to show, in writing, whether the applicant is eligible. This involves a tick box and, if warranted, providing a written explanation as to why the applicant is, or is not, eligible.

While in the majority of forms, this section was clearly filled out, in 26 cases (20.5 per cent), it was not demonstrated that the NIHE had properly considered this section of the form. In eight instances, it was simply not filled out and in seven others, while this specific question on the form was

answered in the affirmative, the final determination was that the applicant was not eligible for assistance. This may have implications for the accuracy of the NIHE data that records the number of applicants who have been deemed ineligible for homelessness assistance. In some instances, it may even impact on the correctness of decision-making on eligibility regarding individuals from abroad. The decision-making regarding eligibility should be evidenced and recorded correctly on the specific section of the homelessness application form.

Practice in relation to ineligibility

When asked about the working approach to a homelessness case involving a non-UK national, the overwhelming response from the NIHE was that there is no difference in approach compared to UK nationals. However, in each case, staff conceded a key difference which is, that often the eligibility criteria are fundamental, meaning that certain non-UK nationals are not entitled to homelessness support:

"In a homeless case, you are looking for different issues, as in a normal housing assessment you know what you are looking for... 'what brought you to be homeless in the first place'. So you are looking at that, but I would say the main crux is eligibility." (NIHE interviewee)

In the majority of district offices and in the Homelessness Services Unit, the decision on eligibility is made by a senior member of staff. Staff felt that, given the complexity of the issue, a decision on eligibility is rarely made on the day that the applicant presents as homeless and, in fact, a determination can take several days or weeks in more complicated cases.

If the applicant is homeless and in priority need, the NIHE has a duty to offer temporary accommodation for the interim period until a decision on eligibility is determined.³³ The investigators found that in

34 cases (26.8 per cent), the applicant was offered temporary accommodation. In addition, there was considerable good practice insofar as staff endeavoured to accommodate applicants for as long as required for the homelessness inquiry. However, this is only a provisional solution and, given that the NIHE must make a final decision within 30 days of the date of application, in most cases 30 days will constitute the maximum length of temporary support. In addition, on review of case files, it was found that to a significant extent decisions on eligibility were taken immediately, which meant that the applicant had no route to crisis support from the NIHE. Therefore, out of the 26 cases where the client was of 'no fixed abode' and/or sleeping rough, only three were offered temporary accommodation pending a decision on eligibility. In the remaining 23 cases, the client was deemed ineligible and refused support and accommodation. As explained by interviewees, there are circumstances when NIHE staff must take an immediate decision on eligibility:

"I mean, if it was so obvious, right, if somebody arrived in this morning and it was so obvious from looking at their passport, single guy is there, that he didn't meet the eligibility criteria, then he would not be eligible for temporary accommodation under homelessness rules." (NIHE interviewee)

Therefore, in cases where the applicant's passport states 'no recourse to public funds', the NIHE staff felt that the only option would be to issue an immediate refusal. In only one case, did the interviewee believe that further inquiries ought to be made:

"[...] Because on her passport, it actually said 'no work and no recourse to funds', but obviously it could have been superseded, you know, so we wanted to confirm that [it hadn't been]." (NIHE interviewee)

³³ Article 8 of the *Housing (Northern Ireland) Order 1988*.

Interviewees often felt that, if an applicant is ineligible, there is nothing that the NIHE can do. However, others were more proactive, using the NIHE statutory duty to provide detailed advice and assistance. The statutory duty to provide 'advice and assistance' is derived from the *Housing (Northern Ireland) Order 1988*, as amended.³⁴ Neither the legislation, nor NIHE policy guidance is clear on what this advice and assistance should entail.³⁵ Interviewees indicated that it often depended on the circumstances of the case. However, on a reading of case files, it seems that the extent of advice and assistance would depend on the knowledge and goodwill of individual staff. In several cases, NIHE staff had provided detailed advice and assistance and the investigators found considerable good practice in this regard. In other cases, advice and assistance was minimal and included signposting to agencies that would be unlikely to help:

"So they come down to ourselves and we would carry out investigations and try to sort out whatever we can but, at the end of the day, you end up with the same problem – that there is no recourse to public funding, so you are stuck in the situation; and you try to say to them, 'well, your best bet is to go to Social Security and get some money there to see if they will help you, send you back or give you a crisis loan' [...] or else send them on to one of the hostels, if you can help them." (NIHE interviewee)

Without access to some source of emergency funds, directing the applicant to a hostel is often futile, given that she or he is potentially destitute and unable to pay. A more appropriate approach to avoid destitution would be to refer the applicant to the Health and Social Care Trust. However, the investigators found that while staff will signpost, they do not make formal referrals:

"If they came in and they did have their paperwork and it was stamped 'no recourse to public funds', or

whatever, and we were satisfied on that day – 'look, you are not going to be eligible for assistance here', and there were children involved, I would imagine, yes, we would maybe even contact social services [the Trust] or, you know, somebody who could provide some help for them." (NIHE interviewee)

Within the NIHE 'Homelessness' handbook, at paragraph 10.9.92, there is a procedure for referral to the Trust for ineligible non-UK nationals who are asked to leave NIHE temporary accommodation. This provides:

[...] It is important that social services are alerted as quickly as possible to homelessness cases where the family may wish to seek assistance under the Children Order. Social services should also be advised of cases of Applicants who may be destitute, vulnerable and ineligible for assistance.

This referral mechanism should apply for ineligible applicants whether or not they have been placed in temporary accommodation. It was not apparent to the investigators that staff were aware of this aspect of the guidance.

Notably, out of the 127 case files reviewed, only four included a note that a referral to the Trust had been made. Three out of the four referrals related to cases involving family with children. In only one case, the referral related to an adult. This is despite the fact that, in 43 cases, the applicant was ineligible for NIHE assistance. Moreover, in half of these instances (26 cases), the applicant was of 'no fixed abode' and/or sleeping rough. Applicants who are ineligible for homelessness support are vulnerable, particularly if they have dependent children or no fixed abode. In these cases, the fact of ineligibility means that, potentially, there is a threat to the applicant's safety insofar as they cannot secure safe and adequate shelter. During interviews with the NIHE staff, the investigators became aware of contacts

³⁴ Above, Article 7A(8)(a) of the Order as inserted by Article 137 of the *Housing (Northern Ireland) Order 2003*.

³⁵ Although, it should be noted that the Housing (Amendment) Bill, if enacted in its current form, will introduce a power for the Department of Social Development to prescribe the form of advice and assistance provided by the NIHE under Article 10 of the *Housing (Northern Ireland) Order 1988*.

with Trusts but at no stage was it apparent that direct referrals had been made on a formal basis. The Commission is of the view that the NIHE should establish an appropriate procedure for referring ineligible non-UK nationals, who are homeless, or threatened with homelessness, to Trusts. The Commission understands that applicants may not receive assistance from the Trust in all cases. Nevertheless, only if the applicant is referred, can she or he be assessed to establish entitlement.

Eligibility and ‘qualified family members’

In practice, it is possible for an ineligible applicant to benefit from homelessness assistance due to the eligibility of a family member.

“We look at the eligibility of the applicant but we also look at if they’re a family member of a qualified person. This is routinely considered. [...] We advise staff to enquire about family members.” (NIHE interviewee)

In terms of the investigation, four cases were encountered where the applicant did not meet the eligibility criteria although, based on the information provided by the applicant, it appeared that her or his partner might. In this type of case, the eligible partner was required to reapply with a fresh homelessness application. The investigators observed an individual make an application, even though it was clear that she would not satisfy the eligibility criteria. The applicant stated that she was from an A8 state, that she was not working and did not have a Worker Registration Certificate. On the other hand, she indicated that her partner was working and might have a Worker Registration Certificate. The applicant was informed to wait until her application had been processed, at which stage she would likely be refused and the NIHE would advise her partner to apply. Given the applicant’s circumstances, this process caused unnecessary delay.

There is no practical or legal reason to prevent the NIHE advising an eligible family member to proceed

immediately with the homelessness application, either instead of their ineligible partner, or at the same time. This would avoid the unnecessary delay caused by having to process two consecutive homelessness applications for the same family. In the alternative, it would be preferable if an ineligible individual was permitted to submit an application, in her or his own name, on the basis that she or he is the family member of a qualified person. The SSA, for example, accepts applications for Income Support and Jobseeker’s Allowance from applicants who are eligible due to their relationship with a family member. However, at present, homelessness applications cannot be accepted from ineligible persons.

A further difficulty for ineligible family members arises in relation to priority need. Article 7A(4) of the 1988 Order states that a person from abroad, who is not eligible for homeless assistance, must be disregarded for the purposes of determining whether another person should be considered homeless or in priority need. In other words, family members who are not eligible for assistance cannot confer priority need. Interviewees who took part in the Commission’s investigation indicated that this rule had presented a problem in a number of cases:

“A couple, which consisted of an A8 national and a non-EEA national, presented. The girl was actually a month or two pregnant [...] She had no recourse to public funds but any priority for homelessness assistance would lie with her, so I am really in the process of investigating that.” (NIHE interviewee)

Following a case concerning the equivalent provision in England and Wales, the domestic courts found an incompatibility with Article 8 (right to private and family life) and Article 14 (non-discrimination) of the ECHR. As Lord Auld stated at paragraph 82:³⁶

The effect of section 185 (4), when read with Article 8, is plainly discriminatory within the meaning of Article 14 of the Convention because the differential

³⁶ *R (Morris) v Westminster City Council* [2005] EWCA Civ 1184 and *R (Gabaj) v First Secretary of State* (28 March 2006, unreported).

treatment for which it provides, turns on national origin, or [...] on a combination of one or more of the following forms or aspects of status: nationality, immigration control, settled residence and social welfare.

Following this judgment, the Court of Appeal issued a declaration of incompatibility under Section 4 of the *Human Rights Act 1998*, in relation to the primary legislation.³⁷ The Government has since sought to rectify the incompatibility via an amendment contained in Schedule 15 of the *Housing and Regeneration Act 2008*.³⁸ This states that an ineligible person can be regarded for the purposes of determining whether another person is homeless or in priority need. However, unlike in other cases, the NIHE can discharge its duty to such a person, known as a 'restricted' person, by offering private rental accommodation with a lease of at least 12 months. The duty is discharged if the applicant accepts or refuses the offer.³⁹

More recently, the Joint Committee on Human Rights (JCHR) has raised concerns with this amendment, nothing that:

[It] is in contrast to the general duty where an offer of similar accommodation will not discharge the duty owed to the applicant by the local authority unless the applicant agrees.⁴⁰

The difference in relation to restricted persons, as against all others, may still leave scope for a claim of discrimination in relation to the enjoyment of Article 8 rights. At present, under Rule 56 of the Housing Selection Scheme, all other homeless applicants are entitled to receive a maximum of three reasonable offers of accommodation.

Where priority need is established due to an ineligible family member, the Government should ensure that the Housing Executive (local authorities

in England, Wales and Scotland) have the same duty towards that individual as to other homeless people. This would be in keeping with international human rights standards and, in particular, General Recommendation 30 on *Discrimination Against Non Citizens*, by the Committee on the Elimination of Racial Discrimination, which requires states parties:

To refrain from applying different standards of treatment to female non-citizen spouses of citizens and male non-citizen spouses of citizens, to report on any such practices and to take all necessary steps to address them. (paragraph 8, October 2004)

The effect of leaving accommodation abroad

In certain circumstances, having or leaving accommodation abroad may mean that a person is ineligible for homelessness assistance. If a person has accommodation abroad, the NIHE may decide that she or he is not homeless on the basis of accommodation elsewhere and it is reasonable for the individual to occupy it. As explained by one interviewee:

"'Homeless' – means no accommodation anywhere, as per 2003 (NI) Order. Basically 'anywhere' means 'on earth'. So a person could be found not homeless if they have accommodation elsewhere but it has to be reasonable for the person to return. 'Anywhere' may apply if there is a house in Poland but even if in the Northern Ireland context they have nowhere to go, the question is, is it reasonable for them to return. If reasonable, this will mean they're not homeless regardless of eligibility." (NIHE interviewee)

The investigators found one example of this from NIHE case files, where it was determined that "it would be reasonable for the applicant to return to accommodation [abroad]". However, in this case, the applicant had a disability, no accommodation or

³⁷ Section 185(4) of the *Housing Act 1996*.

³⁸ This provision commenced on 2 March 2009. It applies to homeless applications made on or after 2 March 2009 (See: the *Housing and Regeneration Act 2008 (Commencement No 1 and Saving Provisions) Order 2009*).

³⁹ Article 10(2A) of the *Housing (Northern Ireland) Order 1988* as inserted by Schedule 15 of the *Housing and Regeneration Act 2008*.

⁴⁰ House of Lords, House of Commons Joint Committee on Human Rights (2008) *Monitoring the Government's Response to Human Rights Judgments: Annual Report 2008, Thirty-first Report of Session 2007-08*, HL 173/HC 1078 TSO Ltd, London, para 88.

access to accommodation, and it was not apparent that she or he had resources that would enable them to return. In this type of case, if it is reasonable for the applicant to return to accommodation elsewhere, then NIHE case files should record more detailed information to evidence that this is the case.

In addition, as part of the investigation, it was important to explore whether, and in what circumstances, having accommodation abroad could result in intentional homelessness. This is because an applicant is ineligible for NIHE homelessness assistance if found intentionally homeless.⁴¹ Article 6(1) of the 1988 Order provides:

A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation, whether in Northern Ireland or elsewhere, which is available for his occupation and which it would have been reasonable for him to continue to occupy.

Interviews with NIHE staff revealed that the question of ‘intentionality’ could relate to non-UK nationals and their reasons for travelling to Northern Ireland:

“The homelessness, the priority need, and making themselves intentionally homeless, just leaving it, up and going and coming over here, on the prospect that they might get accommodation and they might get a job, you know.” (NIHE interviewee)

As this interview extract demonstrates, an applicant may be deemed intentionally homeless due to a decision to ‘up and come over here’ in the hope of finding work. However, a person’s motivation in coming to Northern Ireland, whether to find work or otherwise, should not provide the sole basis to exclude them from homelessness assistance. This type of decision-making was evident in a number of NIHE case files. In one case, the applicant was intentionally homeless

because he “gave up private rented to come to Belfast”; in another, because he “left the family home [abroad] to find work in Northern Ireland”.

The investigators did not find a consistent approach to the issue of ‘intentionality’. It was not entirely clear when having accommodation abroad would lead to a finding of intentionality. At times, it appeared that subjective beliefs about ‘giving up’ property to find work in Northern Ireland dominated decision-making.

Determining priority need

Once an applicant is determined homeless, NIHE staff must establish whether she or he has priority need. Priority need is established if the applicant presents with one or more vulnerabilities as set out in Article 3 of the *Housing (Northern Ireland) Order 1988* (as discussed above).

On review of NIHE case files, it was apparent that having dependent children was the most common reason for granting priority need. This was followed by 11 cases (8.7 per cent) where refugee status had been granted, and eight cases (6.3 per cent) where the applicant was deemed vulnerable due to ill-health, disability or other reason. In a number of cases, it appeared that if the applicant was ineligible for homelessness assistance, the NIHE did not record a decision on priority need. In interview, one member of staff referred to the correct process of decision-making:

“[...] there is kind of hurdles they have to go over, anybody has to go over. First of all, you have to be homeless or threatened with homelessness, then you get that, the next hurdle is priority need, then the next hurdle is intentionality. So, you could get through all those and then eligibility. You could get through all your hurdles, you fail on the last one, you wouldn’t get your homeless, so, but children would get you priority need.” (NIHE interviewee)

Nevertheless, priority need was not always recorded. By way of example, priority need was not recorded in five cases where the applicants had

⁴¹ Article 6(1) of the *Housing (Northern Ireland) Order 1988*.

dependent children, nor in two instances of domestic violence. In these cases, it seems that priority need was not recorded because the overall decision was that the applicant was ineligible for homelessness assistance, as a person from abroad. In light of this, staff perhaps did not feel it necessary to confirm priority need. As one interviewee stated:

“We have a set criteria, which I adhere to, so I would explain to them that; look, when we are doing a homeless assessment, basically we are looking at our homeless, priority need and intentionality, but before I would even do that, I would ensure that basically they were eligible.” (NIHE interviewee)

However, if on enquiry, staff find that the applicant is ineligible, they should still go on to establish if she or he is homeless and in priority need. If it is confirmed that the applicant is in priority need, then the nature of their priority should be evidenced and recorded. Clear recording of priority need, whether due to dependent children and/or risks of violence or any other priority need criterion, is crucial. It will establish possible referral options and show that appropriate advice and assistance have been considered and followed by the NIHE. It will also provide an evidence base from which to monitor the vulnerabilities experienced by applicants who are excluded from NIHE homelessness support.

‘Rough sleeping’ and priority need

A further concern, regarding priority need criteria, is related to ‘rough sleeping’. Where an applicant is of no fixed abode and, in the conventional sense, ‘homeless’, this does not itself constitute priority need. In 26 cases, the investigators noted that the applicant was of no fixed abode and possibly sleeping rough, but ineligible for homelessness assistance from the NIHE. In the majority (18 of these cases), the applicant was deemed not to have priority need, being a single adult male with no apparent priority need. While it was explained during interview that not every rough sleeper will

have priority need, a distinction was drawn between rough sleeping due to unforeseen circumstances and those who rough sleep habitually:

“[...] with the hardcore rough sleepers, it would be exceptionally unusual for them not to have priority need – they have mental health issues, drug related issues. At the end of the day, you wouldn’t rough sleep habitually in the first place if you didn’t have complex needs. But the guy who misses the bus home doesn’t have priority need or the person who falls out with the partner and sleeps in the car – I don’t want to list situations – but not every rough sleeper will have priority need.” (NIHE interviewee)

In many of the 18 cases, the male applicant was a new arrival to Northern Ireland and could not be said to sleep rough habitually. Further, without evidence of illness, disability or other vulnerability, these applicants could not establish priority need. However, as new arrivals to Northern Ireland, with no recourse to subsistence or shelter, the Commission suggests that they are extremely vulnerable individuals.

Individuals, who are sleeping on the street without any means of accessing accommodation, should have priority need whether they have a further identified vulnerability or not. The fact that the individual does not have access to accommodation is enough to show that they are in priority need. This would require an amendment to the current legislative categories of priority need. In the interim, rough sleeping coupled with ineligibility should trigger immediate referral to the relevant Trust.

Review and appeal

The right of review and appeal against homelessness decisions is important because, as recognised by the NIHE, it may be the only safety net for non-UK nationals who may be otherwise ineligible for other types of services, such as access to social security benefits:

“The safety net is the appeals process. While an appeal is ongoing, NIHE can accommodate and we can accommodate right up to the point of final decision and beyond.” (NIHE interviewee)

The investigators encountered mostly good practice among interviewees, who often stated that they would do their best to explain the details of decision letters to applicants and how to review and appeal:

“People come in with letters now and again and it’s saying, you know the way it says on the bottom of a letter, ‘if you want to appeal this decision that you can write to the area manager’. I would be explaining that to them and, then if they weren’t happy with that, I would be getting the housing officer again, if they weren’t sure they were going on Language Line again, you know.” (NIHE interviewee)

Nevertheless, despite good practice, there are concerns regarding review and appeal mechanisms for homelessness decision-making generally in Northern Ireland, and particular difficulties that arise for non-UK nationals. These issues are outlined below.

The European Court of Human Rights has established that Article 6 of the ECHR (right to a fair hearing in the determination of civil rights) can apply to the determination of entitlement to certain welfare benefits.⁴² In addition, domestic courts have generally proceeded on the basis that Article 6 applies once it is determined that an individual is owed a duty under homelessness legislation (the *Housing Act 1996 and the Housing (Northern Ireland) Order 1988*).⁴³

The current process for internal review of homelessness decisions is not independent and impartial. However, in line with the jurisprudence of the European Court and domestic courts, the

Commission accepts that this is not a violation of Article 6(1) if there is a mechanism to allow further appeal to a court of full jurisdiction.⁴⁴ In England and Wales, internal review of local authority homelessness decisions is a statutory right. This is bolstered by a statutory right of appeal to the county court. In Northern Ireland, the homelessness legislation does not contain a right of review or appeal. While the process of internal review is adopted voluntarily by the NIHE, the absence of a statutory right of appeal means that individuals, who wish to proceed further, must do so by way of judicial review. The Commission is concerned that this places applicants in Northern Ireland at a considerable disadvantage, given the difficulties and costs involved in pursuing such an application.⁴⁵ Applicants who wish to appeal a homelessness decision should be able to do so by way of application to the county court.

The Commission understands that clause 5 of the current Housing (Amendment) Bill will amend the 1988 Order, to ensure that applicants have a statutory right of internal review and a right of appeal to the county court.⁴⁶ The Commission welcomes this and urges the enactment of the right of review and appeal without delay.

During the investigation, concerns were raised about the potential lack of knowledge regarding review and appeal mechanisms among non-UK nationals in particular. This lack of knowledge may stem from the fact that, in all cases, decision letters are issued in the English language. A further practical difficulty may relate to the fact that requests for review must be made in writing, stating the reasons for review:

“If anybody rings up and they disagree with their decision, they are always given the opportunity, if they want to put it in writing, to appeal.” (NIHE interviewee)

⁴² *Feldbrugge v Netherlands* (1986) 8 EHRR 425; *Salesi v Italy* (1993) 26 EHRR 189.

⁴³ *Adan v Newham London Borough Council* [2002] EWCA Civ 1916; *Begum (Runa) v Tower Hamlets London Borough Council* [2002] EWCA Civ 239; *Begum (FC) (Appellant) v London Borough of Tower Hamlets* [2003] UKHL 5.

⁴⁴ *Albert and Le Compte v Belgium* (1983) 5 EHRR 533; *Begum (Runa) v Tower Hamlets LBC* [2002] EWCA Civ 239.

⁴⁵ See also: *Begum (Nipa) v Tower Hamlets LBC* [2000] 1 WLR 306 where it was noted that, in practice, the jurisdiction of the county court may be wider than that of the High Court on judicial review in terms of questioning findings of fact.

⁴⁶ See: the Housing (Amendment) Bill.

The Commission is not aware whether the NIHE will accept requests for review that are written in a language other than English. However, it is not unimaginable that the requirement to state reasons in writing would deter an individual from seeking review.

Decision letters should contain a standard statement, translated in several languages, highlighting that the individual can request a review and how best to proceed. In addition, the NIHE should consider appropriate ways to help those who cannot provide written reasons for a review. It may be that the NIHE can accept a statement in the applicant's own language and have it translated. Alternatively, it might appoint a member of staff, not previously involved in the application, to meet with the applicant and note the reasons for review via an interpreting service. While the NIHE may also refer the applicant to voluntary organisations for assistance, it is important to note that voluntary groups are not responsible for ensuring that non-UK nationals understand the homelessness decision-making process (unless there is an appropriate service level agreement in place).

The investigators noted a low rate of review and appeal among the case files considered. This is despite the view, held by some interviewees, that the majority of requests for review are made by non-UK nationals:

"Quite a number of appeals and reviews are from the migrant community which suggest that they are getting and understanding the letters." (NIHE interviewee)

There was evidence of review in only three of the 127 NIHE case files reviewed. In each of these, the outcome of the review was successful. This in itself highlights the complexity of the homelessness rules for migrants and the utmost importance of ensuring that applicants know about mechanisms for review. In addition, in two out of the three cases reviewed, there was evidence of advocacy

and support from voluntary and community organisations. This reaffirms the Commission's concern that, without assistance, non-UK nationals may be unaware, or may feel ill equipped, to pursue a review.

Interpreting services

NIHE staff have access to telephone and face-to-face interpreting services. The telephone interpreting service is provided through a company called Big Word, whereas face-to-face interpreters are provided by various community organisations depending on notice and availability. The Commission accepts that, in an emergency, it may not be possible to access an interpreter, in which case telephone based services are the only option. However, telephone interpreting will not always be appropriate and, where time permits, the NIHE should offer face-to-face interpreting. As one interviewee explained, telephone interpreting is useful but information may be lost in this type of communication:

"[...] it is the Big Word now. We do have it but it is still very difficult because you are asking them questions, you are going through the interpreter and the interpreter is speaking to them and then telling you, but I think you lose something in that you know, it can't be helped." (NIHE interviewee)

Across all offices covered by the investigation, even where there did appear to be time to organise an interpreter, for instance, where there was a prearranged house visit or interview, there was a reluctance to use face-to-face interpreters and a tendency to rely on friends and family members. This appeared to be related to convenience and, in other instances, a failure to recognise the importance of using an appropriately trained and accredited interpreter. While it may be the applicant's preference to have a family member, or friend, interpret, this may not always be the case. Moreover, even if the applicant would choose to have a family member interpret, they must always be informed that interpreting services are available.

“A lot of them, when they come over, don’t speak very good English and usually there is, like, a family member or a friend who has preceded them, so they would know their way around the system or else they would bring somebody with them to interpret.” (NIHE interviewee)

The investigators were concerned at the frequency with which interviewees from the NIHE referred to using children as interpreters. In a few instances, concerns about relying on children were recognised, as one interviewee stated: *“Sometimes there are questions you wouldn’t want a child to be asking a mother, if domestic violence or something”*. However, in most cases there was no apparent knowledge or insight into the inappropriateness of this type of approach:

“Some people come back to explain the letter, but most bring a child or friend to interpret. On some occasions, children have interpreted.” (NIHE interviewee)

It is the Commission’s view that it is never appropriate for a government agency to use children as interpreters for parents. It is difficult to envisage any homeless application process where it would be appropriate to ask the child to relay relevant information. Although it is good practice to ascertain the child’s views, this is different from using children to interpret.

Translation services

During the homelessness application process, applicants will receive important information by letter. As previously discussed, the final decision is provided by written letter. In addition, during the decision-making process, the NIHE may, by written letter, request information from the applicant, which is required to further progress the homelessness application. In each of the case files considered by the investigators, letters were provided in English.

The Commission is concerned about letters issued in English if the applicant is known to the NIHE not

to speak or read the English language. While some individuals may return to the district office to have the letter explained, others may not do so, with the risk that final decisions are misunderstood or information required by NIHE to process the application is not received. It is also possible that applicants may miss out on essential appointments which would then have to be rescheduled. One interviewee relayed how, on at least one occasion, this had occurred:

“So I had a gentleman in there, funny, I was covering the counter for tea break, and he came in with a letter and we were going out to see him today but he landed in with it. That would happen now and again, although the letter did say we were going out.” (NIHE interviewee)

The Commission recognises that it is not always feasible to standardise letters for translation. Indeed, international standards recognise the need for reasonableness in this respect. Particular difficulties might arise with decision letters, where the precise reason for the final outcome may differ in each case. However, the Commission suggests that it is feasible to include a statement with each letter, either on the letter or on a leaflet attached, in various languages explaining the purpose of the letter and contact details should the applicant wish to discuss it further.

Interagency co-operation

Trusts

It was apparent that when the NIHE was willing to make referrals to other government agencies, barriers existed that prevented an effective working approach. Therefore, several interviewees indicated that if an applicant is ineligible and vulnerable, referral to the relevant Trust should be an option but that there were various difficulties revealed. In the first instance, many NIHE staff did not see a role for Trusts unless the applicant’s case involved dependent children:

“In terms of an individual who is ineligible in terms of status, for example, they have children and it’s unlikely we can assist or it’s illegal to assist under legislation, we refer to social services [the Trust]. Social services [the Trust] only have a duty to children as such and this is difficult in itself.” (NIHE interviewee)

Even if the case did involve children, interviewees expressed concern that the consequences of their referral could be that the children are removed from the family and taken into care:

“In many cases, social services [the Trust] will say that their responsibilities are with the children. We will advise social services [the Trust] but may then find that [they] will want to meet the needs of the children – it’s a double edged sword.” (NIHE interviewee)

As discussed in more detail in Chapter 8, this is a fear that is held equally by parents and, in particular, victims of domestic violence. Nevertheless, it would be of serious concern if Trusts were to remove a child on the sole basis that the parents do not have access to public funds when there are no other child protection concerns. In this type of case, if there is a route to support, Trusts ought to assist the family without removing the children unless, as international law requires, it is in the child’s best interest to do so.

In only one instance was there an acknowledgment that Trusts might have a role in cases that do not involve dependent children. This interviewee expressed an awareness of all Trust programmes of care beyond children’s services: *“We would network quite well with social services [the Trust] across, elderly team, child care team, mental health, there has never really been a problem”*. As outlined in Chapter 4, Trusts may not be able to assist in all cases. However, the *Health and Personal Social Services (Northern Ireland) Order 1972* allows Trusts to assist in certain circumstances.⁴⁷ Except for one

interviewee, the investigators found no understanding of this amongst the NIHE staff.

In other instances, interviewees discussed considerable good practice when referring to Trusts. From personal experience with individual cases, certain interviewees felt that the Trust had performed an exemplary job.

Therefore, good practice and working relationships were at times apparent. However, this was only on an individual basis, with no consistency in the response from the Trust or in the working relationship between the NIHE and Trusts across the board. The investigators felt that there was an opportunity to harness good practices, which could be developed in policy and applied on a strategic level. That this had not occurred was evident from several accounts about trying to contact Trusts. For example, NIHE interviewees struggled to find the appropriate department or the correct individual to help:

“I just think there is maybe an issue between social services [the Trust] and the Housing Executive. I don’t know where to go; I don’t know who to contact in social services [the Trust]. I just contact the local officer who deals with ourselves; usually the [name of office] deals with them. I don’t know or they don’t know who to refer me on to and there is a gap there, I know that.” (NIHE interviewee)

There should be better co-operation between the NIHE and Trusts so that ineligible non-UK nationals can be assessed to establish if they may be entitled to assistance from the Trust.

Social Security Agency

In general, NIHE staff spoke positively about contacts with the Social Security Agency (SSA). This tended to stem from the fact that staff were aware of the SSA’s remit whereas, with Trusts, interviewees indicated uncertainty regarding that role. In some instances, it was useful for the NIHE

⁴⁷ For those subject to ‘immigration control’, the 1972 Order can be used if the individual is ‘destitute plus’. For EEA nationals, those with refugee status in another EEA state, refused asylum seekers, and those “unlawfully” in the UK, Trusts can use the 1972 Order where failure to do so would result in breach of ECHR rights or rights under the EC Treaty.

to confirm that an applicant was entitled to social security benefits, such as Income Support or Jobseeker's Allowance, because this helped to evidence eligibility for homelessness support:

"[...] if they have access to something like a benefit, like Income Support or child benefit, it stands to reason then, they are probably going to qualify for Housing Benefit, you know, but you would still do your own tests and all." (NIHE interviewee)

Most interviewees relayed positive experiences of their contacts with the SSA. Nonetheless, at times, it was difficult to find the correct department, as one NIHE interviewee explained:

"You phone [SSA] and – 'it is not mine' and 'it is not mine', so it is going through all the different departments and you end up nowhere."

It is possible that telephone contact and advice between the NIHE and the SSA could be improved.

Finally, out of the 127 case files reviewed, there was no reference to a referral or signpost to the SSA. It could be that a referral was not made or that it was, but not recorded in the case file. The NIHE should consider the appropriateness of referral to the SSA in cases where the applicant appears ineligible for NIHE support and, if a referral is made, it should be clearly noted on the file.

Relationship with voluntary agencies

Often when an applicant is ineligible for NIHE homelessness support, the NIHE staff will signpost to other organisations as a routine part of the duty to provide advice and assistance. Case files and interviews revealed that when confronted with the issue of ineligibility, staff more often signposted to voluntary organisations than to the government sector. As one interviewee from a voluntary sector organisation stated:

"The voluntary and community sector is supporting the state and they're at saturation point. There is a human rights alliance between the voluntary sector

and churches for support and accommodation – it is for bed and food, but this is only short-term, all the safeguards are gone." (Voluntary organisation interviewee)

In 32 of the NIHE case files, it was noted that the NIHE had provided formal 'advice and assistance' through signposting to another organisation, providing a self-referral list for hostel accommodation, or issuing a homeless advice booklet. In only four cases, signposting related to another government agency. Given the extent of signposting, and references to these types of referrals by the NIHE staff, voluntary groups are effectively asked to provide an emergency housing service for ineligible applicants. These organisations neither receive funding for this aspect of their service, nor are they permitted to spend current funding unless they have a source of income that is not derived from government funds. Although difficulties in funding were recognised by the NIHE staff, it was sometimes felt to be someone else's problem:

"We don't mind sending them up there... but the problem is, who is going to pay for it; but that is not our problem." (NIHE interviewee)

There was, at times, a lack of recognition from the NIHE staff about the extent to which voluntary groups might struggle in order to provide emergency help. For example, there was a perception that, in cases of domestic violence, 'ineligible' applicants are referred to the Women's Aid Federation (NI) (WAFNI) 'just like everyone else', because it is responsible for providing this type of help:

"If a person comes in with domestic violence, we would treat them the same as we will treat a person here. We will be directing them to probably Women's Aid and there is quite a lot of support there in Women's Aid." (NIHE interviewee)

It is important that the NIHE continues to refer to organisations, such as WAFNI, which can offer appropriate accommodation, advice and support. However, it is also essential to acknowledge that in cases involving 'ineligible' non-UK nationals, WAFNI must rely on its own funds to accommodate because the NIHE 'Supporting People' funding does not pay for 'ineligible' non-UK nationals.

A further concern was that the NIHE staff would contact voluntary organisations for advice and help. There was a feeling among some voluntary groups that a lack of awareness amid NIHE staff led to reliance on the voluntary sector for this type of assistance. In addition, there was, at times, misunderstanding about the remit of voluntary groups and what they can do to help. Examples of this include referring to the voluntary organisations for help with accommodation when the organisations concerned provide only daytime services, or a tendency to rely on organisations perceived to be able to help with all issues involving migrants. As one organisation explained:

"Often people are referred here if they are a different nationality even though the Housing Executive knows we can't help – we don't have housing, how can we help them?" (Voluntary organisation interviewee)

In several cases, applicants were signposted to organisations such as the Chinese Welfare Association (CWA), the Polish Welfare Association (PWA), and the Northern Ireland Council for Ethnic Minorities (NICEM). It is appropriate to signpost in this way in order to provide the applicant with options for further community level support, but it is difficult for these organisations to assist when the crux of the issue is homelessness and potential destitution. Interviewees from various voluntary groups stated that homelessness referrals had been received from government agencies.

The Trusts

“I mean, social services [the Trust], they are the safety net, so the buck stops with you in terms of accommodation, you know.” (Trust interviewee)

The agency

In Northern Ireland, the delivery of day-to-day social services is the responsibility of the Health and Social Care Trusts (the Trust(s)).⁴⁸ As of 1 April 2008, there are six Health and Social Care Trusts in Northern Ireland: the Belfast Trust, Northern Trust, South Eastern Trust, Southern Trust, Western Trust and the Northern Ireland Ambulance Service Trust. The Commission’s investigation focused on the delivery of services within the Belfast Trust, the Southern Trust (which covers Dungannon) and the Northern Trust (which covers Cookstown).

Beyond the delivery of day-to-day services, responsibility for legislation and policy lies with the Department of Health, Social Services and Public Safety (DHSSPS or ‘the Department’).⁴⁹

Responsibility for commissioning services, resource management and improvement of the delivery of health and social care services in Northern Ireland rests with the Regional Health and Social Services Board (the Board). The Board was established on 1 April 2009, replacing the previous four Health and Social Services Boards that had existed during the time of the fieldwork for the investigation.⁵⁰ The role of the Regional Health and Social Services Board is set out in the *Health and Social Care (Reform) Act (Northern Ireland) 2009*.

Trusts have a wide range of responsibilities and duties. However, this investigation aimed to establish the extent of Trusts’ duties and practice in relation to homeless non-UK nationals at risk of destitution. For the most part, the relevant legislation is the *Health and Personal Social Services (Northern Ireland) Order 1972* (the 1972 Order) and the *Children (Northern Ireland) Order 1995*, (the Children Order).

Legislation and policy

Health and Personal Social Services (Northern Ireland) Order 1972

The DHSSPS has a duty, under Article 4 of the *Health and Personal Social Services (Northern Ireland) Order 1972* (the 1972 Order), “to provide or secure the provision of personal social services in Northern Ireland designed to promote the social welfare of the people of Northern Ireland”. Article 15 sets out how the Department shall discharge this duty:

15. (1) In the exercise of its functions under Article 4(b) the Ministry shall make available advice, guidance and assistance, to such extent as it considers necessary, and for that purpose shall make such arrangements and provide or secure the provision of such facilities (including the provision or arranging for the provision of residential or other accommodation, home help and laundry facilities) as it considers suitable and adequate. [...]

(2) Assistance under paragraph (1) may be given to, or in respect of, a person in need requiring assistance in kind or, in exceptional circumstances constituting an emergency, in cash; so however that before giving assistance to, or in respect of, a person in cash the Ministry shall have regard to his eligibility for receiving assistance from any other statutory body, and, if he is so eligible, to the availability to him of that assistance in his time of need.

Trusts, therefore, have a responsibility to provide advice and assistance to “persons in need”, which may include the provision of accommodation and cash, provided consideration is given to whether or not assistance is available from another statutory body. According to Article 2 of the 1972 Order, a “person in need” is someone who:

⁴⁸ Provisions relating to the establishment and functions of Health and Social Care Trusts are contained in the *Health and Personal Social Services (Northern Ireland) Order 1991*.

⁴⁹ The Department’s role in promoting and providing health and social care is set out in the *Health and Social Care (Reform) Act (Northern Ireland) 2009*.

⁵⁰ The four Boards that existed prior to 1 April 2009 were the Eastern Health and Social Services Board, the Northern HSSB, the Southern HSSB and the Western HSSB.

- *Is in need of care and attention arising out of infirmity or age; or*
- *Suffers from illness or is substantially handicapped by any deformity or disability; or*
- *Being a person who has asked for assistance, is, in the opinion of the Ministry, a person to whom any of the personal social services provided by it may be made available.*

This duty should be read in light of the *Human Rights Act 1998* (HRA), and the duty placed upon public bodies to act in compliance with the provisions of the European Convention on Human Rights (ECHR).

The 1972 Order cannot be used to assist in all instances where a non-UK national is homeless but ineligible for assistance from the Housing Executive. However, Trusts are permitted to use the 1972 Order for certain non-UK nationals where failure to do so would result in breach of Convention rights or rights under the EC Treaty.⁵¹ It should be emphasised that this bare minimum approach is less than satisfactory, coming from a developed state such as the UK. Nevertheless, it is the Commission's view that, to ensure a minimum level of support, a non-UK national who is destitute and has no other means of support ought to be assessed for assistance under the 1972 Order.

In the case of persons subject to 'immigration control', it is important to note a legislative exception that further restricts (but does not prevent) assistance under Article 15 of the 1972 Order.⁵² Article 121 of the *Asylum and Immigration Act 1999* amends the *Health and Personal Social Services (NI) Order 1972* so that assistance under Article 15 must not be provided to a person subject

to immigration control if their need has arisen solely:

- (a) *because they are destitute; or*
- (b) *because of the physical effects, or anticipated physical effects, of being destitute.*

In England and Wales, similar criteria is found in Section 21 of the *National Assistance Act 1948*, which has become widely referred to as the 'destitute plus' criteria. The precise wording of the 1948 Act differs from the 1972 Order. However, the jurisprudence developed by the courts in relation to the interpretation of Section 21 of the 1948 Act can shed some light on the meaning of the 'destitute plus' criteria in the 1972 Order. The meaning of 'destitute plus' was considered by the House of Lords, in July 2008, in the case of *R (On the application of M) v Slough Borough Council*.⁵³ Lord Brown stated:

"If a person reaches that state purely as a result of sleeping rough and going without food [...] then clearly the need for care and attention will have arisen solely from destitution. If, however, that state of need has been accelerated by some pre-existing disability or infirmity – not of itself sufficient to give rise to a need for care and attention but such as to cause a faster deterioration to that state and such as to make the need once it arises more acute – then [...] I would not regard such a person as excluded under Section 21 (A)." (paragraph 40 (ii))

On this basis, it is apparent that a person subject to immigration control, who is destitute with additional needs (whether due to illness or disability or potentially some other reason), may be entitled to assistance under Article 15 of the 1972 Order.

⁵¹ Paragraph 1 of Schedule 3 to the *Nationality, Immigration and Asylum Act 2002* prevents use of Article 7 and Article 15 of the 1972 Order for EEA nationals, those with refugee status in another EEA state, failed asylum seekers, and those unlawfully in the UK unless failure to use the 1972 Order would result in breach of the individual's rights under the ECHR or the EC Treaty.

⁵² According to Section 119 of the *Immigration and Asylum Act 1999*, those subject to 'immigration control' are persons who are not EEA nationals and (1) require leave to enter or remain in the United Kingdom but do not have it; or (2) have leave to enter or remain in the United Kingdom subject to a condition that they do not have recourse to public funds; or (3) have leave to enter or remain in the United Kingdom given as a result of a maintenance undertaking; or (4) have appealed against a decision to vary or refuse to vary leave to remain in the UK.

⁵³ [2008] UKHL 52.

Internal policy and guidance

As part of the investigation, the Office of Social Services was asked for any policy and guidance on Trusts' responsibilities in relation to non-UK nationals who are homeless or at risk of homelessness. At an initial meeting, it was stated that the Department is developing guidance in relation to unaccompanied asylum seeking children in the context of wider guidance relating to health and social care provision for non-UK nationals. However, there is currently no policy or guidance relating specifically to the issue of homelessness for non-UK nationals who are excluded from homeless assistance and welfare benefits. The investigators were provided with a range of documentation at various stages throughout the fieldwork. However, of these, only the Immigration, Nationality and Asylum Guidance was directly relevant to the investigation.⁵⁴

Findings

This section of the report focuses on findings relevant to Trusts' duties in relation to non-UK nationals with no, or limited, access to public funds. It considers issues that cut across all aspects of service delivery. It does not discuss the findings that relate to the Trusts' response to specific concerns identified by the Commission, such as domestic violence, ill-health, or disability, which are covered in the later thematic chapters of this report.

Overall, in relation to the delivery of services by Trusts for homeless non-UK nationals, there are four main concerns:

1. The legislation, namely the 1972 Order, and the limits placed on its use by statutory provisions relating to immigration,⁵⁵ is not in keeping with international human rights standards.
2. Nevertheless, at times, Trusts adopt an unduly restrictive understanding of the 1972 Order. This reflects a failure to adopt the HRA as the overarching instrument when considering non-UK nationals who are at risk of destitution and ineligible for other forms of support.
3. Consequently, the approach of individual staff members may be correct in terms of the direction that they receive from management, but it is unlikely, in all cases, to take adequate account of human rights concerns.
4. As a result, senior level and frontline staff are not always aware of Trust duties in relation to destitute non-UK nationals.

The following sections demonstrate how these main, underlying concerns are problematic for the day-to-day response from Trusts in relation to non-UK nationals.

Human rights awareness

Unlike the other government agencies considered as part of this investigation, Trust staff generally indicated a good awareness of the existence of the HRA and the types of rights that it protects. Therefore, in response to questions regarding human rights training, staff generally replied along the following lines:

"Yes, there has been human rights training. There is human rights training in this Trust and both in the legacy Trust, north and west and also, again, obviously as one of the senior managers here in the office, I see the training coming through, I am familiar with the fact that, yes, that is on offer regularly to our staff." (Trust interviewee)

However, on a number of occasions, staff revealed that human rights training had been received at university and not within the specific context of

⁵⁴ Produced by the Home Office and issued to the Boards and Trusts in 2002.

⁵⁵ As discussed, the 1972 Order is limited by Schedule 3 of the *Nationality, Immigration and Asylum Act 2002* and by Section 121 of the *Immigration and Asylum Act 1999*, which states that the 1972 Order cannot be used to assist persons subject to 'immigration control' solely because they are destitute, or because of the physical effects, or anticipated physical effects, of his being destitute.

their employment with the Trust. It may be that for more recent staff, human rights are covered as part of the vocational social work degree. However, not all staff will have received human rights education in this way. Moreover, a number of staff, who had received human rights training, did not feel it had been put into context. At times, they were able to apply their human rights knowledge to their work with homeless non-UK nationals. For example, when asked about the relevance of human rights to this issue, one interviewee replied:

“I suppose, like Article 6, right to a fair trial, in terms of like, you know, making sure that you know, if decisions are going to be made, making sure that they understand, because if they don’t, then that is not giving them a fair... I know it is not a fair trial, but fair assessment – you know what I mean [...] Yeah, and Article 8, like, the right to private and family life, that is another one that would be relevant as well.” (Trust interviewee)

Nonetheless, for the most part, although aware of the various rights contained in the ECHR, interviewees were not aware, or confident about, how these rights applied to homeless non-UK nationals excluded from homelessness support:

“I think the difficulty is, even though you know you are aware of the human rights, how does that actually fit with our, you know, our policies and procedures and, you know, it is difficult, because you think it is obvious we should be respecting people’s human rights and, you know, if this lady can’t even find food for her children, surely the Trust has a right to provide, but, you know, I suppose it is just training would be helpful.” (Trust interviewee)

Finally, in terms of responsibilities under Article 3 of the ECHR (freedom from inhuman and degrading treatment), one Social Security Agency (SSA) interviewee felt quite clear about Trust duties:

“Whoever is the bottom line financial provider, if that would be the social services [the Trust] providing

emergency assistance, and they refused to help, there may be an argument under Article 3.” (SSA interviewee)

In certain instances, individual social workers had a strong sense that due to the eligibility criteria operated by the Northern Ireland Housing Executive (NIHE) and the SSA, the Trust might indeed be the responsible agency:

“Well we have to, because, I mean at the end of the day, the bottom line is, you know if police feel they can’t help, if the hospital, if medical intervention is inappropriate, I mean, social services [the Trust] they are the safety net, so the buck stops with you in terms of accommodation, you know.” (Trust interviewee)

However, again, this level of awareness was not always apparent among Trust interviewees.

Training on duties toward homeless non-UK nationals

The exclusion of certain non-UK nationals from homelessness assistance means that, depending on the circumstances of the case, Trusts may be tasked to deliver a new type of service – help with accommodation. As one interviewee explained, while staff may be aware of their human rights obligations in terms of social care, they are generally not aware of how this operates in the context of homelessness:

“I mean, we have been on the human rights training in terms of looking at the Convention and what the implications for the provision of health and social care might be, but it didn’t focus specifically on housing.” (Trust interviewee)

As a result, several interviewees indicated that more detailed training on human rights relating to asylum seekers and other non-UK nationals would be useful.

Therefore, in addition to human rights training, the investigators asked interviewees to what extent they had received training regarding Trusts’ duties

toward homeless non-UK nationals. In this respect, interviewees were candid stating that, for the most part, training and support had been extremely limited. For example, when asked if there is enough support, the following interviewee replied:

“Not particularly, no. As I said, I have been sort of learning... I think, it would be stupid of me to say, learning by accident rather than design. I am keen to learn, keen to see what is going on out there.” (Trust interviewee)

Despite the lack of training, interviewees stated that they could rely on social work colleagues for advice and on-the-job learning. The investigators encountered staff with relevant expertise and who were making efforts to assist others in this area. However, this must not detract from the overarching concern about the lack of higher level training. The Commission is concerned that it is inappropriate to expect individual staff members to provide peer support in the absence of training, which should be provided to at least a core set of staff within each Trust. Interviewees often acknowledged that it was difficult to identify a proper response without authoritative written procedures:

“But you don’t have your policies and procedures that you are able to lift out those types of scenarios. If a family are destitute and they are not wishing to return to their country of origin, what is social services [the Trusts] responsibility?” (Trust interviewee)

Related to the issue of training, the investigators also asked interviewees if they had received guidance from the Trust or the Department which would help them respond to requests for assistance from homeless non-UK nationals. Again, interviewees admitted that guidance is scarce. The absence of guidance for Trust staff was also recognised by those working in the voluntary sector:

“Some hospital social workers are very good, but some don’t understand their duty. When dealing at a management level, the relationship is more constructive, but you shouldn’t have to rely on this level of communication, as it is time consuming and more formalised.” (Voluntary organisation interviewee)

A number of voluntary organisations recognised that the Trust needed to do more, but indicated that this was achievable:

“Social services [the Trust] – it is not to blame, but they have no structure in place. The issues are too new and no one has identified who in social services [the Trust] is working on housing issues, race, et cetera. But I think this is something they can move on and improve.” (Voluntary organisation interviewee)

On the whole, the investigators found an absence of formal guidance and training within each Trust in relation to non-UK nationals who are ineligible for homeless assistance and benefits. This translates into a lack of support for staff, who are required to respond to individual cases as best they can, without guidance, at times using only their own initiative. This represents an unsatisfactory situation for staff and risks an inconsistent approach toward protecting the human rights of homeless non-UK nationals.

The investigators attended a DHSSPS workshop on ‘social care issues and non-UK nationals’. The aims of the workshop were to identify issues confronting Trusts and to inform the Department about which issues it needed to pursue. While the Department is actively engaged in pursuing the workshop outcomes, at the time of writing, there has been no comprehensive guidance on how Trusts should respond to non-UK nationals who are not eligible for homeless assistance or welfare benefits.

Staff attitudes

When asked about their approach toward requests for assistance from non-UK nationals, interviewees stated that they do not discriminate because their response is the same for non-UK nationals as for UK nationals. One Trust interviewee explained: *“They would be treated exactly the same way, you know, and we would give them equivalent entitlements that a UK citizen would get”*. The interviewee was referring to equality of treatment and how important it is that everyone is treated the same. Nevertheless, the investigators found that at times interviewees did not appreciate the differences that exist for non-UK nationals.

Therefore, while staff endeavour to treat non-UK nationals in an equal manner, entitlement to homelessness assistance is not the same. For non-UK nationals, who are homeless and destitute, the only possible route to statutory support may be through the Health and Social Care Trusts. In contrast, UK nationals are not forced to rely on Trusts for this type of assistance.

Overall, despite the absence of guidance and support, Trust interviewees revealed a great deal of concern for, and a willingness to help, homeless non-UK nationals. Interviewees felt that even if they were unclear about the nature of their duty of care, they definitely had a duty and would always do something to help. Others felt that regardless of legislative criteria, as a social worker, they had a higher ethical duty to help individuals in need:

“We are all from the social care background and we are all registered with the Northern Ireland Social Care Council, and if you do something that eventually would result in somebody with a serious injury or a death, our registration is at stake. So I think we all err on the side of caution, yeah, and we try and be as helpful. Now, it is very frustrating for us because your hands are tied [...] Other organisations [...] can make a more clinical decision and don’t get involved.” (Trust interviewee)

However, this attitude was not reflected by everyone. In a very small number of instances, interviewees revealed a negative attitude toward non-UK nationals. This was reflected by a perception that ‘local people’ cannot access accommodation because of migrants:

“A local person couldn’t get a house because all the private accommodation was rented to foreign nationals and asylum seekers.” (Trust interviewee)

In addition, as the following statement demonstrates, some staff expressed negative views about particular nationalities:

“Alcohol would be a big issue and domestic violence would be a big issue, especially with the Polish and the Romanians.” (Trust interviewee)

In one instance, an interviewee used inappropriate terminology and expressed a much-exaggerated view regarding the NIHE’s responsibilities toward undocumented migrants who are referred to, in the following transcript, as ‘illegal’. The investigators refer to this example for two reasons: first, the terminology is inappropriate and, second, it is factually inaccurate:

Interviewee 1: “[X] House is totally for illegal immigrants, generally, and what I was surprised at...”

Interviewee 2: “Or they are foreign nationals, not necessarily...”

Interviewee 1: “Having visited, the heat belching out in hot weather, and I am saying, ‘what do you need the heat on for?’. You know what I mean, but the Housing Executive – because I followed it up myself – there was no expense spared. Now the sad thing is, where there are illegal immigrants or what I am told... now I haven’t tested it out – when the status of illegal immigrants, the Housing Executive have a responsibility and I think payments are slightly above the bar.” (Trust interviewees)

Of course, the interviewee is incorrect. The payments referred to are not ‘above the bar’ because the NIHE has no responsibility toward undocumented migrants who are prohibited from seeking homelessness support and welfare benefits. Indeed, if the NIHE is supporting non-UK nationals in the manner suggested, they are most likely to be asylum seekers or persons with refugee status. It is clear from this, and other examples, that Trusts need to provide audited, refresher training on diversity and anti-racism.

Families with children

Prior to beginning the fieldwork for the investigation, it was apparent that, in certain cases, Trusts may be the only route to statutory support for homeless non-UK national families who are ineligible for homelessness assistance and benefits. For non-UK nationals with children, *Article 18 of the Children (Northern Ireland) Order 1995* can be used to assist the children where they are assessed as ‘children in need’. This is regardless of nationality or immigration status. In addition, payments in respect of adults who are family members of ‘children in need’ may also be made in certain circumstances under Article 18.

Although Article 18 payments cannot be used as a permanent substitute for homelessness assistance and welfare benefits, they can be provided to non-UK national adults if failure to assist them under Article 18 would result in breach of Convention rights or rights under the EC Treaty.⁵⁶

The potential use of Article 18 for non-UK national families, who are ineligible for homeless assistance and benefits, was acknowledged by some Trust staff but it was not always understood in the same way. Therefore, in the majority of instances, interviewees cited their duty as extending only to children. In other instances, this could include adults with children, if the risks associated with homelessness were affecting the wellbeing of the children. Therefore, some staff felt that it was feasible to provide support to the family through ‘children in need’ provisions under Article 18 of the Children Order:

“Well, I’m clearer on when you look at Article 17 and 18, finding a child in need and then providing for a child in need [...] I am happier with that; talking to the line manager, my line manager, and sort of seeking any services[...] through those, that range of articles.” (Trust interviewee)

Nevertheless, it was not clear in what circumstances this type of support would be provided. The investigators did not find any guidance on this issue and staff often indicated their own concerns about operating in a “policy vacuum”. While some were happy to use Article 18 of the Children Order, others were not:

“...because our Article 18 payments are not well-defined and, indeed, some of the legal people would say, ‘because we have Article 18 payments, we can finance the world’. Now clearly, we can’t.” (Trust interviewee)

For some staff, providing housing and financial support in the context of accepting responsibility for the welfare of children presented challenges and serious financial difficulties:

⁵⁶ See Schedule 3 of the *Nationality, Immigration and Asylum Act 2002*.

“...the child care bit is our bread and butter. That is the bit we know backwards. That isn’t an issue but when you have these add-on problems that normally you don’t have to deal with... because if a family don’t have a house, they go to the Housing Executive and they are re-housed or they are put in a hostel. That isn’t the bit that we normally have to deal with, but because they are not entitled to housing, because they are not entitled to [benefit]; those are add-ons that we have to deal with within our work. So those are the difficult bits, and if you have a family who don’t have a home and don’t have an income, there isn’t any way on God’s earth that the Trust can, from now to infinity, finance housing and benefits for all the people who need it.” (Trust interviewee)

While a number of interviewees had provided accommodation and financial assistance for families, they had received no guidance on how long this service could be provided. While many staff were pragmatic, locating their approach within the context of need, others disclosed their frustration at the administrative and policy lacuna:

“I don’t think any social worker that is working with a family or is assessing a family, where there are young children – and these children need food and they need somewhere to stay – doesn’t try to do their damndest to provide as much support as possible. [...] However, there needs to be something at an administerial level or further down... in relation to this country. The Trusts even, need to have a policy that, okay, this is what we do in this case, this is what we do in this case, you know, we need to have something.” (Trust interviewee)

The absence of formal guidance, at both Trust and Department level, is problematic. While the decision to give or not to give assistance is made by senior level staff, and not junior social workers, it is still the case that senior staff are operating without guidance. This means, ultimately, that decision-making takes place without reference to policy and/or guidance.

Most interviewees were clear about the extent of Trusts’ responsibilities in cases involving child protection concerns. However, although not explicitly stated by interviewees, the prevention of access to homelessness support and welfare benefits is forcing intervention from Trusts that may raise concerns under Article 8 (right to private and family life) of the ECHR. For non-UK nationals excluded from housing and welfare benefits, Trust staff were anxious about their ongoing involvement with the family when, ordinarily, if the parents were eligible for homeless assistance, there would be no child protection concerns:

“A lot of these families, if they had the means with which to work, if the children were in school, in receipt of medical treatment, if the parents were able to work as they have an entitlement to, we wouldn’t be anywhere near these families, because their care is fine.” (Trust interviewee)

One interviewee felt that on a literal interpretation of legislative duties, Trusts’ responsibilities are to the child and not to the family. It is important to state that the investigators did not find any evidence of children having been removed from their families due to lack of access to public funds. Nevertheless, in two instances, the investigators received a report that possible removal had been threatened:

“It was an [Accession state] family who were not allowed to work in UK. They were destitute. Social services [a Trust] advised them that their kids would be taken into care. [We] advised the family to accept voluntary return and to come back to UK and register for work properly.” (Voluntary sector organisation)

It is the Commission’s view that children should not be removed, or threatened with removal, when the welfare concerns stem from the family’s exclusion from housing and financial support, and not from child protection issues. In particular, the Commission draws attention to Article 3 of the United Nations’ *Convention on the Rights of the Child*

(CRC) (the 'best interests' principle), Article 16 of the CRC (arbitrary or unlawful interference with private and family life), Article 18 of the CRC (appropriate assistance to parents for the upbringing of the child) and Article 27 of the CRC (right of the child to an adequate standard of living and measures to assist parents).

Levels of support for non-UK national families

It is important to emphasise the fact that, in several cases, Trusts did provide extensive support to homeless non-UK national families. Therefore, based on the case files reviewed, Trusts did intervene and provide financial support and/or accommodation. In addition, the information provided by the Trust and voluntary sector interviewees suggests that Trusts are assisting homeless non-UK national families in other cases. However, the investigators did not find any guidance to ensure consistency in the operational approach. While in some instances, the family would receive weekly payments in the form of cash, in other cases, support was provided through vouchers or purchases made in advance by Trust staff.

Once Trusts decide to provide assistance, the amount does not appear to be based on clear assessment of need. While it may not be possible to set out minimum amounts, payments to families should be based on a proper account of potential costs, for instance, accommodation, food, clothing and travel. The investigation found that, in some cases, support was sufficient; for example, in at least two cases, the Trust provided weekly cash, rent and food vouchers. However, in other cases, the support was nominal and irregular. During an interview, one woman, with no access to public funds, indicated that the Trust had provided a weekly food voucher worth £35, but that this was reduced to £25 and she was no longer certain that she would receive this weekly payment.

She was pregnant and had one child. When asked if there was enough help available, she replied:

"How do I explain that? Not too sure. It is not that I am complaining for this roof above my head and I have food, but if I could work I could go out and buy something for myself and it is a different feeling altogether to have your own money." (Non-UK national interviewee)

For an individual to have her, or his, own money is important financially, but it also has an impact on the emotional wellbeing of families who are trying to provide food and basic needs for their children.

Most notably, the investigators were concerned about the use of food vouchers in lieu of cash. There is a stigma attached to the use of vouchers and they are not always practicable. If the family does not have access to financial support, vouchers do not always permit them to purchase all the items that they may need. When asked how she felt about the vouchers, the woman replied:

"It is okay, but the children always wanted, you know, to get something and that is quite difficult when you don't have money, for the person." (Non-UK national interviewee)

Various groups have reported on the inadequacy of vouchers as the sole means of support. For example, reporting on voucher support (known as 'hard case' support) provided to refused asylum seekers in England and Wales, the Joint Committee on Human Rights (JCHR) stated that vouchers are inadequate insofar as they do not permit purchase of items beyond food and toiletries. The Committee concluded that the system of voucher support is "inhumane and inefficient":⁵⁷

⁵⁷ House of Lords, House of Commons Joint Committee on Human Rights (2007) *The Treatment of Asylum Seekers, Volume I, Report and Formal Minutes Tenth Report of Session 2006-07*, HL 81-I/HC 60-I TSO Ltd, London, pp 36-38, para 110.

We believe that the section 4 voucher scheme discriminates on the grounds of nationality, and could constitute a breach of Article 14 in conjunction with Articles 3 and 8 ECHR and of Articles 3 and 8 themselves. There are particular responsibilities towards women, especially relating to pregnancy and post natal treatment. In many cases these responsibilities are not being met and there is an immediate need to provide financial support for essential items not covered by the vouchers, including clothing, baby items, telephone costs and travel.⁵⁸

In addition, in its latest report, the Independent Asylum Commission has recommended that, in this context, “the use of vouchers to provide support should end”.⁵⁹ The Commission is of the view that the same human rights objections apply where vouchers are used as the sole means of support for non-UK nationals by Trusts in Northern Ireland. While recognising that food vouchers are provided as an emergency form of support, on their own, they are often inadequate, particularly in relation to the needs of women and children.

Finally, in various cases, the investigators found that family members had to travel to Trust offices in order to collect cash and/or voucher assistance. In a few cases, and notably in one case involving a pregnant woman, the journey was considerable, with the money for travel having to be taken from Trust assistance. Obviously, if assistance is provided in a voucher format, it will not be possible for the family to pay for travel out of this assistance.

Trusts’ response to non-UK national adults

Potentially, Trusts may be the only statutory agency able to assist non-UK national adults who are excluded from homeless assistance. Therefore, the investigators wished to establish Trusts’ handling of cases involving homeless non-UK nationals who are adults without dependent children. However,

tracking down Trust staff responsible for adults proved to be one of the most difficult aspects of this investigation. While, on a policy level there is a gap in relation to Trusts’ support for migrant adults with children, there is a mammoth void in relation to migrant adults without children. As one interviewee stated in response to the investigators’ queries on this issue:

“Sometimes you would get adults coming, saying that ‘we know you have helped people in the past’, but we have no remit for adults.” (Trust interviewee).

Nevertheless, after repeated efforts, the investigators were provided with the contact details for staff with responsibilities relevant to adults. The investigators were advised to invite for interview senior level staff from Belfast, Dungannon and Cookstown, with responsibilities for specific areas of adult service delivery. Although there is no such thing as ‘adult services’ within Trusts’ programmes of care, there are teams within each Trust providing services to adults if the adult in question falls within their remit. For the most part, the teams within each area covered by the investigation were organised into the following categories:

- Disability and sensory impairment
- Mental health and learning disability, and
- Older persons

Staff from each of these teams participated in an interview for the investigation. During this, it was stated that there might be a route to support for a homeless adult if she or he can be shown to fit into one of the vulnerabilities known to Trusts. In the majority of cases, Trust staff felt that there is no legal duty to help if the person in question is homeless but not presenting with mental illness, physical ill-health, disability, learning disability, or sensory impairment, or requires elder care (being aged 65 or over). The following interaction

⁵⁸ See similar findings in Prior J (2006) *Destitute and Desperate: A Report on the Numbers of ‘Failed’ Asylum Seekers in Newcastle upon Tyne and the Services Available to Them*, Open Door (North East), Newcastle upon Tyne, p 17.

⁵⁹ Independent Asylum Commission (2008) *Deserving Dignity: How to Improve the Way We Treat People Receiving Sanctuary, Third Report of Conclusions and Recommendations*, IAC, London, Recommendation 2.9.9.

represents a typical response from Trust interviewees:

Q: *“Do you know is there anywhere within social services [the Trust] you would refer someone who is over 18?”*

A: *“Over 18, now not specifically in our remit here; we are family and child care, so, not within our social services [Trust]. Now, maybe if there was mental health issues, or learning disability, then, you know, you would present them to learning disability or mental health.”* (Trust interviewee)

However, it is the Commission’s view that a homeless person, with no access to homelessness support, is in need whether they have mental ill-health or physical disability. It may not be in every case that a homeless non-UK national is entitled to support from the Trust but they should still be considered for assistance. When this issue was discussed in interview, a minority of Trust staff accepted that there may be a gap:

“You have an identified need for the sexual violence strategy, you have identified need for the domestic violence strategy, but nobody in the department wants to put their hand up for adult protection.” (Trust interviewee)

While the Department indicates that all Trusts have a policy for vulnerable adults, a few interviewees felt that in relation to destitute non-UK national adults, Trusts are severely lacking in their approach:

“You know, there isn’t equality of treatment and that is not, you know, from our point of view; we talk about social services [the Trust] from a child care point of view; there is absolute equality, because it is governed by our own professional standards, our ethics, our legislation and our procedures. When there aren’t children concerned, I absolutely believe that there would be human right issues, in terms of equality, you know, family life and all of that, yeah.” (Trust interviewee)

When asked about their approach to adults, several interviewees expressed fears about a recurrence of the tragedy in Coleraine involving a Ukrainian woman who was homeless.⁶⁰ They recalled how she had ‘slept rough’ during the winter period and, as a consequence, had both legs amputated due to frostbite:

“I am not sure which country... she was a foreign national anyway, up in Derry, that had to do a double amputation because of hypothermia or something, a whole enquiry. And there was an uproar and whatever, but then that all seemed to have died away and there has been no response in terms of resources.” (Trust interviewee)

A number of interviewees cited this incident and stated that they personally would not “see anyone on the street”. Still, there were no safeguards in place to ensure that this could not happen again. Therefore, while many staff felt certain that, morally, they ought to respond to adults in need, they remained unclear about the extent of Trusts’ duties. As one interviewee revealed, when referring to a homeless adult male with mental health needs:

“[...] the [A8 national] gentleman, I mean, he really had nothing and it was just the prospect of having, you know, to pay for everything. [...] He voluntarily took himself out of the situation and that, so we did, as far as I am concerned, we did discharge our duties, but what exactly is our duty?” (Trust interviewee)

The dearth of guidance in relation to support services for adults was matched by a severe lack of consistency in approach regarding the levels of support provided on the ground. In particular, the investigators found that service delivery for homeless non-UK nationals appeared to depend on arbitrary factors such as geography and referral source:

“I don’t know whether that operates in other areas or not, to be truthful with you, but that is how it operates with us.” (Trust interviewee)

⁶⁰ Chrisafis A (2005) ‘Migrants’ grim deal thrown into tragic relief: Ukrainian woman’s double amputation offers new evidence of social problem in Northern Ireland’ *The Guardian*, 13 January 2005.

Through contact with voluntary sector organisations, the investigators found instances of support from Trusts only if the Trust had made the initial assessment and referral. This concern was also disclosed by Trust staff:

“To be honest, I think that it is dependent on who the person first presents to. If they present to us, yes, I do think, if they come directly to you and you are one having to deal with it, and you have rung round everybody, you have tried everything you possibly can, and yes, I think social services [the Trust] by and large will respond. But if they have gone to another agency and that agency is ringing around us, I don’t know that we are just as accommodating and as amenable because it is somebody else’s problem.” (Trust interviewee)

The manner in which Trust support was provided was not based on any discernable policy or guidance and often dependent on who was leading or pushing the case:

“I think we are in a senior enough position in the Trust as well, that if you ask in the finance department to give you something out of Article 15,⁶¹ they will accept... I have never been turned down for it.” (Trust interviewee)

The Commission does not wish to disregard the hard work and efforts made by individual staff, in many cases, and recognises that, in certain instances, Trusts have provided extensive support. Nevertheless, there is inconsistency in relation to how staff decide on the level and type of support provided. In other words, there is no guidance for staff to ensure that when they do provide assistance, it is sufficient to ensure a minimum level of subsistence. As one interviewee explained:

“[...] there is no policy I have been able to obtain or no resources to do that, [...] I needed something in writing to say, that is what we must provide, but there was nothing, no policy to say that I could [...].” (Trust interviewee)

Interagency co-operation

Trusts operate an ‘Emergency Duty Team’ (EDT) within various Trust areas. The EDT responds to all relevant queries which occur out-of-hours, between 5.00pm and 9.00am, and over the weekend periods, from 5.00pm on Friday until 9.00am on the following Monday morning. Given the relevance to the investigation, the investigators spoke with staff from the EDT for each geographical area covered by the investigation. When asked if they had contact from non-UK nationals, the staff stated that this arose mainly in relation to homelessness:

“They tend to be in relation to homelessness that we would have contact with them. [...] sometimes it can be in relation to the police contacting us but I would say the majority were housing related.” (Trust interviewee)

It was explained to the investigators that the EDT, in agreement with the NIHE and in accordance with homelessness legislation, accepts responsibility for out-of-hours homelessness cases. This means that the EDT will find emergency accommodation for a homeless person if staff believe that the person is in ‘priority need’. Within this arrangement, it is understood by the Trust that the NIHE pays for the cost of accommodation and should follow up on the next available working day, by conducting a full homelessness inquiry. However, there were mixed understandings as to how this service operated in practice. It was explained to the investigators, by the NIHE staff, that the EDT refers homeless people to the NIHE. In spite of this, Trust staff indicated that when they place a person in temporary accommodation overnight, they merely advise that person to contact the NIHE. Therefore, it would seem that there are no direct referrals from the EDT to the NIHE.

In many instances, the investigators sensed that the arrangement between the NIHE and the EDT was a difficult one. Trust staff felt that there was a conflict between their duty to individuals in need and the NIHE homelessness criteria:

⁶¹ Article 15 of the Health and Personal Social Services (Northern Ireland) Order 1972.

“We have a different duty of care then as well, because, in relation to the legislation, you know, unless you have a certain status, you know, you are not eligible for Housing Benefit, et cetera. Then, you know, the Housing Executive say, ‘well we are not going to accommodate you’. Obviously, we have a statutory remit and a duty of care towards families, so, I mean, we obviously have to see that through and we can’t, you know, ignore people’s needs where people are at risk.” (Trust interviewee)

This conflict meant that, at times, when the EDT placed people according to its understanding of Trust duties, there was uncertainty as to whether the NIHE or Trust would cover the bill. This had a negative effect in individual cases and, in the longer term, could reduce temporary accommodation options for the EDT. Therefore, certain accommodation providers would no longer accept referrals of non-UK nationals from the EDT:

“If we get accommodation for somebody in a B and B or a hotel or something like that, and that person has got particular needs, and [...] the Housing Executive did not pay the bill and doesn’t tell anybody, then that place often withdraws the services to ourselves and say ‘look, we are not taking any more referrals from you, thanks’. So, it’s an ever constricting market out there.” (Trust interviewee)

The investigators asked Trust interviewees if they had been provided with guidance, either from the NIHE or from Trusts, on how to discharge out-of-hours duties. In some instances, staff felt that the direction they had was insufficient, being sporadic and often provided through email communications. The investigators were also concerned about the absence of a formal agreement between the Trust and the NIHE for the delivery of out-of-hours homelessness services. This was explained by one interviewee:

“We have no service level agreement with them, you know. I mean, we have tried to put it on a different basis, by looking at the Housing Executive actually

paying something for the service to allow us to do a wee bit more with it [...]. So, it is just tagged on to what else we are doing, you know. There is no money in our budget that is set aside for the Housing Executive’s work, but I think it would give a much better way of doing things, because you know, we would have to be accounting for how we are dealing with their money in this respect and, you know, what people we are accommodating and where we are accommodating.” (Trust interviewee)

In general, Trust interviewees revealed that they did not have much direct contact with other government agencies, such as the Social Security Agency (SSA). However, there was a sense that other agencies do not respond to people in need:

“[...] people are using the legislation to prohibit services, rather than encourage people, you know, it is like, ‘oh we can’t help them, because we have this legislation and this legislation’ and the [Social Security Agency] are saying, ‘oh they have no duty’.” (Trust interviewee)

In this respect, some staff expressed their frustration at what they perceived to be a lack of interagency co-operation in this area.

Relationship with voluntary organisations

As with the other government agencies involved in the investigation, Trusts relied heavily on the help of voluntary organisations when responding to homeless non-UK nationals. This included turning to voluntary groups for guidance and advice:

“There is nobody specialist within the Trust. We are very heavily reliant on the likes of migrant support workers and Citizens Advice Bureau because, even within supervision, you aren’t going to line managers – I suppose they haven’t received any training.” (Trust interviewee)

Therefore, Trusts were at times relying on the voluntary sector for the provision of services to homeless non-UK nationals. They also turned to the voluntary and charitable sector for help with financial assistance and accommodation. However, there was generally a lack of understanding regarding the availability of funding for voluntary groups and the difficulties that they might face in terms of accommodating 'ineligible' non-UK nationals. The following conversation between two Trust interviewees illustrates this point:

Interviewee 1: "Can they not be referred to, is it NICRAS? I am not sure, NICRAS."

Interviewee 2: "NICEM, you mean?"

Interviewee 1: "Can they not be referred to them?"

Interviewee 2: "They don't provide accommodation either."

Interviewee 1: "But they can help financially, they can help, they have some resources there."

In addition, in cases of domestic violence, interviewees felt that Women's Aid could always help. As with the other government agency interviewees, there was a lack of awareness among Trust interviewees about the funding criteria for refuge accommodation, which prohibits Women's Aid from using its core funding to support 'ineligible' non-UK nationals:

"Women's Aid is up here, basically, but that is exactly the same, you know there wouldn't be any distinction between, you know, our own nationals, versus non-EUs, so that is exactly the same." (Trust interviewee)

Trusts should continue to appropriately refer to voluntary sector organisations for advice and support in relation to homeless non-UK nationals. However, there may be cases where the Trust is responsible for providing services under Article 18 of the *Children (Northern Ireland) Order 1995* or Article 15 of the *Health and Personal Social Services (Northern Ireland) Order 1972*. In this type of case, voluntary organisations that are accommodating homeless non-UK nationals should be provided with the Trusts' financial support.

Social Security Agency

“It’s only the people with nothing and nobody that turn up to jobs and benefits.”
(SSA interviewee)

Introduction

The Social Security Agency (SSA) was established in 1991 and is an Executive Agency of the Department for Social Development. The Agency administers social security benefits for Northern Ireland, and for parts of London on behalf of the Department for Work and Pensions. It works under the terms of a framework document which sets out its relationship with the Department and Minister. It operates through a network of 35 Jobs and Benefits/Social Security Offices and four centralised benefit offices.

The SSA was identified as relevant to the Commission’s investigation because it is the body responsible for the provision of out-of-work benefits. Access to such benefits, more specifically Jobseeker’s Allowance and Income Support, can act as a barrier to destitution as well as a ‘passport’ to social housing and homelessness support. This means that, in order to receive homelessness support, a person must be in receipt of, or eligible to receive, a qualifying benefit. Individuals with no, or limited, access to public funds may be denied access to qualifying benefits and, it follows, access to housing support, with the result that they can end up destitute and homeless.

The Commission acknowledges the fact that the staff of the SSA must adhere to immigration and benefit legislation which limits the entitlement of some non-UK nationals. Therefore, beyond applying the benefit rules it is not directly responsible for homelessness provision; however, the decisions they make have important ramifications for persons facing homelessness and/or destitution. As a result, this chapter focuses on the daily decision-making processes and practices which affect a person’s access to benefit. In an effort to understand the processes, the

investigation involved interviews with staff at all levels across eight local offices and review of a sample of 124 case files.

Legislation

Benefit legislation is an extensive and complex area of law. This report does not attempt to provide a detailed analysis of social security law and should not be relied upon as such. This section of the report will focus only on those areas most relevant to the investigation – Jobseeker’s Allowance, Income Support and Social Fund payments.⁶²

Jobseeker’s Allowance (JSA) is an out-of-work benefit which is assessed as either income based or contribution based. Individuals who have worked in the UK for a number of years may be entitled to contribution based benefits and will not have to meet the same eligibility criteria as those who are seeking income based payments. Income Support is a benefit for those who are unable to work full-time due to a specific reason such as incapacity or caring responsibilities. Income Support can be claimed by an individual who is a lone parent, a carer, sick or disabled, or a young person estranged from their family.⁶³ At present, both benefits are paid at the same basic rate, as illustrated in Table 5.1.⁶⁴

Table 5.1 JSA and Income Support Rates

Applicant	Rate
Persons under 25 years	£50.95
Persons over 25 years	£64.30
Couples over 18 years	£100.95

62 On 27 October 2008, Incapacity Benefit and Income Support paid on incapacity grounds were replaced by Employment Support Allowance as part of a government initiative to encourage people back into appropriate employment. The fieldwork for this investigation ended in the same month, before this change occurred; therefore, none of the case files reviewed involved ESA and the focus of the chapter is on JSA and Income Support.

63 Income Support on incapacity grounds has, since October 2008, been replaced with Employment Support Allowance.

64 In addition to the base rates, there is a range of add on premiums available in certain circumstances. The current rates of these premiums are available at: http://www.dsdni.gov.uk/index/ssa/benefit_information/benefit_rates.htm [8 July 2009].

Right to reside

In order to be entitled for either of the out-of-work benefits, a person must satisfy a two-part test. The person must have a right to reside in the UK and she or he must be deemed to be habitually resident. During the course of the fieldwork, the SSA staff interviewed gave mixed responses when asked which part of the test should be applied first. In some instances, staff clearly felt that without a right to reside there was no point in undertaking the habitual residence test (HRT). However, it should be noted that a Tribunal of Social Security Commissioners⁶⁵ in Great Britain has held that it is unlawful to decide the habitual residence test based on whether a person has a right to reside in the UK, without first deciding if the person is actually habitually resident in the UK. This judgment is reflected in SSA guidance to decision makers.⁶⁶ The legislation for both JSA and Income Support elaborates on the concepts of 'habitual residence' and 'right to reside', and defines the meaning of people from abroad.⁶⁷ Some categories of people do not have a right to reside in the UK, including individuals from outside the European common travel area; those from within the EU who have been in the UK for over three months and cannot be classed as a 'worker';⁶⁸ those from the European Economic Area (EEA) who have not satisfied the conditions of the relevant Home Office worker requirements and; finally, those from outside of the EEA who are subject to immigration control.⁶⁹

The criteria for achieving a right to reside in the UK differ, depending on which part of the world the person is from. Individuals from within the

common travel area, which includes the UK, the Republic of Ireland, the Isle of Man and the Channel islands, are generally deemed to have a right to reside within the UK. Applicants from A8 countries may only be granted a right to reside once they have registered work under the Home Office Worker Registration Scheme (WRS).⁷⁰ People from A2 countries are not deemed to have a right to reside unless they have undertaken Worker Authorisation or are students or self-employed.⁷¹ Those from outside the European Economic Area may be granted a right to reside if they successfully apply for leave to remain in the UK, for example, as a spouse, a family member, a student, or a refugee. However, even if granted a right to reside, a person may be subject to the 'no recourse to public funds' rule meaning she or he may be allowed to live in the UK but prohibited from accessing benefits. By applying for Jobseeker's Allowance or Income Support, individuals who are subject to immigration control could be in breach of their right to reside and face removal.

When applying for benefits, a person must provide documented proof of their right to reside, for example, a passport or identity card. Individuals, who come to the UK to join a spouse or family member, may also be required to provide marriage and birth certificates. When deciding on an application SSA staff are required to record the reason for a successful or unsuccessful claim, citing the relevant legislation.

Habitual residence test

In addition to possessing a right to reside in the UK, benefit applicants must be deemed to be habitually resident. This additional measure was introduced

⁶⁵ CIS/2559/2005.

⁶⁶ Social Security Agency (2009) *Decision Makers Guide*, Vol 2, Chapter 7, Part 3, para 071185; and, as referenced in correspondence from the SSA, its *Immigration and Income-related Benefits Handbook*, p 7.

⁶⁷ The legislation for the administration of Jobseeker's Allowance is contained in the *Jobseeker's Allowance Regulations (Northern Ireland) 1996* as amended. The relevant legislation for Income Support is the *Income Support (General) Regulations 1987*.

⁶⁸ Council Directive No 2004/38/EC provides for the free movement of workers and self-employed persons throughout the European Union. The Directive has been transposed in to the UK domestic law via the *Immigration (European Economic Area) Regulations 2006*.

⁶⁹ In addition to workers, a number of other categories of persons do have a right to reside in the UK under Regulations 5, 7 and 14 of the *Immigration (European Economic Area) Regulations 2006* including self-employed persons, jobseekers, students, self sufficient persons and persons from outside of the EEA if they are a family member of an EEA national.

⁷⁰ Or if they are students or self-employed.

⁷¹ Regulations 6 and 14 of the *Immigration (European Economic Area) Regulations 2006*.

in 1994 as a means of preventing so called ‘benefit tourism’, meaning that people who had a legal right to live in the UK could not enter, or return to, the country simply to exploit the benefit system.⁷² The habitual residence test (HRT) applies equally to UK and non-UK nationals; it is generally used in the process of benefit applications by individuals who have not lived full-time in the UK in the two years prior to their benefit claim. It is also applied to UK nationals who have returned to the UK after a period of living abroad.

The habitual residence form considers a range of information such as when the applicant arrived in the UK and with whom, the type of accommodation she or he lives in, whether she or he is enrolled in a course of study, has opened bank accounts, or registered with a doctor. The information provided is then assessed by the SSA against the following questions:

- Is the applicant voluntarily in the UK?
- Is the applicant resident in the UK?
- Has the applicant a settled intention to remain in the UK?
- Has the applicant been in the UK for an appreciable period of time?

The SSA makes a decision on a case-by-case basis as to whether an individual is habitually resident and consequently eligible to receive benefits.

Social Fund

Although not an out-of-work benefit, applicants to the Social Fund are also indirectly subject to the right to reside rule and habitual residence test because a criterion for most Social Fund payments is that the applicant must be in receipt of a qualifying benefit. The Social Fund is administered by the SSA and is intended to provide assistance to individuals, on a low income, by means of lump sum payments, grants and loans. The fund is divided into a number of different categories.

Community Care Grants may be available to people who:

- are leaving institutional care or a care home
- need help to stay in their own home
- are part of a family under exceptional pressure
- are caring for a prisoner or young offender on release/licence
- are setting up a home as part of a planned resettlement programme, or
- are incurring travel costs for certain specified reasons.

Budgeting loans are intended for individuals who require essential household, or other essential, items which they cannot afford to pay for in a lump sum. Crisis Loans may be available to people who require immediate help to meet day-to-day living expenses. A number of other specific payments are also available including Sure Start Maternity Grant, Funeral Payments, Cold Weather Payments and Winter Fuel Payments. Loans and Community Care Grants from the Social Fund are discretionary and do not provide a standard amount.

The most relevant branch of the Social Fund, in terms of persons who are in danger of destitution, is the crisis loan which could, in theory, be used to pay for temporary accommodation, food and other essential day-to-day expenses. Crisis Loans are intended as a safety net for applicants who as a result of disaster, or in an emergency, are unable to meet their immediate, short-term needs.⁷³ In accordance with departmental guidance, the crisis loan should be the only means of avoiding serious damage or risk to the health and safety of the applicant or a member of the family. In the case of non-EEA nationals, persons subject to immigration control and a person who is treated as a person from abroad for benefit purposes, the need must be to “alleviate the consequences of a disaster” and

⁷² The HRT was introduced under the *Income-Related Benefits Schemes (Miscellaneous Amendments) (No.3) Regulations 1994* and has been amended on a number of occasions since.

⁷³ House of Commons Select Committee on Social Security (2001) *The Social Fund, Third Report of Session 2000-01*, HC 232, TSO, London, para 61.

does not allow for emergency situations.⁷⁴ The loans are interest-free and must be recoverable. Decisions are made on the day of application by specialist Social Fund officers.⁷⁵

Findings

Human rights

Given that the remit of this investigation was to consider the human rights implications of homelessness among non-UK nationals, interviews with SSA staff involved human rights related questions. As a government agency, the SSA has a responsibility to ensure that the actions of their staff are in compliance with the *Human Rights Act 1998*. Although the Commission is not suggesting that SSA staff have acted contrary to human rights law, it is of the opinion that at least a basic level of human rights training would be necessary to make staff aware of their obligations. Overwhelmingly, staff who were interviewed reported that they had not received any specific human rights training'. This is contrary to the fact that the SSA delivers human rights training as part of staff inductions.⁷⁶ A minority of staff interviewed referred to having received training in recent years, which appeared to be training on diversity and equality rather than on human rights. One member of staff recalled receiving some human rights training:

"We get them [human rights training] with our induction, there is a wee human rights package... It is a while since I had my induction so... We do get them though... we are aware of the Human Rights Act and what have you. You have to be aware of all those things." (SSA interviewee)

Another member of staff claimed that human rights training was mandatory and delivered regularly, and although confirmed by SSA management this does

not match statements provided by the majority of staff. When asked about gaps in training, one staff member, not a decision maker, stated that no training had been received at all for his current role, never mind human rights training.⁷⁷

"Yes [there are training gaps] like human rights. There is lots of training I think you would need for this job. For instance, I deal with a deaf gentleman quite often. He is profoundly deaf and I can't sign, so, basically we would spend a good hour sometimes writing little letters to each other, trying to explain things and it is just not ideal and I just don't think it is very good customer service, but I have asked for the training, but they can't let me go for any training because they can't afford to let me leave so it's catch-22." (SSA interviewee)

Staff were asked whether they had encountered anything in their work which would concern them with regard to human rights. The answers provided were illustrative of a lack of understanding of the roles and responsibilities of the SSA and other agencies in relation to human rights and homelessness:

"I know everybody has the right to a roof over their head but, as far as I am aware like, the Housing Executive has to actually within 24 hours re-house them, somewhere, far as I have been told... I don't know if that is true like, but there is no reason really for anybody in this day and age to be homeless, because there is a lot of hostels out there like, you know, there is. I mean there is too many of them for people to not have a roof over their head." (SSA interviewee)

The following quote corroborates the lack of basic awareness of human rights which exists among some staff members:

⁷⁴ Social Fund Direction 16 – Crisis Loans for students and persons from abroad.

⁷⁵ According to the SSA, for the financial year ending March 2009, decisions on all crisis loan claims were made on the day of application.

⁷⁶ The investigators requested details of the training and were satisfied that the issues covered were appropriate and relevant.

⁷⁷ During factual accuracy checks on this report, the SSA management responded to this comment: *"This is patently incorrect as all staff received training appropriate to their roles"*. Management further added: *"the Agency has a robust training and consolidation programme for all staff which involves structured classroom training followed by a further period of consolidation whereby staff are mentored in a controlled environment. During this period, all work is monitored and checked by experienced staff to ensure an acceptable standard of accuracy. Only when that standard is reached is the member of staff considered suitable to work in the live environment. A strict record is maintained of all training and consolidation received by staff"*.

“I have never had to contact human rights, never had anything in this area that caused alarm.” (SSA interviewee)

The legislation

As previously outlined, entitlement to out-of-work benefits in the UK is dependent upon successful application of a two-tiered test, which is aimed at preventing benefit tourism. While there are no concerns about the tests being discriminatory, as they apply to everyone, there are a number of general concerns about the complexity of the legislation and its application. A number of SSA staff and voluntary agency staff interviewed commented on the complexity of benefit legislation which is further complicated in the case of individuals from abroad. A failure to fully comprehend the legislation may lead to the provision of misinformation which, in turn, can mean that applicants are incorrectly denied benefit or mistakenly granted benefit which they will be forced to repay:

“Well, unless there is a change in the legislation, in terms of benefit, we can’t do anything further. Obviously our legislation is quite complex, so any simplifying of the legislation would be great.” (SSA interviewee)

In the course of interviews with SSA staff, at all levels of seniority, from across the three locations, it became apparent that there was a lack of understanding among some staff about the entitlement of categories of non-UK nationals to benefits. It should be noted, however, that the investigators did not uncover a lack of understanding among the decision-making staff interviewed. Gaps in training and learning were particularly evident when staff were questioned about the safety nets available to homeless persons. The following extract is typical of the misunderstanding among some of the staff interviewed about how the Social Fund operates.

“The Social Fund would fall into the gap where Income Support is unable to provide because... say it is not clear that the person would be entitled to benefit, the conditional entitlement has not been proven to be satisfied or it is unclear as to whether there would be entitlement or not, there is a question on it. Then Social Fund would step in where there is no provision available from the benefit.” (SSA interviewee)

It should be noted that this lack of understanding and knowledge exists despite the fact that regular information bulletins are circulated from the special advisory officer in each district, and that SSA offices hold weekly team meetings to discuss changes in legislation and operational issues.⁷⁸ When asked if staff felt that they had enough information to do their jobs, the response was generally positive, with more than one staff member interviewed stating that they received too much information at times:

“The information is there for us, I mean, they have supplied everything for us. The Civil Service keep themselves well covered, everything is there for us to... it is the same as the other Acts, equal opportunities and discrimination and things like that there.” (SSA interviewee)

Nevertheless, some staff confided that they had not received specific information or training to assist them with their jobs:

“I would have to say, no. I will be honest with you, the information that I have to give to these people and the knowledge that I have to deal with these situations has all been gleaned from my colleagues, and from just dealing with these people. I have never actually received any formal advice or training, to be honest.” (SSA interviewee)

When confronted with this comment, the SSA management stated that they view information sharing with experienced or senior colleagues as

⁷⁸ In addition, the SSA management informed the investigators that “Special Advisory Officers are of Executive Officer I grade and based in each District to provide specialist advice to staff”.

part of the training and learning process. The lack of specific training and support for some of the staff interviewed has an inevitable impact on their ability to deal with, or appropriately, refer difficult cases and many staff reported feeling powerless to help people in crisis. The impact of particular cases on staff is also aggravated by the lack of structured co-operation which exists not only between local agencies but also with the Home Office or UK Borders Agency. The following example shows the degree to which some staff try to assist where possible:

“...She was subject to immigration, so we were trying to get them [UKBA] to issue her with something and I convinced them to actually fax us through something that enabled us to – when we couldn’t pay her Income Support on that day – we were able to secure a Social Fund loan. So she got something, as opposed to nothing. I felt her situation was quite desperate, so I didn’t want to send her away without giving it my all. That [same] lady happened to be on a Friday afternoon and that was why, because, it wasn’t like... it was going to be two days, if we couldn’t have sorted something out and I was concerned, this sounds ridiculous, but as a human being that I was going to send this lady away, who was obviously, who was not a well woman, with no money.” (SSA interviewee)

As previously explained, entitlement to benefit is dependent on the passing of a two-tiered test which considers the applicant’s right to reside and habitual residence in the UK. In the course of the investigation, 70 Jobseeker’s Allowance applications and 59 Income Support claims from non-UK nationals, from offices in Belfast, Dungannon and Cookstown, were reviewed. Tables 5.2 and 5.3 demonstrate the outcome of the cases reviewed.

Table 5.2 Outcome of JSA claims

Type of claim	Allowed	Disallowed	Total
JSA contribution	0	1	1
JSA income-based	33	31	64
Total	33	32	65

Table 5.3 Outcome of Income Support claims

Type of claim	Allowed	Disallowed	Total
Incapacity	16	13	29
Carer	1	0	1
Lone parent	12	9	21
Unknown	5	3	8
Total	34	25	59

The case files demonstrated that almost half of the applicants failed to meet the right to reside requirement and were consequently ineligible for benefits. The most frequent ground for failing to meet the requirement was based either on a failure by A8 nationals to register or to complete the Worker Registration Scheme (WRS) (66.7 per cent). Just over half of the applicants (52.4 per cent) had a right to reside in the UK, most commonly as a result of EU free movement rights. Although over half of relevant benefit applicants met the right to reside requirement, not all were successful in their applications because of the additional need to demonstrate their habitual residence.

The habitual residence test requires not only that non-UK benefit applicants are resident in the UK, which is valid, but that they be resident for an appreciable period of time. The habitual residence test is extremely problematic as it lacks any statutory definition and is therefore entirely subjective. The difficulty with the application of the test is that there is no definition for any of the terms used including what is meant by an appreciable period. The Commission is concerned

about the vagueness and the potential for inconsistent application. Further, the Commission shares the concerns expressed by the European Committee of Social Rights in its examination of the UK government under the *European Social Charter*. Having considered the test against the provisions of the *European Social Charter*, the Committee stated:

*The Committee concludes that the United Kingdom is not in conformity with Article 13§1 of the Charter as applicants for social assistance must satisfy the Habitual Residence Test which may entail a length of residence requirement.*⁷⁹

The Commission understands that the SSA is not responsible for the test or the requirement to apply it; however, the investigators did have concerns in terms of how the test was being applied. By design, the test is extremely subjective and it is at the discretion of staff to determine what information they request initially and then, if necessary, for decision makers to request further information from applicants. The high level of discretion would require that those SSA staff gathering and deciding on evidence should have a high level of understanding as to how the test operates. In interviews with SSA staff from across the three geographical areas, different interpretations of appreciable period were expressed, ranging from six weeks to several months. A social security commissioner, whose role is to decide on any appeals referred, has stated that an appreciable period of time can be anything up to three months but could also be a shorter, or longer, period depending on the facts of the case.⁸⁰

A similar lack of clarity exists with the notion of settled intention. In the course of interviews with SSA staff, a variety of examples were described to demonstrate how a decision would be made on a benefit applicant's intention to settle in Northern

Ireland, with some staff considering certain criteria to be essential, such as an applicant having her or his own accommodation. In the context of this investigation, the reliance of some staff on a person having a home is particularly troubling given the potential negative repercussions faced by homeless people. Other staff gave the impression that it was easier to demonstrate intention to settle if the applicant had children because they could be registered in a school. This, again, raises concerns. Information provided from a number of sources, including voluntary groups and accommodation providers would strongly suggest that many of the non-UK national population in Northern Ireland are single people without children. The Commission would therefore be concerned that such individuals may face an unfair disadvantage in attempting to satisfy the habitual residence test. An overall concern for the investigators was the lack of evidence provided in a number of case files as to how the HRT was, or was not, satisfied. In some case files, a box was ticked and no further information provided. In such cases, the investigators were not able to establish how, if at all, the test was applied. This information is essential in demonstrating fair application of the test and, therefore, the Commission would strongly urge that the SSA ensures that all case files contain an accurate record on how the decision on the habitual residence test was arrived at.

Social Fund

Although individuals likely to be entitled to benefit may be eligible for interim benefit payments to avoid hardship, Crisis Loans via the Social Fund are the SSA's primary stopgap mechanism for individuals at risk of destitution and homelessness.⁸¹ However, the investigation found that, in reality, the fund offers little, or no,

⁷⁹ *European Social Charter*, European Committee of Social Rights, Conclusions XVII-1 (United Kingdom), 2004.

⁸⁰ Social Security Commissioners are judicial appointments and their role is to decide appeals which have been referred to them. When Commissioners make decisions, precedents are set and case law is created which will then be used by decision makers when making decisions. The case referred to is: *Secretary of State for Work and Pensions v Bhakta* [2006] EWCA Civ 65.

⁸¹ SSA management advised the investigators that if a person was without funds and was "in all likelihood going to satisfy the conditions of entitlement to benefit and for some reason could not be paid immediately then they would be considered for an interim payment which would be recovered from future benefit payments".

protection to individuals from abroad. It operates mainly on a referral system, where clients are referred or directed by SSA staff. They may also self-refer. No referral to the Social Fund was recorded in any of the 124 case files analysed by the investigators, or identified in the client interviews observed between SSA staff and non-UK nationals. However, it should be noted that there is no statutory duty on SSA staff to refer to the Social Fund, rather an expectation that they would advise customers to present. The Commission remains concerned, however, that no reference to the Social Fund, either in terms of advice or referral, was included in any of the 124 benefit application cases. Separately, the investigators requested and received access to Social Fund case files involving non-UK national clients, of which nine were made available. The small number appears to be representative of the low number of non-UK national referrals and applications across the three geographical areas, as demonstrated by Table 5.4.

Table 5.4 Social Fund case files

District Office	Number of case files reviewed	Number of Social Fund referrals
Shaftesbury	37	0
Belfast East	9	0
Shankhill	5	0
Belfast West	6	0
Dungannon	29	0
Cookstown	38	0
Total	124	0

Of the Social Fund cases reviewed by the investigators, seven applications were successful and two were refused. In each of the positive cases, the applicant was either in receipt of, or due to, receive benefits. Bearing in mind that access to Crisis Loan assistance for certain non-UK nationals may be limited to the alleviation of the consequences of disaster, other barriers should be

considered. Based on the investigators' interviews with SSA staff and community/voluntary groups, one barrier in accessing Crisis Loans is the client's ability to repay the loan. Clients must be able to demonstrate how repayments will be made, either from benefits or through wages. This is problematic as clients will apply for loans because they have no other source of funds. If someone is temporarily unemployed, she or he cannot demonstrate how the loan can be recovered. The same problem arises in the situation of clients who have been refused benefits and also lack any means of repayment. A further obstacle in terms of Crisis Loan access concerns staff understanding of the Social Fund, an issue which has already been discussed in this chapter. The Commission reiterates the need for improved staff training and guidance on entitlement to support.

Staff attitudes to non-UK national clients

Gaps in training and learning were apparent across the SSA in a number of thematic areas. In the first instance, some staff simply did not understand how the benefit system operated in relation to non-UK nationals. The investigators interviewed staff at all levels of the SSA and found primarily positive attitudes toward non-UK national clients and homeless persons. In almost every interview, staff were quick to emphasise that every customer was treated equally and that there was no difference in practice or approach where a non-UK national client was involved:

"[Non-UK national] I mean, down there, our attitude has to be everybody is the same. It is not, you know, they are from Europe so they have to be treated differently." (SSA interviewee)

While the intention, and indeed the practice, may be that everyone is treated the same in terms of dignity and respect, the legislation means that the processes involved for non-UK nationals are quite different. A number of factors impact to ensure that there are disparities between the experiences

of nationals and non-UK nationals. The legislation requires that specific forms must be completed and tests applied to non-UK national applicants. The logistics of coming from another country means that certain supporting information may be required in relation to medical history and dependent children. The language barrier may necessitate the use of an interpreter or translation facilities, with the consequence that appointments can take longer to arrange and carry through. Ultimately, in addition to the core qualifying criteria which any applicant must meet, the decision on a non-UK national's application is often dependent on immigration status. The following statement by an SSA claims assessor demonstrates the fact that the legislation and policy necessitate a difference in approach to the processing of claims made by non-UK nationals:

"We don't make any distinctions between somebody from abroad... It is, everybody is treated the same and how they apply for Income Support. Generally...they complete a claim form, we make sure all the relevant information is there for us to be able to process the claim, or in the case of if you are talking about a person from abroad, there is different things that we have to satisfy. Are they classed as a qualified worker, are they registered under Workers Registration Scheme, things like that. Are they a family member of a qualified person, different things. We make sure we have all the relevant documentation, work out, is the person entitled to Income Support. They are either allowed or disallowed." (SSA interviewee)

The above issue deals with differences in the processing of UK and non-UK national benefit applications. In addition, interviews with community and voluntary groups illustrated a difference in treatment between national and non-UK national staff contacting the SSA which caused concern as to the extent to which nationality may effect how people are treated:

"Staff in the SSA office respond differently depending on who calls them. If [local staff] calls they get a better response than if [non-UK national member of staff] calls. If that is their attitude when it is [organisation] staff calling, what might their attitudes be towards people who need help?" (Voluntary organisation interviewee)

Staff at one voluntary organisation highlighted, by the following example, the impact of SSA staff attitudes on foreign nationals as potentially limiting applications for crisis support:

"We were having clients, especially migrant workers, who basically had no money to live on and we were sending them down and they were technically eligible for crisis loans. They were getting to the front desk and the person at the desk was actually saying, 'no, you won't qualify, go away' when actually it is not the receptionist's job to make that decision. Everybody has got a right to apply... I mean if it gets to the stage where you are applying for a crisis loan, you are in trouble and something like that should be treble ring-fenced to make sure it is working properly, you know, because the next stage is starvation." (Voluntary organisation interviewee)

On the whole, the investigators found the majority of staff across the SSA to be helpful and compassionate; however, some staff appeared to be indifferent toward non-UK nationals and homeless clients, regardless of their circumstances. The investigators did not directly observe any poor conduct towards these client groups; however, one interviewee remarked:

"Foreigners can be more demanding and pushy."

Based on further interviews, it appeared that the restrictive legislation was at times being used by some of the SSA staff as a means of distancing themselves from potentially emotive issues, as the following examples demonstrate:

"[Children] if they don't qualify, they don't qualify, whether they have got children or not." (SSA interviewee)

"[No fixed abode] if they come in there would be nothing really we would do differently to someone who was no fixed abode than we would with someone if they had a house. There is just maybe an extra form for them to fill in because there is no fixed abode stencil. Other than that, there is no real difference." (SSA interviewee)

Other staff were more flexible in their approach and while, like all other SSA staff interviewed, they adhered to the legislation and policy, they adopted a more compassionate response to clients in need. As one SSA interviewee stated:

"You don't close the door on anyone no matter where they are from. You try every avenue. You can't let someone walk out with nowhere to sleep."

Similarly, another staff member recognised that when clients presented, many were doing so as a last resort:

"...there are people down there, and they don't appreciate what you do for them. But, again, they're at that desk and that is their last resort; they are not there because they want to be, you know what I mean." (SSA interviewee)

Understanding of homelessness

Homelessness is not an issue for which the SSA has overall responsibility. However, the investigators felt that from a human rights perspective, and in order to ensure effective referrals, staff should have a clear understanding of what to do when someone presents as homeless. Staff across the SSA had a varied understanding of homelessness which focused entirely on lack of accommodation. In most cases, staff interviewed understood homelessness to mean no access to any kind of accommodation.

"We have a few [homeless], but they tend to be no fixed abode in name only in that they do actually have several addresses that they spend several nights at. The actual case of... 'I am living in a cardboard box in the street', you know, really doesn't present." (SSA interviewee)

In some instances, the perception of staff interviewed in terms of levels of homelessness vastly contradicted the reality. In an office which covers an area with one of the highest levels of homelessness, staff were unaware of the extent of the problem, with some claiming that there were no homeless people in the area. For the most part, lack of accommodation and, consequently, no postal address was seen as more of an administrative issue than a human rights concern. Very few staff recognised the connection between access to benefits and housing need and, generally, the attitude was that homelessness is not something they deal with:

"But the homelessness isn't relevant in our decision. Whether they are homeless or have a home, you know, our decision will be the same." (SSA interviewee)

This last statement is not factually inaccurate because, as legislation, policy and practice currently operate, SSA staff do not have a direct responsibility toward homelessness other than to offer advice. However, the statement is reflective of the professional distance maintained by a number of the staff interviewed. Even where children are involved, homelessness tends to remain an administrative issue for staff and there is no real sense of responsibility to refer to other agencies:

"We very, very rarely would have anybody who has no address completely who has children. If we do, we really strongly urge them to try and get an address. It isn't really within our remit to make them do that. We can't sanction them in any way for not getting an address, but obviously, if somebody has children and they don't, I mean, they present to us and say they are sleeping rough, we will say, 'please go to the NIHE... try and get yourself an address'. But our problem is that our remit is to pay benefit, to sort out benefit, it is not to take on the social aspect of it, although sometimes you do, but it isn't really within our remit to do that." (SSA interviewee)

Language barrier

Interviews with SSA staff, clients and voluntary/community organisations consistently highlighted the language barrier as an issue in relation to accessing benefits. Despite the fact that the SSA has a facility in place for translating documents, all correspondence is sent in the English language and is generated from a computer system. While only a few staff acknowledged that clients will return with the letter for an explanation of its contents, many voluntary and community organisations stated that SSA clients were presenting to them for language assistance. Staff at one voluntary organisation explained the practical implications of using English-only correspondence:

“Letters go out in English but these are standard letters that could be translated. People are missing deadlines because of this.” (Voluntary organisation interviewee)

For face-to-face applications, some claimants brought a friend to provide interpretation. In the course of the investigation interviews, it was apparent that a small number of SSA staff thought it appropriate for an applicant’s child to interpret in interviews and some had conducted interviews in this way. There are obvious concerns about this practice, given the fact that children are potentially missing school to attend interviews, the complexity and possible sensitivity of information involved and, therefore, the potential for, and consequences of, providing the wrong, or inadequate, information on benefit entitlement.

SSA management informed the investigators that its staff are advised to offer interpreting services to individuals for whom English is not their first language and who may require assistance. The SSA has contracted a company to provide telephone based interpretation.⁸²

This service operates as a three-way telephone system, where the member of staff speaks, the interpreter translates and the client listens. SSA management reported a high level of satisfaction among staff using this service. However, the Commission in its interviews with SSA staff found that there were some issues with telephone interpreting generally. While the service is intended to operate on a conferencing phone, some offices only have the facility to use an ordinary phone which means they have to pass the handset back and forth. Many staff found this service helpful. However, a significant number reported difficulties. Interpreters could be based anywhere in the world and some staff stated that there could be a bad line or that the interpreter’s accent was difficult to understand. Other staff commented on how time consuming the service was due to the need to repeat information several times. Staff in voluntary and community organisations also highlighted problems with the service:

“The interpreters are not always great and the language used may be the customer’s second or even third language. Like, they can’t get a Slovakian interpreter so they use a Czech one, but these languages are different. It means that people don’t get the information they need from agencies.” (Voluntary sector interviewee)

In an interview with the investigators, a staff member recalled a particularly distressing experience with the telephone based interpreting service. From the staff member’s perspective, the interpreter was less than professional and, rather than interpret the conversation, was seen to have aggravated an already emotionally charged situation:

⁸² Language Line is one of two telephone-interpreting services which have been used interchangeably by various government agencies. The other is called ‘Big Word’.

“It is hard sometimes, telling people like, you know, because there was [A8 national] girl came in. God help her like. She was, she was only here seven weeks, she fell pregnant, she found out she was pregnant and she was just devastated... And she didn’t speak any English and she just came in crying to me and then we eventually got the interpreter on the phone, but the interpreter says to her, ‘right, you just need to go home’... So, I was just trying to advise her what benefits that she was entitled to, the interpreter just said to her ‘you need to go home and be with your mummy’. I think she was a mother herself, you know. And she was being nice, she was being nice like, but it just didn’t come across like that to the wee girl, you know.” (SSA interviewee)

While the use of face-to-face professional interpreters is good practice, it should be noted that Northern Ireland has a small population and many close networks exist within the various non-UK national communities, meaning that privacy may be an issue. During the investigation, it became clear that the interpreters used by statutory agencies were, in some cases, well known to the local population. While no claims of unprofessional conduct were made against any interpreters to the investigators’ knowledge, there were concerns expressed in relation to domestic violence cases where the interpreter knew the victim and the perpetrator.

Client experiences

Fourteen homeless people were interviewed during the course of the Commission’s investigation. They were asked about their experiences of government agencies. Nine had no direct experience of the SSA, with many not aware of it. A further three were not aware of the existence of the SSA and, although they had visited an SSA office to obtain their National Insurance number, they did not know that the office provided a dual function as a benefit agency. Only two of the fourteen people interviewed had direct experience of seeking

benefits from the SSA and neither were entitled. One person was particularly critical of the treatment he had received, claiming that it was unhelpful and that he felt that no advice was given. He cited the language barrier as being particularly problematic:

“It is possible that the SSA provided advice on where to go but the meeting was being interpreted through the telephone and the line was very bad, lots of noise and I couldn’t understand what was being said. I am shy and didn’t want to ask questions.” (Non-UK national interviewee)

These experiences demonstrate the need for the production of accessible, comprehensive information about the SSA and its remit for non-UK nationals. It should be noted, however, that some translated information is available including online leaflets and a migrant workers’ guide, and so the issue may well be about the accessibility and dissemination of such resources.

Lack of interagency co-operation

Despite the range of overlapping issues, the investigation uncovered almost a complete absence of interagency co-operation in relation to homelessness. This is not to say that SSA staff have failed in meeting their legislative responsibility; however, given the vulnerability of individuals ineligible for benefit, the Commission would see a need for interagency co-operation. There was evidence of good statutory interagency practice in one office under the investigation’s remit but, most notably, this was an area with very low numbers of cases concerning non-UK nationals:

“[NIHE] Yes, there is a liaison meeting with the Housing Executive, six-monthly, every six weeks. Because Income Support and Jobseeker’s Allowance provide a passport to Housing Benefit, there would be a close liaison with them on an ongoing basis for all claims and our computer systems are interlinked to provide access too. So Housing Executive are automatically notified that an Income Support

customer has become entitled which will tie up then with a corresponding Housing Benefit application, but that is a routine for all Income Support and Jobseeker's Allowance customers.” (SSA interviewee)

Staff across SSA offices quite often made the link between homelessness and the Northern Ireland Housing Executive (NIHE), but had differing approaches in terms of pursuing this link. While some staff would be inclined to signpost, others were more reserved:

“No, we don't refer as far as we are concerned; it is not within our remit to do that, okay. We are benefit office; we are not an advice and guidance centre.” (SSA interviewee)

The lack of interagency referrals appears to be grounded in the fact that, overall, staff know very little about the roles and responsibilities of the other relevant statutory agencies in relation to homelessness:

“The Housing Executive is a totally separate department from ourselves, even though we do deal with a small slice of their customers, you know. I don't think there is much information shared between government departments, I have to say.” (SSA interviewee)

Although there is no statutory duty on SSA staff to make referrals, the Commission is of the opinion that a failure by staff to recognise and understand the remit of other agencies can exasperate the hardship faced by clients.

Relationship with voluntary organisations

Each of the SSA offices involved in the investigation stated that they received referrals from voluntary and community organisations. Certain offices had extremely positive relationships with the voluntary and community sector, and adopted a proactive approach to the needs of non-UK national clients. While positive engagement with the non-statutory

sector is to be welcomed, staff interviewed appeared, at times, to demonstrate inappropriate levels of reliance on community and voluntary groups. Staff across the three locations – though some offices more than others – referred clients to voluntary organisations for language assistance, filling in forms and information, as well as to other charitable organisations for support and financial assistance. Interviews with staff in the voluntary and community sector revealed that they were under pressure to respond to requests for advice and assistance on issues which they felt were the remit of the statutory agencies. While staff in voluntary and community organisations felt they had the necessary skills, knowledge and expertise to respond to requests, some felt that they were essentially fulfilling a function, at great time and financial expense, which the SSA is already mandated and funded to undertake.

“If the Social Security Agencies out there are going to be sending people here to get forms filled in, why not pay for them, why not pay for the interpreters' time? That would be a big bone of contention for us. The financial impact is enormous. The cost of interpreting would be the price of at least one advisor.” (Voluntary organisation interviewee)

During factual accuracy checks of this report, SSA management stated that “the Agency offers information, advice and assistance with form filling to customers”. However, where they request alternative services, the SSA will signpost to the relevant voluntary organisations. The SSA provides contact details for all its offices to the Advice Service Alliance, an umbrella organisation of advice and support organisations.

Impact on SSA staff

The findings have, so far, focused on the impact of SSA practices on clients and the voluntary sector. However, it should be noted that a lack of support, clear guidance and training on homelessness and non-UK nationals can impact on the SSA staff who encounter these cases. In the course of the investigation interviews, a number of staff complained about the pressure of having to meet 'unrealistic' targets in the context of what they felt was a lack of training and guidance. Some staff went further and disclosed the personal impact which cases had on them:

"That case hit me hard because she was on her own, with twins, and we couldn't pay her and, much as I felt dreadful about it and the case has stuck with me and I am waiting to hear how it goes [on appeal]. I truthfully felt that I had applied the legislation correctly, but I felt dreadful about it... Part of our problem here is that we are not social workers and there is only so much we can do and our hands are basically tied and, you know, you can feel great sympathy for someone but it doesn't mean that you can necessarily do anything about it, because you are stuck with the regulations, you know you are stuck with the legislation." (SSA interviewee)

The above case illustrates the extent to which, despite best intentions, staff can feel severely restricted or, as one staff member described, 'powerless' by legislation. SSA management informed the investigators that the agency has a well-advertised Staff Welfare Service which provides a range of services to support staff as necessary. The Commission commends the agency's efforts in relation to the care of its staff and the provision of detailed guidance for decision makers. It is, however, of the opinion that the negative impacts of difficult cases could be minimised through the production and dissemination of comprehensive guidance to front line staff on the possible avenues of support available to non-UK nationals.

Thematic findings



Exploitation and immigration rules

“For ineligible cases – what can we do? There are real concerns around vulnerable people and, of course, exploitation.” (NIHE interviewee)

Introduction

People who are excluded from accessing public services, such as homelessness assistance and welfare benefits, may be all the more vulnerable to various forms of exploitation. The Commission’s investigation found examples of potential rights violations that were exacerbated by UK immigration rules that exclude people from accessing support. This chapter considers the investigation findings of exploitation in the context of the Home Office Worker Registration Scheme (WRS), the Worker Authorisation Scheme, and the immigration rules that apply to non-EU workers.

Human rights standards

The human rights standards that apply to migrants in the context of their working life in the UK are the same as other human rights standards, as discussed in Chapter 2 of this report. Therefore, migrant workers are entitled to the protection of the rights contained within the *European Convention on Human Rights* (ECHR), and other international human rights instruments. Those that have specific relevance are the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD). In addition, it is important to highlight the Council of Europe’s *Convention on Action against Trafficking in Human Beings*, which the UK has recently ratified.⁸³ This places an obligation on state signatories to offer protection to victims of trafficking who may be made all the more vulnerable by legislation which prohibits access to homelessness support and welfare benefits.

Legislation and policy

Worker Registration Scheme

In order to facilitate accession of the A8 states to the European Union (EU), the European Commission permitted an EU-wide derogation from Article 39 of the EC Treaty (free movement provisions) for a period of five years, from 1 May 2004. This allowed member states to restrict access to their labour markets for nationals from the A8 states until 30 April 2009. However, member states were permitted to extend transitional restrictions for a further period of two years, in the event of “serious disturbances to the labour market, or a serious threat thereof”.⁸⁴ On 8 April 2009, contrary to the advice of the Northern Ireland Human Rights Commission, the Government announced its decision to extend the Worker Registration Scheme (WRS) for two years, until 30 April 2011.

The WRS was introduced on 1 May 2004, as the Government’s transitional measure to regulate access to the labour market by A8 nationals.⁸⁵ The scheme is also intended to restrict eligibility for benefits and homelessness assistance. The need for, and aims of, the scheme are set out in the Government’s most recent WRS monitoring report:

*The UK Government put in place transitional measures to regulate A8 nationals’ access to the labour market (via the Worker Registration Scheme) and to restrict access to benefits.*⁸⁶

The *Accession (Immigration and Worker Registration) Regulations 2004* set out the requirements for worker registration. They provide that within one month of working for an employer, the worker must apply for a registration certificate authorising them to work for that employer. To meet the WRS requirements, the worker must remain registered on the scheme for a continuous period of

⁸³ The UK ratified this Convention on 17 December 2008; it came into force on 1 April 2009.

⁸⁴ The Accession Treaty 2003: the *Accession (Immigration and Worker Registration) Regulations 2004*.

⁸⁵ The A8 accession states are the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia.

⁸⁶ UK Border Agency (2008) *Accession Monitoring Report: May 2004–September 2008, A8 Countries*, a joint online report between the UK Border Agency, Department for Work and Pensions, HM Revenue and Customs, and the Department of Communities and Local Government, UKBA, London, p. 1.

12 months. That time period is not met if there is more than a break of 30 days in registration. In addition, registration will lapse if the worker changes employer as this requires re-registration with the Home Office.

The *Allocation of Housing and Homelessness (Eligibility) Regulations (Northern Ireland) 2006* provide that A8 nationals, who are out of work and have not completed worker registration, are ineligible for homelessness assistance. In addition, eligibility criteria for welfare benefits, namely, Income Support and Jobseeker's Allowance, were amended by the *Social Security (Habitual Residence Amendment) Regulations (Northern Ireland) 2004*. This states that in order to qualify for benefits, the individual must have a right to reside. Nationals from the A8 states will not have a right to reside and are, therefore, not entitled to benefits unless they satisfy the requirements of the WRS.

A2 accession states

Romania and Bulgaria joined the EU on 1 January 2007. As with the A8 states, member states are permitted to derogate from Article 39 of the EC Treaty in order to restrict access to national labour markets for a transitional period of up to five years, until 31 December 2011.⁸⁷ On 1 January 2007, the Government introduced the *Accession (Immigration and Worker Authorisation) Regulations 2006* (the 2006 Regulations). These provide that A2 nationals cannot work in the UK unless:

- *Their employment falls within a specified category of employment; and*
- *Their employment is first authorised before they begin work.*

In general, in order for employment to be authorised, employers must first obtain a work permit. However, for A2 nationals, certain types of work require only a 'worker authorisation card' and

not a work permit. The types of permit-free employment are specified in the 2006 Regulations.

With regard to the legislative restrictions placed on A2 nationals, the Commission is of the view that while the Government is generally acting within principles laid down by the European Commission in limiting A2 access to the labour market, its motivation for doing so is not solely based on the protection of the labour market, but is also responding to public concern about impacts on communities, housing and social services. Therefore, as with nationals from the A8 states, the Government's transitional measures in relation to A2 nationals restrict access to benefits and homelessness assistance. Unless A2 nationals undertake a 12-month period of continuous, authorised employment, they are excluded from homelessness support and benefits, such as, Income Support, and Jobseeker's Allowance.⁸⁸

Non-EU nationals

Non-EU nationals, who come to live and work in the UK, will often do so subject to a work permit and visa. This generally means that they are subject to immigration control, with limited leave to remain in the UK. In many, but not all cases, those subject to immigration control will have 'no recourse to public funds'. Section 115 of the *Immigration and Asylum Act 1999* provides that they are excluded from benefits, unless they fall within a specified exception. In relation to those subject to immigration control, Section 115 states:

- (1) *No person is entitled to income-based jobseeker's allowance under the [...] Jobseekers Act 1995 or to –*
- (a) *Attendance Allowance,*
 - (b) *Severe Disablement Allowance,*
 - (c) *Invalid Care Allowance,*
 - (d) *Disability Living Allowance,*
 - (e) *Income Support,*

⁸⁷ Member States can extend transitional arrangements for a further two years if there are "serious disturbances to the labour market or a serious threat thereof".

⁸⁸ For homeless support, see: *Allocation of Housing and Homelessness (Eligibility) (Amendment) Regulations (Northern Ireland) 2007*; for social security benefits, see: *Social Security (Bulgaria and Romania) (Amendment) Regulations (Northern Ireland) 2006*.

- (f) Working Families' Tax Credit,
- (g) Disabled Person's Tax Credit,
- (h) A Social Fund payment,
- (i) Child Benefit,
- (j) Housing Benefit, or
- (k) Council Tax Benefit.

According to Section 119(1)(a) of the 1999 Act, homelessness assistance is also prohibited.

Non-EU nationals, who remain in the UK beyond the term of their visas, are known as 'overstayers'. Therefore, Section 9(6) of the 1999 Act provides that "An 'Overstay' means a person who, having only limited leave to enter or remain in the United Kingdom, remains beyond the time limited by the leave". Individuals in this category are not entitled to homelessness assistance or welfare benefits. Finally, non-EU nationals may travel to, and enter, the UK without documents. This means that they are 'undocumented'. Despite the fact that the reasons for travelling to the UK in this manner might be related to various forms of exploitation, including trafficking for forced labour,⁸⁹ these individuals are also excluded from benefits and homeless support.

Findings

Extension of the Worker Registration Scheme

During the period of this investigation, the Commission submitted evidence to the UK Border Agency (UKBA) outlining, from a human rights perspective, the implications of the WRS, with the main recommendation that the Government discontinue it.⁹⁰ However, on 8 April 2009, the Government announced that it would extend the scheme for two years. The reason for the extension is that the scheme allows the Government to monitor the type, and location, of employment by A8 nationals:

The Worker Registration Scheme enables the Government to monitor the work A8 nationals do, and where in the country they do it – and so better plan for local services and ensure migration is working for the British labour market and the country as a whole.⁹¹

However, in its submission of evidence, the Commission pointed out that the Government has already had five years since the introduction of the WRS to monitor the work that A8 nationals do. In addition, the Government's own monitoring reports have stated that, as it currently operates, the WRS is ineffective as a labour market monitoring tool. Given that the scheme was extended, the Commission restates what previous Home Office monitoring reports have found, namely, the scheme represents:

[...] a gross (cumulative) figure for the number of workers applying to the Worker Registration Scheme. The figures are not current: an individual who has registered to work and who leaves employment is not required to de-register, so some of those counted will have left the employment for which they registered and indeed some are likely to have left the UK.⁹²

It does not seem logical to extend the WRS for monitoring purposes when evidence suggests that it is ineffective as a monitoring tool. However, the Commission notes that the Government has also extended the scheme in order to maintain restrictions on benefit entitlement:

Maintaining the restrictions also means A8 nationals will not have full access to benefits until they have been working and paying tax for at least 12 consecutive months.⁹³

Yet, the inflexible restrictions on access to benefits and homelessness support means that A8 nationals

⁸⁹ See, for example: Dowling S, Moreton K and Wright L (2007) *Trafficking for the Purposes of Labour Exploitation: A Literature Review*, Home Office, London. Available: <http://www.homeoffice.gov.uk/rds/pdfs07/rdsolr1007.pdf> [8 July 2009].

⁹⁰ Northern Ireland Human Rights Commission (2009) *Submission of Evidence to the UK Border Agency Regarding the Impact of the Worker Registration Scheme*, NIHRC, Belfast.

⁹¹ UKBA press release, 8 April 2009. Available: <http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/Government-keeps-work-restrict> [8 July 2009].

⁹² UK Border Agency (2008), above, p 2.

⁹³ UKBA press release, 8 April 2009, above.

are vulnerable and at risk of exploitation. As outlined in the later chapters of this report, failure to meet the strict requirements of the WRS can have serious implications for vulnerable individuals, including victims of domestic violence or racial intimidation, or persons with ill-health or a disability. In extreme cases, this may have the potential to interfere with the enjoyment of human rights, including the right to be free from inhuman and degrading treatment⁹⁴ and, perhaps, even the right to life. The WRS should be discontinued without delay. In the meantime, a number of measures are required to ensure better protection of the rights of A8 workers while the scheme remains in force. These measures were outlined in the Commission's submission of evidence to the UKBA and they are discussed further below.

Workers without worker registration

As a result of the WRS, unregistered A8 nationals can be denied access to benefits and homeless services even though they have worked, paying taxes and national insurance contributions, for more than 12 months in the UK. As explained by interviewees, often A8 nationals discover the scheme when they present to government agencies for help, by which time it is too late. As one Social Security Agency (SSA) interviewee explained: *"the first time maybe they hear about it is when they come in here"*.

From SSA and Northern Ireland Housing Executive (NIHE) case files, the investigators were able to gather information about the extent to which individuals were working but did not register their work on the WRS. From the files, it was found that 20 applicants for social security benefits had been working but were not on the WRS. In two instances, it was recorded on the case file that the employer had failed to inform the applicant about the need to register. Nine applicants had been in employment, paying tax and National Insurance contributions, for more than 12 months. In

addition, from NIHE case files, where this type of information was recorded, it was apparent in two cases that the applicants had worked for more than 12 months but had not registered on the WRS. However, during interviews, a number of the NIHE staff felt that this happened quite often: *"Most of them are working some of them just haven't registered"*. In this type of situation, the NIHE staff will inform the individual about the WRS and explain how to become entitled. However, many of the staff interviewed stated that this was unsatisfactory because it did not entitle the applicant to homelessness assistance:

"So I said, 'have you registered?' and then I show them how to get the registration and stuff like that, you know. But again, what do you do after that because they are not eligible for funds? Do I say, 'well, I am sorry you have to go to a self referral hostel' but again, self-referral hostel, how do you pay for it? So it is the same situation, you know." (NIHE interviewee)

The investigators also received information from voluntary organisations which suggests that more individuals may have been working in Northern Ireland for months, often beyond 12 months, but have never registered on the WRS, as illustrated by the following case studies.

⁹⁴ See, in particular: judgment in *Limbuella* as discussed in more detail in Chapter 2.

Case studies - unregistered workers

- A8 national, male 47 – in employment for three years but did not register on WRS; voluntary organisation helped him find work and get on the WRS. They worked out a payment plan with a new landlord and helped him stay for a short period in a hostel. No help from state agencies – the Trust stated that it would not assist.
- A8 worker – lost his employment. Eventually, a voluntary organisation accepted him and referred him to a GP for treatment for depression. Although he worked for more than one employer, he had worked for more than 12 months.
- A8 worker on WRS for nine months – lost his job and, as a result, he lost private rental due to non-payment of rent. He slept rough for 13 months before being referred to a voluntary organisation.

The Commission was unable to investigate employer practices as part of this investigation and, therefore, cannot make any findings in this respect.⁹⁵ However, based on the information contained in the SSA case files, it appears that recruitment agencies and employers may not always inform A8 nationals about the need to register. In addition, at times, interviewees expressed frustration when dealing with employers and recruitment agencies:

“The customers are good enough to provide their workers registration certificates or their registration cards and it tells you which places they have been

working for, but sometimes the employers won’t give you the information and it is holding up everything.”
(SSA interviewee)

The Commission notes that while the 2004 Regulations create a criminal offence for employers who knowingly employ unregistered workers, at the time of writing, the Public Prosecution Service has yet to record a prosecution under this provision. Yet, there is clear evidence that many workers are unregistered and, as a result, penalised by the denial of homelessness assistance and benefits. As noted by Baroness Hale in a recent case brought before the House of Lords:

As monitoring is the aim [...] it is difficult to see how the future denial of benefits to a person who has worked here for at least 12 months is even a suitable means of achieving it [...]. Given the lack of familiarity of many migrant workers with the UK system, it would obviously be more effective to target those sanctions against employers and employment agencies than against the employees. The employers should be fully aware of what needs to be done if an accession worker is employed.⁹⁶

As a result of this investigation, the Commission is of the view that the practice of recruitment agencies and employers in relation to worker registration may be an area requiring further research. In the meantime, until the WRS is discontinued, it is disproportionate and unnecessary to deny homelessness assistance and welfare benefits where the individual can demonstrate that they have worked in the UK for more than 12 months.

Re-registration

The WRS requires individuals to notify the Home Office about all changes of employer during the 12-month registration period. However, during the investigation, it was discovered that very few individuals were aware of this requirement.

⁹⁵ The Commission’s powers of investigation do not extend to private organisations or to individuals.

⁹⁶ *Zalewska (AP) (Appellant) v Department for Social Development (Respondents) (Northern Ireland)* [2008] UKHL 67, para 56.

Government agency interviewees felt that this was a considerable problem:

“Sometimes they don’t know that they should have their registration documentation updated.” (NIHE interviewee)

“Most maybe don’t know that if a job finishes, you need to register again and that can be sometimes, you should be more aware of that. But I don’t know how you would make them more aware of that.” (SSA interviewee)

The Commission does not accept that there is any basis for the requirement to re-register. Indeed, it was heavily criticised by the dissenting Lords in the recent *Zalewska* case.⁹⁷ This case involved a claim by a female victim of domestic violence, who was denied Income Support on the basis that she had not completed 12 months of worker registration. She had worked in Northern Ireland for more than 12 months but had failed to notify the Home Office about a change of employer, which had taken place during the 12-month period. In her dissenting judgment, Baroness Hale found that the requirement to re-register represents an unnecessary and disproportionate part of the scheme:

*It is even more difficult to see how denial of benefits can be a necessary means of achieving the monitoring aim. The consequences for the worker’s right to freedom of movement are severe. She was allowed to come and to work here for 12 months. But she has been denied what she would otherwise be entitled to, having worked for so long.*⁹⁸

The case proceeded on the basis of EC Law. The majority judgment found that the requirement to re-register did not amount to a disproportionate restriction on free movement rights under Article 39 of the EC Treaty. The Commission notes, however, that human rights arguments were not raised. Given the serious consequences for individuals who fail to re-register, the Commission

is of the view that the requirement to re-register may have an unnecessary and disproportionate impact on an individual’s rights. In particular, for those who are homeless and at risk of destitution, exclusion from homelessness assistance and welfare benefits may engage the right to private and family life, the right to be free from inhuman and degrading treatment, and, in extreme cases, potentially the right to life.⁹⁹

Work related injury

It was discovered during the investigation that, in a number of cases, individuals were injured as a result of incidents that had occurred at work. In these instances, voluntary organisations reported dismissals which had resulted in loss of registration under the WRS, as illustrated by the following extract from an interview with a voluntary organisation:

“The client was deaf in one ear. His employer gave him four weeks Statutory Sick Pay and then he was dismissed. He lost his worker rights. He started work in January and so only had eight months’ registration. You can’t bank worker registration – once you lose it you have to start again. He slept rough for one night and then a man took him in. [We] argue that he should be seen as an employee as the only reason he is now unemployed is due to employer’s negligence.”

In this particular case, it was alleged that the employer’s failure to consider the safety of the employee resulted in a work related accident and serious injury. In another instance, the investigators were informed about an individual who broke his back due to work related injury. The individual and his wife were referred by a voluntary sector organisation to a street outreach organisation and, for further advice, to CAB. In this case, again, the injury resulted in inability to work and incomplete registration under the WRS. On reviewing government agency case files, the investigators discovered the background to the

⁹⁷ Above.

⁹⁸ Above, para 57.

⁹⁹ See: Chapter 2 for human rights standards relating to destitution.

situation and that he received some help from the Trusts, as illustrated by the following case study.

Case study: work related injury

Ben travelled to Northern Ireland from an A8 State to find work. Meanwhile, his wife and children stayed in their home country. After several weeks at work, Ben fell and broke his back. He was admitted to hospital immediately. As a result of the injury, Ben remained in hospital for over two months. This meant that he had more than a 30-day break in his worker registration and was not entitled to benefits or homelessness assistance on discharge. Staff at the hospital delayed Ben's discharge while they tried to find him some form of accommodation. They referred to the Trust which then contacted the NIHE. Given the lapse in Ben's worker registration, the NIHE confirmed that Ben was not eligible for homelessness assistance. The Trust arranged respite accommodation for Ben and agreed to cover the cost pending recovery. However, after two weeks without any hope that he would receive benefits, Ben left his accommodation voluntarily to find work. Ben did not leave a forwarding address and has not had any contact with the Trust. Ben became reliant on charitable organisations.

It is notable that according to the rules governing the WRS, a period of sick leave, as opposed to dismissal, would not have resulted in a break in registration. The investigators did not receive any further information about Ben's case, but if Ben was dismissed from his employment, he would have been entitled to pursue a claim for unfair dismissal. Yet, Ben has been seriously injured; he has no income, and no worker registration. This makes him extremely vulnerable and, as a

consequence, less able to pursue such a claim. To ensure that workers can assert their rights in this type of situation, worker registration should not lapse if the individual is claiming unfair dismissal on loss of employment. In any case, where an individual is out of work due to injury, WRS status should not impact on her or his entitlements to access homelessness assistance and welfare benefits.¹⁰⁰

Worker registration fee

When the WRS was introduced in 2004, Regulation 8(4)(a) of the Accession State Worker Registration Scheme required an application from an unregistered worker to be accompanied by a £50 fee. This fee was increased to £70, from 1 October 2005, by the *Accession (Immigration and Worker Registration) (Amendment) Regulations 2005*. As of 2 April 2007, the fee was increased again, to £90. In the explanatory paper accompanying the last increase in fees, (No. 928 (2007)), the Government stated that, even at the increased rate, the fee was below cost recovery levels and therefore justifiable. It went on to say that it did not want the fee to deter workers from applying to register their work.

However, the Commission is concerned that the extent of the fee may be deterring people from registering. For example, Table 6.1, overleaf, demonstrates how the £90 fee compares to the monthly minimum wage of individuals from A8 states.

¹⁰⁰ It should be noted that under current legislation and practice there is no automatic entitlement to benefits for an EEA national in the event of unemployment due to work related injury. The individual would still have to meet the qualifying conditions for benefit.

Table 6.1 Proportionality of application fee

Country	National Min Wage	UK Stg Equiv	% monthly wage	Days work
UK	993.20 GBP	993.20	9.06	2.70
Slovenia	566.54 euro	599.778	17.65	5.29
Slovakia	295.49 euro	265.889	33.84	10.15
Poland	1,276 zlotys	253.028	35.56	10.66
Czech Republic	8,000 koruny	252.688	35.61	10.68
Estonia	4,350 kroons	250.067	35.99	10.79
Latvia	180 lats	224.26	40.13	12.03
Hungary	71,500 forints	217.469	41.38	12.41
Lithuania	800 litai	292.88	44.36	13.30

- Figures based on Federation of European Employers' review of minimum wage rates
- National minimum wage for full-time adult employees (age 23+) per 30-day month
- Exchange rates based on <http://www.xe.com> as at 11 February 2009 at 16:35.

The table demonstrates that the current £90 fee equates to an average of 35.6 per cent (9.77 days) of an A8 worker's minimum monthly salary. As previously outlined, A8 migrant workers may be unaware of the WRS prior to arriving in the UK and will not have budgeted for it. There are those who may not have been in full-time employment in their home state and are leaving a situation of poverty in search of a better life abroad. As one NIHE interviewee stated, many individuals will have used their savings in order to travel here:

"They saved money up when they were in Poland. They think that they are coming to Northern Ireland for a more rewarding sort of life and, when they get here, they find that there are actual conditions to be able to be employed and they don't realise until they get here that there is actually a criteria to be employed. So now they are stranded here but they have probably used an awful lot of savings and family money to get

to here and then realise, when they get here, that there is actually legislation behind being employed." (NIHE interviewee)

The investigation involved a number of voluntary and community organisations, as well as A8 workers. Those aware of the scheme were asked about the cost implications of the fee and many expressed that it was burdensome and was a deterrent to registration. Government agency staff were also concerned:

"It seems very unfair to these people [...] I think it is the fact that they even have to pay £80 [...] especially when they're out of work and they're trying to get employment." (SSA interviewee)

A2 nationals and worker authorisation

The investigators encountered fewer homelessness cases involving A2 nationals. However, voluntary organisation interviewees stated that considerable barriers exist for A2 nationals and, in particular, for Romanian nationals when attempting to access support:

"The Romanian clients are not entitled to any support from the government at all [...] no support at all. They have to go for a specific procedure to get... even to get the right to work. So it is really hard for a lot of the families that are coming to me, that are Romanians, to get things, you know, like primary things, like food and accommodation." (Voluntary organisation interviewee)

Indeed, although only seven of the NIHE case files considered for this investigation involved A2 nationals, all of the applicants were of 'no fixed abode' and ineligible for homelessness assistance. In three cases, the applicants presented with children and were still refused support.¹⁰¹ The following case study is an overview of one of these cases.

¹⁰¹ In two of these cases, the applicant had three dependent children and, in one case, five dependent children.

Case study: homeless without worker authorisation

The family, A2 nationals, travelled to Northern Ireland to find work, unaware of the transitional restrictions and the requirement to have a work permit and worker authorisation. With three children, they presented to a voluntary organisation for help. The voluntary organisation did not provide accommodation and so referred the family to the Trust. On receipt of the referral, the Trust referred to the NIHE which found that the applicant and his family were ineligible for homelessness assistance. However, due to the children, the NIHE offered temporary accommodation. The family left the NIHE office before accepting this offer. The NIHE referred the case back to the Trust. The file was closed and the outcome is unknown.

One voluntary organisation reported that A2 nationals make up quite a high volume of its clients. However, many of them do not present to state agencies for support:

Q: "How many Romanian families would present to you?"

A: "Like only lately, at least 20, it is a big, very, very big community." (Voluntary organisation interviewee)

Often, A2 nationals arrive in Northern Ireland in order to seek a work permit and/or worker authorisation, but in the meantime they are excluded from accessing support. During interviews with the NIHE staff, it was sometimes felt that for homeless A2 nationals, it is a case of 'clear-cut' ineligibility:

"Non-UK, like somebody from Romania, who hasn't got a visa, he has come over here, I am sorry; he has got no paperwork at all. So that is a clear-cut case, you know, he hasn't got either the yellow or purple

card' you know... you just say, 'sorry'." (NIHE interviewee)

Perhaps more so than with the WRS, the work permit and worker authorisation requirements render A2 nationals vulnerable to exploitation. Anecdotally, the investigators were informed that A2 nationals are regularly employed without a formal contract or work permit. Without the permit, they are often prevented from seeking Home Office authorisation which, in turn, prevents them from regularising their immigration status.

Particularly for A2 nationals, the investigation found, albeit on limited information, that voluntary and charitable organisations appear to be the only source of help, even in cases where the individual is destitute and at serious risk. The following interview extract demonstrates the level of support provided by one organisation in relation to an A2 national who was ineligible for homelessness assistance:

"He wanted to work; he wasn't wanting to claim any benefits. You know, he was quite adamant not wanting to claim the benefits, but we were trying to explain to him, 'if you don't have the housing benefit, you know, you are not going to be able to stay'. So anyway, he stayed here for a month and it was a month on a charitable act, so there was no income paid. [...] Isn't it awful when you are watching and you see somebody and you know that you can't help them anymore, and you know they are given nowhere to live." (Voluntary organisation interviewee)

Despite the serious concerns reported through a number of interviews with voluntary organisations, there was a lack of available information regarding access to homelessness assistance by A2 nationals.

Non-EU nationals and no recourse to public funds

Most of the cases encountered by the investigators, that involved non-EU nationals, related to asylum claims or to individuals who had been granted refugee status. Given the specific rules relating to asylum, the investigation findings relating to asylum seekers and refugees are discussed in Chapter 7. The investigators did, however, come across a small number of homelessness cases involving non-EU nationals who were in Northern Ireland and who were either subject to immigration control – and therefore a requirement to have ‘no recourse to public funds’ – or undocumented. In these cases, regardless of their circumstances, the individuals were barred from accessing homelessness support and welfare benefits.

On review of the NIHE case files, it became apparent that six homelessness claims were made by applicants who were subject to immigration control with ‘no recourse to public funds’. In four of these cases, the investigators noted that the applicants were particularly vulnerable. For example, in one case, the applicant, a non-EEA national, had entered Northern Ireland on a work visa. He had presented to the NIHE following racist attacks on his home but was refused assistance as a person with ‘no recourse to public funds’.¹⁰² In another case, a female applicant with diabetes had also entered Northern Ireland on a work visa. A decline in her sight and mobility meant that she was no longer able to work. Following non-payment of rent, she had received a notice to quit from her landlord. Again, due to the ‘no recourse to public funds’ rule, she was refused homelessness assistance.

Anecdotally, and based on discussions with a number of voluntary groups, it is likely that more of these types of cases exist in Northern Ireland. Indeed, many cases may be unknown to government agencies. Despite this, in an interview with the Trust’s staff, one interviewee felt that she had come across this situation in a number of cases. In her experience, the ‘no recourse to public funds rule’ impacts on vulnerable people who, perhaps due to illness, are unable to maintain their work:

“It has impacted on those who had employment before they went in [to hospital] because I am even thinking of the [individual] who was from [a non-EU state]. She ended up having to go back home because she couldn’t maintain her... her housing was attached to [her employment] and therefore she couldn’t go back there because that was part of... it was paid for through the wages of [her job]. But she wasn’t fit to go back into work... She lost her home; do you know what I mean?” (Trust interviewee)

The above information shows how people entering the UK to work may be rendered vulnerable due to the absolute nature of the ‘no recourse to public funds’ rule.

Labour exploitation

Following the fieldwork period for the investigation, the UK ratified the *Council of Europe Convention on Action against Trafficking in Human Beings*.¹⁰³ As of 1 April 2009, this means that victims who report trafficking to, or who are rescued by, the “Competent Authority”¹⁰⁴ will be entitled to assistance which may include a minimum 45-day “recovery and reflection” period to consider whether they want to remain in the UK or return home.¹⁰⁵ During this period, the victim will be entitled to

¹⁰² See: Chapter 10 for more detail on this case.

¹⁰³ Ratification by the UK Government took place on 17 December 2008.

¹⁰⁴ “Competent Authority” refers to public authorities which may have contact with trafficking victims, such as the police, the labour inspectorate, customs, the immigration authorities, and embassies or consulates (Explanatory Report to the Convention, para 127). At present in the UK, there is a central multi-agency Competent Authority based in the UK Human Trafficking Centre.

¹⁰⁵ Article 10 of the Convention provides for the identification of victims; Article 12 sets out assistance for identified victims; Article 13 sets out a minimum 30-day ‘recovery and reflection’ period for those otherwise likely to be removed from the Contracting State. The Government has introduced a “recovery and reflection” period of 45 days.

state funded hostel accommodation and support. In addition, persons subject to immigration control may apply to the Home Office for an initial 12 months' leave to remain. In relation to the "recovery and reflection" period under Article 13 of the Convention, the Commission notes that Paragraph 177 states:

[...] The length of this recovery and reflection period has to be of at least 30 days and has to be compatible with the purpose of Article 13. At present countries which have a period of that kind in their domestic law have lengths of one month, 45 days, two months, three months or unspecified. A three-month period was referred to in the declaration of the 3rd Regional Ministerial Forum of the Stability Pact for South-Eastern Europe (Tirana, 11 December 2002). The Group of Experts on trafficking in human beings which the European Commission set up by decision of 25 March 2003 recommended, in an opinion of 16 April 2004, a period of at least 3 months.

The Government ought to view its commitments under the Convention as minimum obligations and ensure support for victims that can extend beyond the current practice of a minimum 45-day reflection period, in line with international best practice.

It should be noted that those who do not report their experiences to the Competent Authority will not receive assistance under the Convention. In this type of case, access to homelessness assistance and welfare benefits will depend on immigration status.

During the investigation, one interviewee revealed how she had been prevented from accessing assistance because she did not meet Worker Registration Scheme requirements. According to the interviewee's account, it would appear that her circumstances are similar to those described in the Council of Europe Convention, which defines 'trafficking' as follows:

Article 4 – Definitions

For the purposes of this Convention:

- a "Trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;*
- b The consent of a victim of "trafficking in human beings" to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used...*

The case study, overleaf, is an account of events as reported to the investigators by the interviewee.

Case study: exploitation and the WRS

Lisa came to Northern Ireland from one of the A8 accession states because her friend, Ed, was working here and paid for her to join him. Lisa was offered a room in Ed's house. His wife and seven other people lived there. The others were also from Lisa's home country.

Lisa stated that she was working 16 hours each day but was not receiving any money. When Lisa raised this, Ed's brother-in-law said that she would be evicted from the house if she asked for any money. Lisa then asked her manager if she was owed wages. Her manager said that he had been forwarding a cheque to her by post each week. Lisa learned that, because she didn't have a bank account, Ed was receiving her wages and paying them into his wife's personal account. After this, *"Then another wages came but they came directly to the bank account and I didn't see that money"*. She had been working 16 hours each day for three-and-a-half months. Lisa also stated that, because she did not have any money, she walked for two hours each day in order to get to work. Sometimes, she was so tired after work that she slept on the shop floor.

Lisa finally raised the issue with Ed and was evicted from the house. At the same time, Ed contacted Lisa's employer and, the next day, she was dismissed from her employment. The investigators asked Lisa how she survived on leaving the house:

"After expulsion from the house, five nights I slept outside. I didn't know about this [day centre] but I was sitting in the city centre one day and a man asked me what was wrong and I told him and he told me about the centre."

Q: *"What other help did you receive?"*

A: *"There wasn't really any help from my colleagues or friends because nobody would take responsibility for me to [...] give me accommodation. Three times I slept in [the shop] because the manager let me, even though it was against policy."*

Lisa said that she heard about the WRS but was unable to register, *"I couldn't get the Home Office registration because I didn't get a National Insurance number and I didn't get that because of my landlord letter"*. Lisa never got a 'landlord letter' from Ed. As a result, she did not get a National Insurance number and was never able to register on the WRS.

Lisa states that she is now in contact with a recruitment agency and hopes to find work. With the help of staff at the day centre, Lisa received some money from her former manager but she did not get all that she was owed. Lisa indicates that she would like to report Ed to the police but he has threatened her, saying that if she does, he will harm her family.

After sleeping rough on the streets, Lisa now stays with a friend. However, this is only temporary and she must find a job. Lisa has applied for many positions but feels that she has limited use of English and this is letting her down. The investigators asked Lisa about the impact all of this has had on her. Crying, she replies:

"It is a very bad deep feeling. You need to have the experience to be able to describe it. If I had known that it would end up like this, I wouldn't have come here. There are some people that came here and they are bringing other people here and making money on them – that's the way it works."

During the interview, Lisa alluded to at least five other individuals who may be in a similar situation. It is not known whether they contacted the police. However, the fieldwork for the investigation took place prior to the introduction of the Council of Europe's *Convention on Action Against Trafficking in Human Beings*. This means that even if they had reported their experiences to the police, they would not have been entitled to assistance under the Convention.

Even with the Convention, Lisa's account highlights the difficulties that remain for those who do leave an exploitative relationship but for whatever reason do not report their experiences to the police. As recognised by the government agency interviewees, despite the potential risk to basic human rights, there is no flexibility within the WRS rules to assist vulnerable individuals. At best, interviewees felt that they could direct these applicants to day centres. This might help with food and clothing but does not offer accommodation:

"But we will point them in the direction [...] the Welcome Centre for food and things like that, you know, just somewhere to sit for a few hours during the day if it is cold." (NIHE interviewee)

The account provided by Lisa illustrates the impact of exploitation, and how this may be exacerbated by the WRS rules which prevent access to homelessness assistance and welfare benefits for those whose work has not been registered.

Non-EU nationals and labour exploitation

During the investigation, the Commission received information about three non-EU nationals whose experiences would suggest that trafficking may have taken place. Two of these individuals agreed to take part in an interview for the investigation. In each case, a large sum of money was paid in return for travel to, and work in, Northern Ireland. One interviewee explained that after two years she is still paying the money back.

The following case study details one of these cases through an account of events as described by an interviewee.

Case study: exploitation and immigration control

Damien stated that he travelled to Northern Ireland eight years ago when he was 16 years old. He was brought here by a gang master and promised work. When he first arrived, Damien was provided work and accommodation which was tied to his employment. In addition, money was deducted from his wages to repay the gang master for bringing him to Northern Ireland:

"The gang master, I owed him some money so they arranged a job for me so when I finish the work, I have to pay back".

In the last year, Damien stated that the Home Office contacted him. The Home Office detained him for two months, but now he lives at a named address in the community. Damien is liable for removal and must report to the police station each week. He is not permitted to work. He currently lives in a flat above the place where he used to work and is relying entirely on friends for food and money. Damien fears that he will soon be on the street because the owners are selling the accommodation.

When the investigators asked Damien how he would survive, he replied:

"Home Office does not allow me to work, so I am scared, I don't want to work and also the place sell it to another person, so I will be homeless very soon."

Q: *"And this time, where will you go for help?"*

A: *"Well, some friends just found them to help, to ask for help from friends."*

Q: *"Do you know or do you feel there are any other options?"*

A: *“Well, I am lost, totally lost. Also the government does not allow me to work with my conditions, it is lost and I have an English barrier so, don’t know what to do.”*

Damien is adamant that he does not want to rely on government support. He would prefer that the Government would allow him to work:

Q: *“Is there anything that would help to make things better?”*

A: *“Well, if Home Office allow me to work and then I don’t mind to pay tax.”*

Q: *“Is there anything else that you feel would help you or people like you who are in a similar situation?”*

A: *“I will like to support myself and I don’t want to live on the government. I have my all four limbs I will learn to work instead of sitting on the government.”*

At the moment, Damien waits each week to report to the police station. He has no money and is constantly frightened in case he is detained again:

Q: *“Has this situation had any impact on your health?”*

A: *“I am panicked and scared. Every Wednesday, as long as I can go to the police station, I am really scared in case they catch me again and I go to the detention again, the detention house.”*

The investigators asked Damien if he felt there were any other options. He was aware of the International Organisation of Migration who would help him to return home. However, he was unhappy with this option:

“No, I don’t want to return back, I have no relatives any more there [...] I stay here long enough, I feel this is my home”.

The account provided by Damien reveals the harsh nature of immigration rules. According to Damien, although he has worked in Northern Ireland for eight years paying off his debts to a gang master, he is now liable for removal and subject to the condition that he does not work or access public funds.

It is notable that in this situation undocumented migrants may apply for the “assisted voluntary return for illegal migrants” (AVRIM), through the Home Office, facilitated by the International Organization for Migration (IOM). The Home Office website¹⁰⁶ presents this programme of assisted voluntary return for undocumented migrants as follows:

This programme (sometimes known as AVRIM) is not for people who have applied for asylum. It is for people who are in the United Kingdom illegally, including those who have overstayed the time allowed by their visa or who have been smuggled into the country.

If you are accepted onto this programme, IOM can give you:

- *tickets to your home country;*
- *help with arranging your travel; and*
- *help with obtaining travel documents.*

However, as demonstrated in Damien’s case, return to the country of origin is not always a practicable option.

¹⁰⁶ Available: <http://www.ukba.homeoffice.gov.uk/asylum/outcomes/unsuccessfulapplications/voluntaryreturn/> [8 July 2009].

Refugees and asylum seekers

“They need help unless people want them sleeping on the streets and possibly dying or being injured. It is not a representation of a civilised society.” (Voluntary organisation interviewee)

Context

The United Nations describes an asylum seeker as someone “who has applied for protection as a refugee and is awaiting the determination of his or her status”.¹⁰⁷ The issue of asylum seekers in the UK is one which is shrouded in myth and prejudice.¹⁰⁸ Many of the misconceptions about people seeking refuge are perpetrated through the media and founded on misinformation and misunderstanding. Attempts have been made to debunk a number of these myths, including the idea that Britain is ‘swamped’ with asylum seekers, when the reality is that they account for less than two per cent of the population (MORI, 2002). Asylum seekers are regularly referred to in the media and public domain as ‘illegals’ and ‘foreign criminals’ when, in reality, everyone is entitled under international law to seek asylum in the UK and remain in the country until a decision has been made.¹⁰⁹ The Commission’s investigation found, from a review of case files and anecdotal evidence from voluntary organisations, that asylum seekers come to Northern Ireland primarily from non-EEA states from where they are fleeing serious human rights abuses, oppressive regimes and ethnic conflict. This chapter will examine the entitlement to support afforded to those claiming asylum in the UK, and the potential destitution and homelessness which arises from a lack of access to public funds. The chapter also looks specifically at the situation facing unaccompanied minors entering the UK.

Human rights standards

The rights of refugees and asylum seekers are enshrined in a number of international instruments. The *Universal Declaration on Human Rights* (UDHR) establishes the basis of asylum-seeking under Article 14(1):

Everyone has the right to seek and to enjoy in other countries asylum from persecution.

Asylum seekers and refugees are protected from discrimination in several international treaties, in particular, Article 7 of the United Nations’ *Convention Relating to the Status of Refugees* 1951 (the Refugee Convention) which provides for their fair treatment whilst in the country of refuge. The principle of non-discrimination, with regard to refugee and asylum seekers, was reiterated at the Durban Review Conference in April 2009, which stated in its final report:

80. [...] that the national, regional and international response and policies, including financial assistance, towards refugee and internal displacement situations in different parts of the world, should not be guided by any form of discrimination prohibited by international law and urges the international community to take concrete action to meet the protection and assistance needs of refugees, and to contribute generously to projects and programmes aimed at alleviating their plight and finding durable solutions.

Despite the fact that asylum seekers are perceived to have broken the law by entering the country covertly, Article 31 of the Refugee Convention prohibits the punishment of asylum seekers for the use of false documentation, as it is widely accepted that it may be impossible to escape persecution without using illegal means. This is because, in order to obtain legitimate travel documents, a person will have to deal with the agencies of the state which may be the perpetrators of persecution or oppression, therefore forcing some asylum seekers to rely on illegitimate papers to flee.

¹⁰⁷ As defined by Article 1 of the 1951 United Nations’ *Convention Relating to the Status of Refugees*.

¹⁰⁸ See, for example: ‘Big jump in illegals on lorries’ *The Sun*, 9 February 2009; ‘Number of illegal immigrants in Britain may be nearing 1 million’, *Daily Mail*, 10 March 2009; ‘Each illegal immigrant costs us £1m, says study as Government faces calls for amnesty’ *Daily Mail*, 4 May 2009; ‘Illegal immigrants caught “hiding in classic cars”’, *Daily Telegraph*, 20 April 2009; ‘Bum maps free army of illegals’, *Daily Star*, 11 January 2009; and ‘Rally urges illegal migrant amnesty’, *News Letter*, 4 May 2009.

¹⁰⁹ Above.

Of particular relevance to this report, is the right of all individuals to an adequate standard of living, which is explicitly outlined under Article 25 of the UDHR, and Article 11(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) which states:¹¹⁰

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

The right of refugees to housing is further established under Article 21 of the Refugee Convention. The most common means of attaining an adequate standard of living is through employment, and the right to work can be found in both the ICESCR under Article 6 and the UDHR under Article 23:

Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

Restriction on employment is a common theme in this chapter and it is one of the contributing factors to destitution and homelessness. International provisions make specific reference to the right of every person to social security assistance, in addition to the explicit reference to unemployment protection. This right is enshrined under Article 22 of the UDHR and Article 19 of the ICESCR, while particular reference, in relation to refugees, is provided in Article 23 of the Refugee Convention. Inevitably, destitution impacts on all aspects of a person's life including their health and wellbeing. Chapter 9 of this report provides detail on the relationship between destitution and ill-health. For now, it should be noted that international human rights law provides for the health of all people under Article 12 of the ICESCR.

In addition to all of these protections, which are afforded to people of all ages, children are additionally protected under the UN *Convention on the Rights of the Child* (CRC). This chapter will examine the situation of children as asylum-seeking family members, as well as children who are unaccompanied. The CRC explicitly states, under Article 2, that all children should be treated without discrimination. Article 3 contains the fundamental principle that in all actions concerning children, the best interests of the child shall be a primary consideration. The Convention provides for the protection of all children from all forms of abuse and exploitation under Articles 19, 32 and 34-36, which are of particular importance when dealing with trafficked or otherwise vulnerable children.¹¹¹ The CRC also makes specific provision, under Article 22, for asylum-seeking or refugee children whether they are unaccompanied or part of a family:

States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

As this section has demonstrated, international human rights law provides a range of protections to the general population in respect of destitution, as well as giving specific protections to asylum seekers and refugees whether adults or children. The remainder of the chapter will examine current practices in Northern Ireland in relation to homeless asylum seekers, in an effort to establish whether such practices are human rights compliant.

¹¹⁰ See: Chapter 2 for a discussion of the relevant rights within the ICESCR and application to non-citizens.

¹¹¹ Article 19 refers to the protection of children from abuse while in the care of parents; Articles 32 (economic exploitation), 34 (sexual exploitation), 35 (trafficking) and 36 (other forms of exploitation) place an obligation on the state to protect children from all forms of abuse and exploitation perpetrated either by the state or a third party.

Legislation

This section of the chapter will provide an overview of current UK asylum legislation. The UK ratified the Refugee Convention, in 1954, and the Protocol, in 1968, both of which it adhered to without introducing any further asylum legislation for several decades. The Refugee Convention was partially incorporated into domestic law, in 1993, by the *Asylum and Immigration Appeals Act* which widened the appeal rights of failed asylum seekers. The Act also introduced the fingerprinting of all asylum seekers and permitted detention of asylum seekers pending the outcome of their application. The Government went on to introduce a further piece of restrictive asylum legislation, in 1996 – the *Asylum and Immigration Act*, which included a list of countries deemed to be safe, and from which asylum seekers would not be accepted. Entitlement to housing and welfare benefits was restricted to those persons who applied for asylum at the point of entry to the UK.

More recently, the *Immigration and Asylum Act 1999* introduced a range of measures intended to regulate further the asylum system. Among other matters, the 1999 Act saw the establishment of the National Asylum Support Service (NASS) which co-ordinates the arrangements for supporting asylum seekers and dispersing them to different areas within the UK.

The *Nationality Immigration and Asylum Act 2002* introduced accommodation centres with educational and health services for failed asylum seekers, and resettlement programmes. Accommodation centres differ from asylum removal centres in that failed asylum seekers would have been subject to a less restrictive regime. However, the plans to establish such centres in the UK were reconsidered in favour of a focus on detention centres.¹¹² In addition, the Act provided for tighter appeal mechanisms, extension of offences for

illegal entry, regular reporting for all asylum seekers, and it introduced an Asylum Registration Card (ARC). It also included a provision which had the potential to trigger destitution.

Asylum seekers were refused NASS support if they did not claim asylum “as soon as reasonably practicable” under Section 55 of the 2002 Act. The rationale for the legislation was to allow the Government to restrict people, who had been in the country a long time, from applying for asylum at a late stage. Implementation of Section 55 led to an increasingly shorter window in which people could make an asylum application, to the extent that, at one stage, ‘in country’ applications had to be made within 72 hours of arriving and could only be made in person at the Asylum Screening Unit in Croydon or Liverpool. This policy caused large numbers of asylum seekers to be denied support and left destitute, as many were unable to submit applications within such narrow timeframes without the opportunity to find appropriate support and advice. This practice of refusing subsistence to late asylum applicants was found, by the House of Lords, to be in some cases incompatible with Article 3 of the European Convention on Human Rights (ECHR).¹¹³

Strict asylum measures followed with the *Asylum and Immigration (treatment of claimants, etc) Act 2004*. The most relevant sections of the Act, for the purposes of this report, are those which relate to financial support and housing. In this regard, Section 9 of the Act allows the Home Secretary to stop the support of refused asylum seekers with families if they have failed to leave the UK voluntarily and without reasonable excuse. Successful asylum applicants are automatically connected to the local authority housing scheme and entitled to apply, under Section 13, for an ‘integration loan’, rather than be eligible for backdated benefit payments.

¹¹² On 14 June 2005, then Minister of State for immigration, Minister Tony McNulty MP announced in a ministerial statement that the Government had decided not to proceed with the construction of an accommodation centre at Bicester and confirmed that it would not be proceeding with the development of accommodation centres at any other site.

¹¹³ See: Chapter 2 for further references to the *Limbuella* case.

In addition, Section 43 extends the provision of accommodation under section 4 (hard case) support to local authority housing and widens the application criteria for integration loans.

The asylum process

Under current legislation, a person seeking asylum is expected to present either at the 'port of entry' or 'in country' as soon as reasonably practicable after arriving in the UK. If an application for asylum is made at the port of entry, for example, at Belfast International Airport, the applicant will be subject to an asylum screening interview. During this interview, evidence will be gathered on the identity of the person and how they entered the UK. This evidence will then be submitted to the Home Office for consideration along with the asylum application. A person may also make a claim 'in country' if she or he has been in the UK for a period of time, for example, on a work visa, or has entered the country covertly.

Such applicants are required to present in person to a specific asylum office where, like port of entry applicants, they will be fingerprinted, photographed and subject to an asylum screening interview. Following the screening interview, all applicants are issued with an Asylum Registration card (ARC) which contains the photograph and biometric data of the applicant. Provided that the applicant is not being detained, a temporary admission order is issued, allowing the person the right to remain in the UK pending the outcome of the application process. During this time, the applicant may be required to sign regularly at a police station or remain at a designated address.

An application for asylum can have three different outcomes. In successful cases, the applicant will be accepted as a refugee and granted five years limited leave to remain, after which time an assessment will be made on whether it is safe for the person to return to their country of origin. The applicant may be offered an alternative form of

protection, for example, humanitarian protection or discretionary leave to remain, or they will be refused asylum.

A common ground for asylum refusal arises from the need to submit an application "as soon as is reasonably practicable". EC Law allows for the Government to refuse support to individuals who have not made claims in a timely manner, on the basis that genuine claims would be likely to be made as soon as possible. Article 16(2) of *Council Directive 2003/9/EC* reads:

Member states may refuse conditions [...] to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence in cases where an asylum seeker failed to demonstrate that the asylum claim was made as soon as reasonably practicable after arrival [...].

The House of Lords ruled in the *Limbuella* case, in 2005, that withholding support from late applicants may be a breach of their Article 3 (ECHR) rights to be free from inhuman and degrading treatment.¹¹⁴ The landmark ruling gave strong consideration to the reasons why an application might be delayed, for example, due to the mental state of the individual, the disorientation in a new country, language barriers and lack of knowledge about the process. During and after the asylum application, applicants may be entitled to varied levels of support.

¹¹⁴ *Limbuella*, above.

Entitlement to support

Asylum seekers

Under existing legislation, asylum seekers are not entitled to work unless specifically permitted to do so by the Home Office, nor are they entitled to claim benefits or be eligible for general housing support. Instead, asylum seekers may apply for NASS support entitlement which is dependent on having sought asylum as soon as is reasonably practicable.¹¹⁵ The exception to this is if their human rights would be breached by a denial of support.

An applicant may apply for NASS support once her or his application for asylum has been recorded by the Home Office. If deemed eligible for support, the applicant will have to sign an Asylum Support Agreement which sets out the conditions of entitlement, for example, meeting certain reporting requirements and remaining in the allocated property. Applicants may apply for housing or financial support, or both. Accommodation is allocated through the Northern Ireland Housing Executive (NIHE) and is free of charge. Financial support is currently set at 70 per cent of Income Support amounts. The Government's justification for this is that NASS recipients do not have to pay utility bills. It should be noted that Income Support is the minimum amount the Government has determined that a person needs in order to survive.¹¹⁶ Table 7.1 outlines the current rates of entitlement.

Table 7.1 Rates of Benefit Entitlement

Category	Amount per week
Qualifying couple	£66.13
Single parent aged 18 or over	£42.16
Single person aged 25 or over	£42.16
Single person aged 18-25	£33.39
Single person aged 16-18	£36.29
Single person aged under 16	£48.30
Additional payments	Amount
Pregnant women	£3 extra
Family with baby under 12 months	£5 extra
Family with child aged 1-3 years	£3 extra
Certain pregnant women	£300 lump sum

The Maternity Grant is a one-off payment made under certain conditions of entitlement; otherwise all money must be collected weekly from a designated Post Office, on presentation of a registration card. Payments will continue to be made until a decision has been made on the asylum application.

Refugees

If an asylum application is successful, the applicant is then considered to be a refugee. Refugees are generally permitted to work and claim benefits in the same way as UK citizens and, provided there are no delays in accessing services, are generally protected from destitution. Similarly, individuals who have been granted leave to remain on humanitarian grounds may be subject to conditions of leave, but are generally entitled to access benefits and social housing. With regard to housing, successful asylum seekers and those with leave to remain are given up to 28 days notice to vacate their NASS accommodation. Under housing legislation, this renders them homeless.

¹¹⁵ 55(1) of the *Nationality, Immigration and Asylum Act 2002*

¹¹⁶ The Child Tax Credit established a guaranteed minimum income level for families in work, but there are no minimum levels for those on benefit.

However, their status as refugees entitles them to access homeless support through the Housing Executive.¹¹⁷ In practical terms, this means refugees are entitled to temporary accommodation until such time as permanent housing becomes available. This may mean that a refugee remains in temporary accommodation pending the availability of a private tenancy or a vacancy in the NIHE housing stock.

In addition to this support, in 2007, the Government introduced an 'integration loan' to assist refugees, and those granted leave to remain and their dependents, in settling within the UK. The loan, which is not retrospective, is designed to give financial support in setting up a home, undertaking training or qualifications and seeking employment. The loans are interest free and subject to repayment terms. The repayments will be collected by the Department for Work and Pensions through mechanisms already in place to collect third party deductions such as utility debts and fines. Where a refugee is not receiving state benefits, she or he will repay the loan directly to the Department for Work and Pensions. In most cases, repayment of the loan will commence six weeks after the funds are released to the individual.

Failed single asylum seekers

Once an asylum claim has been denied, and no leave to remain has been granted, an appeal may be lodged within a specific period of time.¹¹⁸ NASS sends a letter in English which explains that its support will end in 21 days. Interviews conducted with the Asylum Development Unit, in Belfast, indicate that letters may be translated as appropriate. If the appeal fails, the applicant will be expected to leave the country as soon as possible. The refused asylum seeker may opt to return by her, or his, own means, or seek assistance to do so. The International Organization

for Migration (IOM) is currently charged with running the UK's Voluntary Assisted Return and Reintegration Programme (VARRP). The programme is open to all refused asylum seekers and those with temporary leave to remain in the UK. Individuals registered with the programme and their family members will be assisted, not only in returning to their home country but through a tailored financial package (up to £3,000) which provides the means to establish a new life, including accommodation, training or employment. The support is conditional upon leaving the UK within three months of registering with the IOM and not returning.

Individuals awaiting, or unable to, return to their country of origin may be entitled to short-term financial and accommodation based support under Section 4 of the *Immigration and Asylum Act 1999*, if they would otherwise be destitute. In order to access such support, a person must be destitute **and** must meet one of the following conditions:

- *be taking all reasonable steps to leave the UK or placing them in a position to do so;*
- *be unable to leave the UK because of a physical barrier to travel or for some other medical reason, for example, pregnancy. This issue was examined in R v Chief Asylum Support Adjudicator, where it was established that in order to meet this criteria, the person should, first, be unable to leave the UK and, second, that inability must be by reason of a physical impediment to travel or for some other medical reason;¹¹⁹*
- *be unable to leave because the UK Border Agency believes there is no safe route available. This criterion is not currently in use because the Secretary of State would have to make a declaration of policy that no safe route*

¹¹⁷ For the purposes of a homelessness application, if they have received asylum/refugee status, applicants will still have to establish 'priority need'.

¹¹⁸ At present, individuals who are in detention must have their appeal form received within five working days. This period is extended to 10 working days for those not in detention.

¹¹⁹ *R (on the application of the Secretary of State for the Home Department) v Chief Asylum Support Adjudicator* CO/10382/2005.

exists to a particular country and, at present, no such policy exists in relation to any country;

- *have applied for a judicial review of an asylum application and been given permission to proceed with it. In this situation, a person is entitled to Section 4 support. The court will give the person evidence of the judicial process which they can then present to NASS;*

or

- *be in need of accommodation in order to prevent a breach of their rights under the Human Rights Act 1998.¹²⁰ NASS interprets this as meaning the person has made a fresh claim for asylum or an Article 3 claim within the meaning of the 1998 Act (regarding inhuman and degrading treatment) that has been received but not recorded.*

In order to receive Section 4 support, the applicant must sign a form stating the intention to return home as soon as the Secretary of State determines that it is safe for her or him to do so. Section 4 support differs from NASS support as it does not involve any cash payment. Instead, recipients are provided with accommodation and vouchers, reportedly up to £35 per week, to claim against food and other essentials from designated outlets. The weekly amount is stipulated on the NASS website. However, as the following extract shows, in one case, a client interviewed by the investigators was only receiving £10 per week while awaiting return.

Q: *“Has the IOM been able to give you any money for food?”*

A: *“They give me vouchers... £10 for a week.”*

Q: *“How do you survive on that?”*

A: *“I survive on that, £10. I am very careful and I eat little. I get a few eggs, bread, chips.”*

Q: *“You can make it last?”*

A: *“Yeah.”*

The vouchers do not cover certain items like toiletries and baby formula, and cannot be used to pay for transport or other services, leaving a number of gaps in provision which cash payments could address. The accommodation and vouchers provided are minimal so as to provide no incentive for people to remain in the UK, but must be of a standard deemed to be compatible with the provisions of the ECHR. The use of vouchers is discussed in Chapter 4. The Joint Committee on Human Rights (JCHR), and other bodies, has called for an end to the use of vouchers, in particular as the sole means of support, as they are generally regarded as limiting, stigmatising and degrading.

There is currently no obligation on NASS to arrange for the continued support of an asylum seeker when her or his asylum application fails, resulting in an inevitable delay for the individual in accessing alternative assistance. Once a claim for asylum has failed, a person can then apply for Section 4 support; however, the application process can reportedly take up to eight weeks which means, in the interim, people are without accommodation or finance. Research in England and Wales indicates that many people simply do not know of the existence of Section 4 support.¹²¹

Failed asylum seeking families

Section 4 support is available only to single individuals while families could, in theory, continue to receive NASS support, pending their return or removal.¹²² A change to the law, in 2004, created the power for the Secretary of State to revoke

¹²⁰ In the case of a failed asylum seeker, such support from a local authority would be provided only if there would otherwise be a breach of Convention rights, as provided for under Schedule 3 of the *Nationality, Immigration and Asylum Act 2002*. In Northern Ireland, the Trusts should provide support under Article 15 of the *Health and Personal Social Services (Northern Ireland) Order 1972*.

¹²¹ Asylum Support Appeals Project (2007), *Failing the Failed: How NASS Decision Making is Letting Down Destitute Rejected Asylum Seekers*, ASAP, Croydon, p 11.

¹²² Individuals denied access to section 4 have three days to lodge an appeal with the Asylum Appeals Agency.

NASS support to families where it was believed that they had not taken reasonable steps to leave the UK. Section 9 of the *Asylum and Immigration (Treatment of claimants, etc) Act 2004* provides no grounds for appeal against the Secretary of State's decision.

Section 9 was, according to the then Minister for Immigration and Asylum:

*[...] intended as a means of influencing the attitudes and behaviours of unsuccessful asylum seeking families who are not taking steps to facilitate their departure from the United Kingdom to their country of origin. It does this by providing for the termination of support in cases where the assessment is that the family is not co-operating or placing themselves in a position where they can leave.*¹²³

The provision was piloted between December 2004 and December 2005, in three areas. Ultimately, the pilot found that removal of support did not encourage return of asylum families, rather, in some instances, it was felt that fear of the Section 9 process pushed families underground.¹²⁴ As the Government's report on the pilot project stated:

Evidence suggests that a significant number of the families may have absconded from their accommodation because of concerns about the section 9 process.

One voluntary organisation commented:

"When the process ends, they become invisible; they don't give addresses, they don't sign on with the police."

The Commission shares the concerns, raised primarily by the voluntary sector, about the potential for Section 9 to leave families, including children, destitute.¹²⁵ Despite widespread criticism of the provision, the Government has continued to allow the withdrawal of funds from families, not on

a blanket basis as initially proposed, but on a case-by-case basis.

If NASS withdraws support, the legislation states that local authorities have to provide assistance to children and to adults if failure to do so would result in breach of ECHR rights. The failed asylum family can apply to a Trust for support under Section 18 of the *Children (Northern Ireland) Order 1995* (the Children Order). Trusts can only refuse to support the family if it is satisfied that to do so would not breach the family's ECHR rights. If the Trust deems it necessary to accommodate the child to avoid a breach of ECHR rights, it may be possible to argue that the family should also be accommodated to protect the right to family life, under Article 8 of the ECHR. This issue was raised in *R (J) v Enfield LBC*, where the claimant was awarded damages for breach of his Article 8 rights in respect of an authority's failure to take steps to provide accommodation to his family to meet their community care needs.¹²⁶ Ultimately, if there is concern for the safety of the child, the Trust can take the child into care under Section 26 of the Children Order, thus removing any duty to accommodate the parent(s). However, as stated elsewhere in this report, unless it is in the best interests of the child, the Trust should not remove her or him from the family on the sole basis that the parents are excluded from housing and financial support.

No support

While access to support under sections 4 and 9 is fraught with difficulty and ultimately provides only a minimal level of assistance, there are many people who, having failed the asylum process, are left destitute. A 2006 report, by the House of Commons Committee of Public Accounts, highlighted that the Home Office can only state that there is somewhere between 155,000 and 280,000 asylum seekers who

¹²³ Written Ministerial statement, Hansard, 25 June 2007: Column 9WS. Available: <http://www.publications.parliament.uk/pa/cm/200607/cmhansrd/cm070625/wmstext/70625m0002.htm> [9 July 2009].

¹²⁴ Border and Immigration Agency (2007) *Family Asylum Policy, The Section 9 Implementation Project Report*, BIA, London, section 2.2.

¹²⁵ Above.

¹²⁶ *R (Bernard) v Enfield LBC*, Queen's Bench Division, 25 October 2002.

have been unsuccessful in their asylum claim, yet are still living in the UK without any statutory support.¹²⁷ The figures evoked a powerful response from the churches in the UK whose joint letter was published in *The Times*, in December 2005, criticising government asylum policies:

We believe that it is inhuman and unacceptable that some people seeking asylum are left homeless and destitute by government policies. Every city has people destitute or living on food parcels because they have no means of support [...] We therefore call on the Government to allow people seeking asylum to sustain themselves and contribute to wider society through paid work, and where this is not possible, to re-instate 'refused' asylum seekers' entitlement to benefits until such time as they may be removed.

Unaccompanied minors

The term, 'unaccompanied minor', refers to any person under the age of 18 who is outside their country of origin and separated from both parents, or from a previous legal or customary primary care giver. In December 2008, the UK removed its reservation under Article 22 of the CRC. This means that children, who are in the UK subject to immigration rules, are entitled to full protection of the rights contained within the Convention. Regardless of where the child originates, the Children Order confers a duty of care on the state towards unaccompanied children under the age of eighteen. During the course of the investigation, the Commission became aware of primarily unaccompanied minor cases involving asylum claims. As a result, this section of the report will focus on the experiences of asylum-seeking children in Northern Ireland. It should be noted that, in theory, all unaccompanied children are entitled to the same care and assistance irrespective of immigration status, as provided for at an international level by the Durban Review Conference, which:

Acknowledges that although all children are vulnerable to violence, some children, because of, inter alia, their gender, race, ethnic origin, physical or mental ability, or social status, are especially vulnerable, and in this context calls upon States to address the special needs of unaccompanied migrant and refugee children and to combat the sexual exploitation of children.¹²⁸

Unaccompanied asylum seeking children (UASC) go through largely the same asylum process as adults and, like adults, the claim for asylum can result in one of three outcomes. Table 7.2 provides a breakdown of the outcome of claims made by asylum-seeking children and illustrates that, consistently, such claims tend to result in the granting of limited leave to remain. Limited leave is a form of humanitarian protection and usually extends until the child reaches the age of 18 when her or his right to remain is reassessed.

Table 7.2 Outcome of UK-wide UASC applications

	2002	%	2003	%	2004	%	2005	%
Decisions made	6,990	3,835	3,440	2,835				
Asylum granted	625	9	165	4	105	3	170	6
Asylum refused	1,575	23	890	23	830	24	870	31
Limited leave	4,790	68	2,780	73	2,505	73	1,795	63

Until 18 years of age, unaccompanied asylum-seeking children will be cared for by the Trust, at which point the right to remain in the UK may be reviewed. In cases where a child is entitled to remain in the UK beyond 18, the Trust has a continued duty of care until the individual reaches the age of 21, or beyond depending on time looked after and whether she or he is in full-time education.¹²⁹

¹²⁷ House of Commons Committee of Public Accounts (2006) *Returning failed asylum applicants, Thirty-fourth Report of Session 2005-06*, HC 620 2005-06.

¹²⁸ Durban Review Conference, outcome document, April 2009, para 89.

¹²⁹ *Children (Leaving Care) Act (Northern Ireland) 2002*.

The agencies

The following section provides an overview of the responsibility of each of three government agencies with regard to asylum seekers and refugees.

Social Security Agency

The investigators did not encounter any benefit claims involving asylum seekers during the course of the fieldwork. This may be because the Social Security Agency (SSA) has no responsibility in providing benefits as this is handled separately through NASS. Two applications for Income Support by refugees were reviewed, but the investigators had no concerns in either case. In addition to reviewing case files, the investigators also asked staff about their experience of asylum seekers and refugees; however, only one of the interviewees recalled direct contact, as set out in the following extract:

"[...] with that [refugee] lady, we spent most of the day on the phone to the Borders Agency. I know it is slightly different because she was subject to immigration, so we were trying to get them to issue her with something and I convinced them to actually fax us through something that enabled us to, when we couldn't pay her Income Support, on that day, we were able to secure, well, let her apply for a Social Fund loan... I was concerned, this sounds ridiculous, but as a human being, that I was going to send this lady away, who was obviously, who was not a well woman, with no money. I was concerned about, that is why I phoned the borders agency every 15 minutes, 'have you made a decision, can you fax me something through, can you give me a clue on this'..." (SSA interviewee)

Another staff member recognised generally the eligibility restrictions faced by people subject to the 'no recourse' rule and the subsequent limitations on staff:

"There will be cases where people come in and they have no recourse to public funds whatsoever and, unfortunately, we cannot pay them a crisis loan. All we can do is signpost them to local charitable organisations or the local voluntary groups that we are aware of." (SSA interviewee)

Northern Ireland Housing Executive

The Northern Ireland Housing Executive (NIHE) has operated an Asylum Development Unit (the Unit) since 2001, which currently has three staff and is based in central Belfast. The Unit has a contract with the UK Border Agency (UKBA) to provide temporary accommodation to asylum seekers in receipt of NASS support. The Unit is also responsible for housing people who are in receipt of Section 4 support, pending return to the country of origin. Referrals to the Unit come from the UKBA which receives referrals from a variety of sources, including the Law Centre (NI) and Bryson One Stop Shop, both of which have close links with the Unit.

The accommodation used to house asylum applicants is a mixture of Housing Association stock and private rented accommodation. Houses of multiple occupancy are also used, where appropriate, for single claimants but never for families. Home visits with asylum applicants are conducted monthly by the Unit's staff to ensure that the accommodation is up to standard and that there are no problems. Individuals are accommodated until such time as the UKBA directs otherwise, for example, until a claim for asylum has been decided. Table 7.3 indicates the number of people being accommodated by the Asylum Development Unit under the *Immigration and Asylum Act 1999*, in November 2008.

Table 7.3 Number of asylum applicants accommodated by the Asylum Development Unit in November 2008

Type	Support	Units	Total
Single	Section 95	104	104
Single	Section 4	11	11
Family	Section 95	56	156
Family	Section 4	5	10
			281

According to the NIHE staff, while the number of families presenting to it remains static, there has been a considerable increase in the number of single individuals presenting for asylum support. Regular NIHE staff in Belfast were aware of the existence of the Unit, however, there was no awareness of the Unit in the Cookstown or Dungannon offices. Certainly, the majority of asylum cases would present in the Belfast area due to the proximity to ports and airports; however, that does not negate from the fact that asylum seekers could present elsewhere in Northern Ireland, for example, from the Republic of Ireland. Therefore, even though individuals cannot present directly to the Unit, knowledge of asylum support should be consistent throughout the NIHE offices to ensure that appropriate referrals are made.

The issue of priority need, which was discussed in detail in Chapter 3, also arises in relation to asylum seekers and refugees. Asylum seekers are dealt with through NASS and, therefore, separate from the regular housing application system until such time as a decision has been made on the asylum application. If the asylum application decision is positive, the applicant will be recognised as a refugee and given 28 days to vacate the NASS accommodation. As a refugee, the person will be entitled to homelessness support if granted priority need and will, therefore, be eligible for temporary housing, while awaiting either private rented or NIHE accommodation. If the asylum decision is

negative, the person will be deemed to be a failed asylum seeker and given 21 days notice until support is withdrawn, at which point, they will have to vacate NASS accommodation. At present, refused, or failed, asylum seekers may apply for Section 4 support or may be entitled to the Trust's assistance, if this is required to avoid a breach of ECHR rights. The following case example demonstrates some of the complications which can lead to a failed asylum seeker facing destitution.

Case study: failed asylum

Mikel is an asylum seeker, from a non-EEA country, who initially came to Northern Ireland as an unaccompanied minor over three years ago, at which point he was granted humanitarian protection and cared for by the Trust. When he reached 18, Mikel applied for leave to remain in the UK on the grounds of asylum, but his application was refused and his appeal failed. Mikel was liable for removal but, because he had no passport, was unable to be removed. His NIHE case file included a letter from the Home Office, stating his liability for removal to an immigration detention facility and the requirement that he remain at the address specified, and report weekly to police. He had no recourse to public funds and was not allowed to work. He had been living with his girlfriend, at the address specified by the Home Office; however, the relationship broke down.

Mikel presented to the NIHE for homelessness support; however, as a person subject to the no recourse rule, he was not entitled to support. As a failed asylum-seeking, single male without additional vulnerability, he was deemed not to be in priority need despite being destitute. A note in Mikel's NIHE case file indicated that a referral had been made to the Trust;

however, unless Mikel was able to demonstrate that he was destitute and had an additional vulnerability, it is unlikely that the Trust would provide support except where he was eligible for leaving and aftercare support under Leaving After Care provisions. As a result, it is likely that Mikel was left destitute and dependent on the goodwill of others, pending his eventual removal from the UK.

The Trusts

Local authorities have a limited duty to provide for failed asylum seekers, if failure to do so would result in breach of ECHR rights. The Trusts have duties to carry out assessments of need under community care legislation.¹³⁰ Where children are involved, the Trusts have duties under child protection legislation.¹³¹ A local authority still has a responsibility to provide for unaccompanied asylum seekers under the age of 18 years. Once they reach 18, asylum seekers with unresolved cases move into the NASS support system. For those with needs 'over and above destitution', including asylum seekers with mental health issues, pregnant women and older people, the Trusts have a duty to provide assistance.¹³²

The investigators found good practice, in the main, in relation to the Trusts' response to unaccompanied children, with certain offices having significant experience of dealing with these cases. One concern, however, is the apparent lack of emergency accommodation for unaccompanied children, which resulted, in a number of occasions, encountered by, and told to, the investigators, in the use of unsupervised and un-vetted bed and breakfast accommodation. This raises issues in terms of ensuring the best interests of the child, as well as issues relating to the child's health, wellbeing, association, protection from violence and exploitation, and education.

A further area of concern relates to age assessment of unaccompanied children, which is conducted in cases where there is a dispute as to whether the child is over or under 18 years of age. At the time of writing, only two social workers in Northern Ireland have been trained to make these assessments, which are important in ensuring the appropriate placement of children and that individuals over 18 are not inappropriately placed with children. The lack of trained staff creates lengthy delays in assessing applicants. In one case, reviewed by the investigators, a child had arrived in the UK on 11 August 2008, but due to staffing issues would be unable to undergo an age assessment until 30 October the same year. As it stands, the Trusts do not have to provide support until it is established that a person is below the age of 18 and, therefore, the responsibility of the state is in line with the *Children (Northern Ireland) Order 1995*. However, as previously stated in this report, the investigators found primarily good practice in the handling by the Trusts of unaccompanied children cases. Through a review of case files and interviews with staff, the investigators found that, where a dispute arises, the Trusts tend to give the child the benefit of the doubt and continue support.

The investigators found that unaccompanied children were presenting with a range of issues. One teenage mother had experienced sexual abuse in her home country; a number of children had fled situations of conflict, violence or political oppression; and two children had been trafficked or smuggled into the UK and some were subsequently subjected to economic exploitation. One child had witnessed the destruction of his village and murder of his brother. While no two asylum-seeking children's cases are the same, the following case study is a typical example of the Trusts' response to an unaccompanied child.

¹³⁰ *Health and Personal Social Services (Northern Ireland) Order 1972*.

¹³¹ Including, for example, the *Children (Northern Ireland) Order 1995*.

¹³² See: Chapter 4 for a detailed account of duties.

Case study: unaccompanied child

Sue had arrived in Northern Ireland as an unaccompanied minor from a non-EEA country. She had been orphaned in her home country and spent some time destitute, relying on casual catering work and begging to survive. Sue experienced regular physical attacks while on the streets. A man, alleging to be from a well-known charity, provided Sue with false documents and the means to travel via London to Belfast. She made an application for asylum when she arrived at Heathrow airport. Sue had been provided with a contact for a man from her country of origin in Belfast. She presented to the Northern Ireland Council for Ethnic Minorities (NICEM) as an asylum seeker and was referred to the Trust's team. Social workers provided Sue with access to medical care and with accommodation, which was specifically for young people, for six-and-a-half months. Support was provided under the *Children (Northern Ireland) Order 1995* and section 15 of the *Health and Personal Social Services (Northern Ireland) Order 1972*. After the initial period of accommodation, Sue was provided with the appropriate support and assistance necessary to live in private rented accommodation with a friend.

In addition to support with accommodation and subsistence, many of the young people received educational support in the form of school enrolment and language classes and, in some cases, further education was provided, all of which aided the integration of the young people into society. The majority of the children had legal representatives, primarily to deal with asylum claims. In some cases, social workers had linked children with relevant religious or community organisations. For example, in three cases, children were brought to Mosque and provided with religious materials and culturally appropriate food.

Overall, the investigation's findings were very positive in respect of the care of unaccompanied children, with the exception of the use of unsupervised bed and breakfast accommodation.

The investigation findings in relation to failed adult asylum seekers were less positive and reflective of the overall concerns regarding the lack of clear guidance and training for the Trusts' staff on their duties and responsibility with respect to homeless individuals.

As this chapter has shown, in cases where there are children involved, there was inconsistent practice among different offices, despite the clear duty which exists to all children under the Children Order. As Chapter 8 on domestic violence highlights, the issue of immigration status and financial dependency creates an additional imbalance between victims of domestic violence and abusers, and a further barrier to accessing safety and support. Add to this the uncertainty facing refused asylum seekers with no access to benefits or entitlement to work, and the situation becomes critical.

As one non-EEA mother explained to a voluntary organisation worker, there really is little option but to leave and face destitution, or remain and face abuse:

“She said she would like to leave him, but she has no access to housing and she has no access to anything really. ... It is basically giving him control because he is the one who is paying for the house and getting an income...” (Voluntary organisation interviewee)

In cases where there are no children, a single failed asylum seeker faces the serious challenges in that she or he cannot access the Trusts’ support unless it is necessary in order to avoid breach of ECHR rights. Chapter 4 has already set out the concerns in relation to this gap in service provision. What remains to be said in relation to failed asylum seekers and destitution is that, in addition to the practical needs of this group of people, there are often serious mental and physical health issues to be addressed, particularly among those individuals fleeing abuse, exploitation, violence and oppression. Yet, as the situation currently stands, they have no safety net.

Domestic violence

“It is not that I am complaining for this roof above my head, and I have food, but if I could work I could go out and buy something for myself and it is a different feeling altogether to have your own money.” (Non-UK national interviewee)

Context

The United Nations’ *Declaration on Violence Against Women* defines violence against women as:

Any act of gender based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.

The Police Service of Northern Ireland (PSNI) defines domestic violence as “any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) by one family member against another or adults who are or have been intimate partners, regardless of gender”. The police statistics indicate that up to one third of all recorded crime in Northern Ireland is related to domestic violence. It is, however, well established that incidents of domestic violence are severely underreported. A number of social and practical barriers to reporting exist, particularly for certain categories of victims. Victims of same-sex domestic violence are less likely to officially report abuse than those in heterosexual relationships.¹³³ Women’s Aid recently reported that disabled women were unlikely to report abuse due to physical and practical constraints.¹³⁴ Research has demonstrated that Black and minority ethnic women are less likely to report domestic violence to the police for fear of racism.¹³⁵ While women have traditionally been the focus of domestic violence, men too can be victimised and research has increasingly emphasised the impact of domestic violence on children.

Victims of domestic violence come from across all geographical, social, economic, class and cultural boundaries within the UK; however, certain categories of people are particularly vulnerable to

abuse and exploitation, in particular, those with insecure immigration status. A person’s nationality and subsequent legal status within the UK can impact on the ability to seek protection from domestic violence. The following extract, from an interview with a voluntary organisation worker, illustrates how immigration status can exasperate the power imbalance between the abuser and the abused:

“She is in a new marriage, and a new comer to Northern Ireland. She got married [in her country of origin] and then her husband, who is working here with a work permit, brought her back here. Before, she thought here was paradise, but after getting married and coming here it was not as she thought... plus the language barrier, no friends. And then her husband tried to use her for work and then started to get violent. ...she went to college to study English; she did her best but her husband tried to stop her studying. He wanted her to stay at home to work. She was married little more than one year. ...she was beat a few times, then she left home and then tried to find a job and a place by herself. She is confused; she doesn’t know if she should divorce, maybe she cannot stay. Unfortunately, her husband is holding the work permit; she is not resident or allowed to remain unless she stays with him.”

Domestic violence can result in serious psychological and physical harm to the victim and her or his family. However, violence in the home can also have significant practical implications, including on housing. During 2003-04, approximately 700 households which presented as homeless to the Northern Ireland Housing Executive (NIHE) stated domestic violence as the cause of the homelessness.¹³⁶ This chapter will examine the issue of domestic violence in the context of homelessness, with a focus on those women with no, or limited, access to public funds.

¹³³ Lundy S (1993) ‘Abuse that dare not speak its name: assisting victims of lesbian and gay domestic violence in Massachusetts’, *New England Law Review*, 28 273, winter 1993.

¹³⁴ Hague G, Thiara R, Magowan P and Mullender A (2008) *Making the Links: Disabled Women and Domestic Violence Final Report*, Women’s Aid Federation of England, Bristol.

¹³⁵ Mama A (1996) *The Hidden Struggle: Statutory and Voluntary Sector Responses to Violence against Black Women in the Home* (2nd ed) Whiting and Birch Ltd, London.

¹³⁶ Northern Ireland Housing Executive, Homelessness Statistics 2003-2004.

Human rights standards

The Government is obliged, under international, regional and domestic human rights law, to prevent gender-based violence and to ensure victims' access to safety and support. International law primarily deals with the issue of domestic and gender-based violence under two treaties: the UN *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) and the UN *Convention on the Rights of the Child* (CRC).

CEDAW is widely recognised as the basic source of female-specific human rights. However, it was heavily criticised at the time of its creation by the women's sector, globally, for failing to directly address the issue of violence against women. Since its adoption, in 1979, CEDAW has been supplemented by instruments which take a more direct approach to gender-based violence although these do not have the same legal force as a Convention. The *Declaration on the Elimination of Violence against Women* and the Beijing Declaration both place a duty on state parties to protect women from violence and to meet their needs as victims.¹³⁷ While CEDAW may be textually weak regarding violence against women, the treaty, which is legally binding, remains relevant to the Commission's investigation as it goes to the heart of the factors which facilitate and exasperate domestic violence, namely, inequality and discrimination.¹³⁸ In July 2008, the UK was examined under CEDAW and, in its concluding observations, the Committee expressed concern about the situation of women with no recourse to public funds, and urged the Government to review its policies in this regard. At paragraph 48 of its concluding observations of 18 July 2008, the Committee stated:

The Committee calls upon the State party to keep under review and carefully monitor the impact of its laws and policies on women migrants, refugees and asylum-seekers with a view to taking remedial

measures that effectively respond to the needs of those women. In this respect, the Committee urges the State party to review its 'no recourse to public funds' policy to ensure the protection of and provision of support to victims of violence.

By comparison to CEDAW, international child rights law is more direct on the issue of violence and provides a range of provisions under the CRC, which are intended to afford protection from violence and ensure that children, who are harmed, are provided with appropriate support. The CRC asserts the right to life and survival of every child (Article 6), freedom from torture, inhumane or degrading treatment (Article 37) and it deals, in detail, with all forms of abuse and exploitation (in particular, Articles 19, 34, 35 and 38). At the cornerstone of the CRC, is the 'best interests' principle which reaffirms the state's duty to protect all children. Accompanying protection, as one of the key themes of the CRC, is the duty of state parties to provide for all children. The positive obligation of provision is crucial in considering the practical ramifications of domestic violence on victims and their dependents. Several Articles in the CRC outline the socio-economic rights of every child under international law. Crucially, the Articles, establish the right of every child to an adequate standard of living, including social security and state-provided material support in relation to nutrition, clothing and housing.¹³⁹

The UK was examined under the CRC in October 2008. The Committee addressed several issues fundamental to this investigation, namely, protection from violence and provision of resources. In the first instance, the Committee was highly critical about the prevalence of child abuse and neglect in the UK and the lack of a nationwide prevention strategy. The Committee also highlighted the geographical inequality in terms of access to services that are aimed at the physical and psychological recovery of victims of abuse.

¹³⁷ *Declaration on the Elimination of Violence against Women* (General Assembly resolution 48/104, 20 December 1993) and the Beijing Declaration (Fourth World Conference on Women, Beijing, 1995).

¹³⁸ See, in particular: Articles 3, 5 and 13.

¹³⁹ See, in particular: Articles 4, 16 and 27.

In this regard, the Committee recommended that the UK:

Strengthen support for victims of violence, abuse, neglect and maltreatment in order to ensure that they are not victimized once again during legal proceedings; and

Provide access to adequate services for recovery, counselling and other forms of reintegration in all parts of the country.¹⁴⁰

The second relevant issue addressed by the Committee was that of provision of resources. As previously highlighted, the CRC contains several socio-economic rights provisions, among the most fundamental of which is the right to an adequate standard of living. While considering the problem of child poverty, the Committee stated particular concern about the situation in Northern Ireland, where over 20 per cent of children reportedly live in persistent poverty. Although the Committee welcomed the Government's commitment to eradicate child poverty by 2020, it felt that the strategy was "not sufficiently targeted at those groups of children in most severe poverty".¹⁴¹ It went on to highlight the necessity of an adequate standard of living to all aspects of a child's existence and development, and recommended that the UK:

Give priority in this legislation and in the follow-up actions to those children and their families in most need of support; and

When necessary, besides giving full support to parents or others responsible for the child, intensify its efforts to provide material assistance and support programmes for children, particularly with regard to nutrition, clothing and housing.¹⁴²

Regional human rights law also provides relevant obligations on the state.¹⁴³ The *European Convention on Human Rights* (ECHR) does not directly address either the issue of ordinary intrapersonal violence or specific socio-economic rights. The ECHR has, however, been interpreted, through the courts, to cover forms of violence and abuse under Articles 2 (right to life) and 3 (freedom from torture, inhuman and degrading treatment). However, of primary importance to the Commission's investigation is Article 8, which deals with the right to family life. In addition, each of the rights in the ECHR is further protected by the right to non-discrimination in Article 14.

Legislation

There are two aspects of UK immigration legislation which are relevant to foreign nationals experiencing domestic violence. The first is the area of law which deals with access to public funds, and the second is that which looks at the right to remain. Each of these areas will be examined in turn with a view to demonstrating how current immigration rules act as a potential barrier to the protection from domestic violence guaranteed to all women under international law.

No recourse rule

In Northern Ireland, female victims of domestic violence may avail of refuge and legal assistance from charitable and statutory sources. The prevalence of female on male, or male on male, domestic violence in Northern Ireland is an area on which there is little research and, consequently, little evidence exists. This, therefore, is the subject of controversy in terms of the allocation of resources. Currently, male victims of domestic violence may access voluntary advice and support,

¹⁴⁰ UNCRC, Concluding Observations, 20 October 2008, para 51.

¹⁴¹ Above, para 64.

¹⁴² Above, para 65.

¹⁴³ Other regions also address the issue of violence against women. The *American Convention on Human Rights* is supplemented by the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* (1994). The specific Convention requires governments to take measures to eradicate violence against women as well as to provide effective access to justice and reparations. The African region also specifically addresses the issue of violence against women through a comprehensive protocol additional to the *African Charter*. The *Protocol on the Rights of Women in Africa* (2000) places obligations on state parties to take specific measures to address violence against women.

but not supported accommodation. Access to statutory support including sheltered accommodation, subsistence and legal advice is denied to people with no, or limited, access to public funds, in accordance with various legislative provisions. Often, this appears to absolve local authorities of any obligation to provide financial support to certain categories of people, based on whether they have a right to reside in the UK.

Women with no, or limited, access to public funds include those who came to Northern Ireland on spousal visas, students, visitors, 'over-stayers', refused asylum seekers and undocumented migrants. Those who have not fulfilled the relevant workers registration requirements – the Workers Registration Scheme (WRS) (A8) or the Workers Authorisation Scheme (A2) – will also be denied access to public funds. Those individuals, to which no recourse is a condition of the right to remain in the UK, may face deportation if they seek financial assistance from government agencies. The term 'public funds', as set out in Chapter 6, includes access to social housing and Housing Benefit, in accordance with the *Housing (Northern Ireland) Order 1988*, and a number of other benefits listed under the *Social Security Contribution and Benefits Act 1992*.

The practical implications of the 'no recourse' rule is that, often, women are financially dependent on their abusers whether they be family, partner, employer or trafficker:

"Without him, it is very difficult... If she had been born here it would have been different, but because she has the legal residency because of her husband, everything would depend on him. If he says 'no', that is it, she is not entitled to have the residency. She can stay in the country, but without any document, therefore she is not going to be eligible for any kind of benefits... She doesn't want him with her, not after what he has done." (Voluntary organisation interviewee)

Women with no recourse are legally denied access to safe refuge accommodation because most refuges rely on government funding. Access to benefits or employment may be prohibited as a condition of the right to remain in the country. Such women are not eligible for income based benefits. With no safe space, and no financial assistance, non-UK national victims of domestic violence are essentially trapped as the following case study illustrates.

Case study: domestic violence

A non-EEA woman was married to a British man and they had one child. The husband abused the woman over a lengthy period, but she stayed in the marriage as she felt unable to leave because her husband withheld her documents. Finally, after a particularly serious incident, she presented with her child to a refuge where she was accommodated and supported. When her passport was eventually released by her husband, it showed that she had no recourse to public funds. The refuge continued to support the woman and her child, allowing her to stay rent free and providing financial assistance for food, clothes and toiletries from the emergency budget. The refuge tried to get assistance from the Trust, but it claimed no duty toward the family. The refuge absorbed the cost, but it was detrimental to their annual budget.

There is limited assistance for victims beyond the statutory agencies, with community and voluntary groups willing to provide advice, support, accommodation and financial assistance where their means allow. However, despite the overwhelming willingness and commitment of such groups, which was evident throughout the investigation's fieldwork, these organisations are severely limited in their capacity to provide assistance due to a lack of funding and other resources.

Domestic violence rule

A non-EEA person, who marries an Irish or UK citizen, must fulfil certain criteria in order to obtain a right to enter Northern Ireland. The criteria focus on demonstrating the genuine nature of the relationship and providing evidence of how the visiting spouse can be sustained financially. If these criteria are fulfilled, the non-UK national spouse may remain for a probationary period of two years, during which time she or he can have no recourse to public funds. The same rules and conditions apply for unmarried couples who have been living together for at least two years. Once the probationary period draws to an end, the non-UK national partner can apply to the Home Office for indefinite leave to remain. A successful application will depend on meeting a number of requirements, including being able to demonstrate that the marriage is intact and that the couple intend to remain together permanently. If, during the initial two years the relationship breaks down, then entitlement to a spousal visa ends. Under EEA regulations, unmarried couples who separate, lose the right to an EEA Residence document. However, separated couples may retain their residency provided they do not divorce. Once indefinite leave to remain has been granted, the status of a relationship is irrelevant in terms of the victim's legal right to remain in the UK.

In 1999, the Government introduced a concession to the above immigration rules for victims of domestic violence, allowing them to apply for indefinite leave to remain in the UK. The rule is extremely limited as it may apply only to those individuals who entered, or stayed in, the UK on the basis of a relationship with a UK national or person with indefinite leave to remain in the UK. In order to apply for indefinite leave to remain, the domestic violence must occur with the two-year probationary period. The applicant must provide 'satisfactory evidence' to support a claim under the domestic violence rule. Such evidence must include specific

legal or medical evidence to verify the occurrence of the domestic violence.

Legal evidence must include at least one of the following:

- an injunction, non-molestation order or other protection order against the sponsor (other than an *ex-parte* or interim order)
- a relevant court conviction against the sponsor, or
- full details of a relevant police caution issued against the sponsor.

In the absence of the specific legal evidence, the applicant must provide two of the following:

- a medical report from a hospital doctor confirming that the applicant has injuries consistent with being the victim of domestic violence
- a letter from a GP who has examined the applicant and is satisfied they have injuries consistent with being the victim of domestic violence
- an undertaking given to a court that the perpetrator of the violence will not approach the applicant who is the victim of violence;
- a police report confirming attendance at the home of the applicant as a result of domestic violence
- a letter from the relevant Trust confirming its involvement in connection with domestic violence, or
- a letter of support or report from a women's refuge.

The application procedure can be a lengthy process, particularly as specialist immigration lawyers are in short supply and high demand in Northern Ireland. Interviews with immigration lawyers indicate that the process can take several months and sometimes longer when information is lost or mislaid. In 2002, the Government

incorporated the domestic violence concession into the immigration rules, which means that applicants under the rule now have a right of appeal if the initial application is refused. The Government also made a commitment, through the UK Border Agency (UKBA), to fast track applications for indefinite leave to remain based on the domestic violence rule.

In addition to the lengthy time frame, applications under the domestic violence rule have serious financial implications for the victim. There is a £750 non-refundable application fee which places obvious limitations on non-earning victims. The fee will not be waived unless it is established that the victim is completely without funds. This means that the victim must be beyond the legal definition of 'destitute' in order to qualify for a free of charge application fee. The issue of the fee was raised by several immigration lawyers and community groups, during the investigation fieldwork, who felt that it was inordinately high. An example was provided of a woman who had to use her last £10 toward the fee. In one case, a woman who had been awarded damages by the state had to use her compensation towards the fee, therefore essentially returning the compensation to the Government. During the course of the application, the applicant will have no recourse to public funds and can potentially be left destitute. Only when leave to remain has been granted, will the applicant have access to public funds.

Case study: domestic violence

A 27-year-old, non-EEA woman, married to a man from Northern Ireland where she lives with her two children. She also had a five-year-old daughter in her home country who is being cared for by family who are dependent on her to send money home regularly. Having experienced domestic violence, the woman applies to a women's refuge for support. The organisation contacted the Trust which was reluctant to support the woman.

The woman's husband then applied for custody of the children, on the basis that their mother was unable to support them. If the mother is deemed unable to support the children, the father can get custody even though he has perpetrated domestic violence. The woman then applied for a non-molestation order and occupancy order through legal aid, which enabled her to return to the family home. The husband remained listed on the tenancy and, as the woman had little or no financial support she defaulted on her rent and faced eviction by the NIHE.

The woman has since applied for indefinite leave to remain; however, any residency would be dependent on her spouse working, his remaining in UK and their marriage remaining intact. The woman has become mentally unwell as a result of the stress and needs to send money home for the upkeep of her daughter or she will be abandoned. She continues to get advice and support from voluntary and community organisations.

The reality of the domestic violence rule is that it is a very limited concession accessible only to those whose partner is a UK national or a person with a right to remain in the UK, and then only available to

those women who are financially self sufficient. The women who pursue this avenue face a difficult and uncertain future. Many fall outside this supposed safety net, including those whose partner is from another EU country. The following case study illustrates the logistical and administrative difficulties which arise when both victim and perpetrator are non-UK nationals.

Case study: domestic violence

A pregnant non-EEA woman resides with her EU husband and two children in Northern Ireland. They had been living here for a number of years and both children were born here. The woman presented with domestic violence and the Trust placed her and her children in a women's refuge. After a time, the Trust claimed that it was too expensive to keep the woman and they wanted to send her and her children home once her pregnancy has ended.

The woman's husband had withheld her documents so she was unable to verify her right to remain in the country. The refuge attempted to obtain information from the Home Office about her status or that of her husband, but the Home Office would not disclose anything to the refuge nor to the woman, due to data protection. The husband continued to withhold her documents and only returned them to allow her to claim child benefit. The refuge continues to work with the woman and a legal advisor on her case.

Social Security Agency

The Social Security Agency (SSA) has a limited duty to individuals with no, or limited, recourse to public funds, whatever their circumstances. Agency staff have a duty to accept and process benefit applications and to provide advice and assistance on benefit related matters. Victims of

domestic violence, who are considering leaving or who have left abusive relationships, may present to SSA offices for information on their entitlements. As previously demonstrated, those with no, or limited, recourse to public funds are not entitled to claim income related benefits. Victims with no, or limited, recourse are also ineligible for Social Fund assistance, including Community Care Grants, a discretionary non-repayable sum intended to help relieve exceptional pressure on the woman and her family.

As set out earlier in the report, the issue of domestic violence is one which arises in relation to factors affecting destitution, both in scoping for the investigation as well as in interviews with community and voluntary groups. For these reasons, staff at each of the SSA offices were asked specifically about their approach to customers presenting with domestic violence issues. The response was generally positive and demonstrated an overall compassion and an individual willingness to provide assistance:

"[...] if somebody comes in and says that they were attacked, we would try and get them money immediately, like crisis loans or whatever... So you do try and it is not special treatment, it is just like you feel sorry for them, you know." (SSA interviewee)

Staff at all three locations had a basic knowledge of the local voluntary and community organisations and were willing to provide contact details to clients. This, in itself, is a positive observation and both the SSA and the Commission are of the opinion that where SSA staff have fully complied with their obligations, and then provided additional advice and direction, that should be encouraged. However, concerns are expressed throughout this report at the over-reliance of statutory bodies on voluntary organisations where there is a resulting financial burden involved.

Information illustrative of over-reliance came from staff across the three agencies and from interviews with voluntary agencies. Where an over-reliance occurs it may in part be due to the restrictive legislation which limits the ability of SSA staff to assist as well as a lack of SSA understanding of the role of the Trusts. In one office, staff had a very clear understanding of the voluntary organisations and sign-posted clients appropriately:

“We would get cases in Social Fund where you might have someone, you know enquiring, telling us about domestic violence, et cetera, and what can they do. So I mean, we will, if they are a person ringing up, a female ringing up and who has an entitlement and already on benefit, we can then tell them about the grant, but we would also then signpost them to [a refuge], just up the road here. We have really good liaison with them and would be on first name terms with the manager up there and we can say, you know, give us your contact details and with permission, we will pass them on or we will give you the number here to contact this person or various other hostels. But, at the end of the day then, it is down to that person. If you know, their personal choice, if they decide to go ahead and do that, but certainly the manager in [the refuge] would liaise with us.” (SSA interviewee)

Staff at one office explained how they had regular contact and information exchange with their local women’s refuge:

“We have a Women’s Aid hostel within our area which we would actually have very close links with. I used to be a visiting officer and would have been out fairly frequently to it.” (SSA interviewee)

While SSA staff demonstrated good practices in relation to signposting clients to voluntary organisations, they also exposed gaps in interagency co-operation. There was no evidence presented to the investigators to indicate any links

between the SSA and either the NIHE or the Trusts on the matter of domestic violence.¹⁴⁴ One office explained how it would verify the occurrence of domestic violence with the police.

“We would come across domestic violence and we would have contact with PSNI, you know, domestic violence unit, because maybe with Community Care Grants, you know, where there was a history of that, and we would try and verify specific incidents they have highlighted in their applications.” (SSA interviewee)

However, the investigators found no statutory or policy requirement to verify domestic violence for the purposes of Community Care Grants. It is concerning that domestic violence victims might be expected, as the following quote implies, not only to have reported abuse to the PSNI, but also to detail specific incidents of domestic violence to SSA staff for the purposes of corroboration before being considered for a Social Fund payment. During factual accuracy checks of this report, the SSA management confirmed that no legal or policy requirement exists for PSNI verification of a domestic violence incident. Management further stated that verification is sought to establish the grounds of any Social Fund claim and in the case of domestic violence evidence of contact may be sought from a range of sources, for example, the NIHE, the Trusts, Women’s Aid or the PSNI.

Northern Ireland Housing Executive

The NIHE is responsible for assessing people, who present as homeless, by applying the homelessness legislation – the *Housing (Northern Ireland) Order 1988*, as amended. Chapter 3 of this report has already outlined the limited duty which exists between the NIHE and homeless non-UK nationals. This section will briefly examine the specific duty which the NIHE has to victims of domestic violence, and illustrate the gaps in

¹⁴⁴ During factual accuracy checks of this report, the SSA provided the following information: “[...] it is worth noting the Agency has a representative on the ‘Northern Domestic Violence Partnership’. This partnership meets bi-monthly and is represented by such organisations as the Police Service of Northern Ireland, The Housing Executive, The Trusts, The Northern Trust, DHSS&PS (Domestic Violence Unit) and Barnardos (Domestic Violence Consultant). There are also representatives from health care professionals and from the voluntary sector”. This information was not provided during the fieldwork period, nor was it apparent in any of the 60 interviews with government agency staff. This illustrates the point that, although links may exist at a senior level between agencies, there was no evidence of established interagency co-operation among front line staff.

services which exist when the victims are from outside the UK.

The current legislation places a duty on the NIHE to house homeless people, a definition which includes those with accommodation who are subject to violence, or threats of violence, by another person residing in the house.¹⁴⁵ Following the implementation of the *Housing (Northern Ireland) Order 2003*, there is now a new ground for possession which enables the NIHE to apply for possession in cases where domestic violence has occurred. Prior to the introduction of the new provision, the victim would have had no option but to seek an occupation order, or request the court to directly transfer the tenancy. This change enables the NIHE to perform this function without the victim having to go to court. While the legislation has progressed in recent years, it remains subject to serious limitations. Most notably, it only applies in cases where the perpetrator actually lives with the victim. It does not take account of abuse perpetrated by partners not living with the victim, and the implications that this has for safe housing. A further fault is that the duty of the NIHE to house is limited only to individuals who are entitled to access public funds, which means that a significant number of non-UK national victims of domestic violence are without statutory support. Although victims may not be entitled to access social housing, they are legally entitled to advice and information from the NIHE.

Staff at each of the NIHE offices were asked about their approach to cases involving domestic violence. The responses demonstrated an overall awareness of the issues and compassion toward victims. One staff member stood out as being acutely aware of the sensitivity needed in responding to housing applications from victims:

“If a woman is making a housing application because of domestic violence... I phone the person and ask what would be a suitable time for me to call, because

she might not want anyone else to be there... If she wants me to come at eight o'clock in the morning or eight o'clock at night, I will be there after hours.”
(NIHE staff interviewee)

Equally, however, the comments of one senior NIHE staff member, included in the interview extract below, deeply concerned the investigators and emphasised the culture of misunderstanding which exists around domestic violence.

“There was one incident... There was a girl, sort of very volatile. ... I think she was fit to give as much as what she took, you know; she fired an air gun at him and he blacked her eyes and then they were all smiles again. She came over here with really bad teeth and then he punched her teeth out, but then once she went and got a whole new set of dentures, and all on the National Health, she couldn't stop smiling. That is the way he told me, you know; he said she never actually smiled until she came over here, she got her new teeth.”

Q: *“And would that case have involved eligibility issues?”*

A: *“No... she was [an EEA national] and she had two or three different boyfriends on the go. I think it was a question of jealousies... passions were inflamed; she fired an air gun and put a hole in him and then he turned around and belted her up the face. She was took away with broken teeth. She got a new set of teeth out of it... then they were back together and everybody was happy.”* (NIHE staff interviewee)

In the majority of interviews, staff demonstrated a good knowledge of the role of voluntary organisations and a willingness to refer, primarily to Women's Aid. In just one instance did a staff member refer to other statutory agencies as having a role to play:

“If a female has gone to the extent of saying, actually saying, that it is domestic violence, on the face of it, I am taking her word for that. I will try and say 'have

¹⁴⁵ Article 3(5)(b) of the *Housing (Northern Ireland) Order 1988* states: “it is probable that occupation of it will lead to violence from some other person residing in it or to threats of violence from some other person residing in it and likely to carry out the threats”.

you contacted social services, have you had any social workers over the years and I don't care whether it was last week or it could be 10 years ago." (NIHE staff interviewee)

In October 2003, the Department of Health, Social Services and Public Safety (DHSSPS) issued its consultation document, *Tackling Violence at Home*, which contained proposals on domestic violence in Northern Ireland.¹⁴⁶ The document highlighted the need to increase the range of accommodation and support options available to victims of domestic violence. Despite the legislative and strategic progress, albeit limited, which have been made in relation to homelessness and domestic violence, there has been little, or no, positive impact on those individuals with no, or limited, access to public funds. In reality, NIHE staff may be willing and able to provide advice and assistance, but under current legal restrictions can do little else. As one staff member explained:

"If they are not eligible, then that changes everything. It is very difficult when, like with domestic violence, you know that somebody is really desperate and genuinely needs help and your hands are sort of tied. There is nothing you can do for them." (NIHE staff interviewee)

The Trusts

Unlike the NIHE and the SSA, the Trusts can generally provide financial and other assistance to people, irrespective of nationality or immigration status as long as it is necessary to avoid a breach of ECHR rights. The Trusts have an explicit duty of care to all individuals under the age of 18 years, in accordance with the *Children (Northern Ireland) Order 1995*. However, the investigators found that the Trusts' duties toward adults are strictly delineated by social work teams allocated to elder care, physical disability and sensory impairment, mental health and learning disability. Despite being

the only statutory agency which can, in theory, provide practical help, victims of domestic violence do not neatly fall into any of the operational categories. The fact that a category specific to the needs of this group does not exist is an issue which affects all victims, not just non-UK nationals. However the absence of a clear duty to victims of domestic violence raises extreme concerns about the safety net available to those victims who have no entitlement to access funds, and for whom the Trust really is a last resort.

In the course of the investigation, interviews were conducted with professionals and homeless victims of domestic violence, some of whom had contact with the Trusts. A number of common themes arose as the fieldwork progressed, including the lack of clear guidance for, and consistent practice by, social workers in relation to non-UK national victims of domestic violence. As the following case study shows, the gap in service and support has a serious knock-on effect, not only on the wellbeing of the victim and any children, but also has resource implications for the voluntary services attempting to meet the needs of the clients for whom there are no other avenues of support.

Case study: domestic violence

A woman from an A8 state presented with her young son to a voluntary organisation, seeking help with domestic violence. She had left her partner and had been staying in rented accommodation with another woman and her children. She needed £160 to pay her rent contribution or she and her son would have to leave the accommodation that night and either face homelessness or return to the abusive home. The voluntary organisation contacted the Trust which, having spoken with a manager, stated that it would pay for flights home for the woman and child. However, the woman had a

¹⁴⁶ Northern Ireland Office (2005) *Tackling Violence at Home: A Strategy for Addressing Domestic Violence and Abuse in Northern Ireland*, NIO, Belfast. In its response to the earlier consultation document, in January 2004, the Commission broadly welcomed Government's plans to increase protections for women and others suffering from domestic violence and, in particular, the emphasis on preventing domestic violence from occurring in the first place and the attention given to the improvement of support and protection for victims and their families.

non-molestation order and a residency order, and could not remove the child from the jurisdiction.

As the wife of a migrant worker, she should have had a right to support, but her husband would not supply his WRS certificate. The Trust agreed to give £97 to a women's refuge to cover the cost of one week's accommodation only, despite the fact, that had they given her £160, she and her son would have secured accommodation for one month. The woman had also explained that in her current accommodation the lady she shared with looked after her child to allow her to work 16 hours per week. The Trust insisted that she go to the refuge with her son. As a result, she was unable to continue her employment and lost any opportunity to register her work. The stress of the situation led to the woman becoming ill, but she is not entitled to Income Support as her husband is withholding his WRS certificate. The woman and staff at the voluntary organisation have contacted the Home Office, but they refuse to provide confirmation of her husband's status due to data protection restrictions.

The Trust allegedly issued an ultimatum, stating that either she accepted flights home for her and her son or they would stop supporting her and her child would be taken into care. The voluntary organisation intervened in assisting the woman practically, to the extent that she remains in the country and is now in registered employment.

In cases where the Trusts have decided to support a victim and her children, the assistance provided has been inconsistent. Refuge and accommodation providers commented that they were more likely to

get paid if the Trusts brought the client to them, rather than the client presenting and the accommodation provider then attempting to secure funding. Some victims commented that they did not know what money they would get, or when, from one week to another. In some cases, women were given supermarket vouchers, others were given cash and a small number reportedly received food vouchers from the Trust which can be redeemed against certain items at a supermarket. The investigators found differing practices in relation to the type of assistance, its frequency and amount being offered, with no explanation of how support was calculated. One woman explained, through an interpreter, that she received a total of £30 a week to buy food and supplies for her and her two children:

"It is not every week, it is not like every Monday, it would come one Monday and the next week it will be on Wednesday and that. Sometimes [I] will have to ring to enquire about the money... Sometimes [I] would have to go to [another town] to get the money."
(Non-UK national interviewee)

Domestic violence professionals explained that, in many cases, the Trusts accepted a duty to the children but not to the mother, leading to increased anxiety for victims. Several people raised concerns about alleged threats by Trust staff to take children into care, in situations where women without access to public funds have become destitute as a result of domestic violence. In two such cases, victims and key workers explained that the Trusts had offered to either pay for the family to return home or to take the children into care. This information is extremely concerning because it essentially blames the mother for her inability to provide for her children and forces her to make a complex decision, the pressure of which could push the victim and her family underground. The following case example was provided by a voluntary organisation.

Case study: domestic violence

“The victim presented at a refuge herself; she had been given info from our helpline. She was a [non-EEA] woman in her thirties, who had been living in London with her husband. She came to the UK on his visa. She stated that her husband had become very abusive and she had to flee London for her safety and also for the sake of her child (then two-and-a-half years old) witnessing the abuse. She came to Belfast but stated that she did not know anyone here. Her expectations of the statutory agencies were quite high. Unfortunately, the Trust informed her that they had a responsibility to her child but not to her and they would not financially support her. The refuge had to forego payment of rent as well as financially support the mother and daughter for food, et cetera, for over two months. She requested to go back to London as she felt she was not getting proper support in Northern Ireland. The Trust agreed to pay her flights.”
(Voluntary organisation interviewee)

The response from social workers was generally of concern, but understandable in the context of an absence of any guidance or direction on the issue and the constant financial pressure, expressed by interviewees, on the Trusts to make cutbacks on staff and expenditure. Despite the lack of clear policy and procedures, some domestic violence professionals praised the efforts of individual social workers and maintained that the problem was generally not with individual Trust staff, but with the system as a whole.

Given the concerns raised in relation to the right to family life, social workers were directly asked to clarify their duty regarding victims of domestic violence. One social worker bluntly explained it as:

“There has to be children involved before we would pay”.

Ill-health and disability

“It is obviously rather humiliating to keep asking for things.” (Non-UK national interviewee)

Context

The investigation found that a number of people with no, or limited, access to public funds had become homeless due to the onset of ill-health or disability. In addition, it was frequently apparent that although illness was not the primary cause of homelessness, in a number of cases, people became seriously ill as a result of their destitution on becoming homeless. Perhaps more so in relation to other homeless persons, those with no, or limited, access to public funds risk serious deterioration in their physical and mental health due to the stresses associated with destitution, coupled with the lack of assistance.

Human rights instruments

International level

On an international level, there are many human rights instruments that impact on housing and health. That the right to housing cannot be viewed in isolation from other rights is enunciated in General Comment 4 of the Committee on Economic, Social and Cultural Rights. This provides that “[...] the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised”. Equally, General Comment 14, on the right to the highest attainable standard of health, states:

[T]he right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as [inter alia] housing.

It is clear, therefore, that the right to housing is inextricably linked with the right to health, and it is in the context of homelessness that the importance of this link is most stark.

In outlining states’ general legal obligations in relation to the right to health, the Committee on Economic, Social and Cultural Rights states that governments:

[...] must ensure equal access for all to the underlying determinants of health, such as nutritiously safe food and potable drinking water, basic sanitation and adequate housing and living conditions.¹⁴⁷

The Committee also identifies violations of the right to health, including retrogression. This type of violation may occur when states repeal or suspend legislation which would be essential for the full enjoyment of the right to health. In the current context, insofar as homelessness impacts on health and access to health care services, the repeal of specific aspects of housing legalisation, so as to exclude non-UK nationals from homelessness assistance, may be viewed as such a retrogressive step. General Comment 14 sets out additional types of violations of the right to health, which are applicable to the findings throughout this investigation report. Examples of violations of the right to health include:

- **violation of the obligation to respect:** including the suspension of legislation or the adoption of laws or policies that interfere with the enjoyment of the right to health
- **violation of the obligation to protect:** including failure to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to health by third parties
- **violation of the obligation to fulfil:** including insufficient expenditure or misallocation of public resources resulting in non-enjoyment of the right to health by individuals or groups, particularly the vulnerable or marginalised.

These violations must be read as referring to the provision of health care services and other types of services, such as homelessness assistance, which impact on the enjoyment of the right to health.

More recently, the UK has ratified the UN *Convention on the Rights of Persons with Disabilities* (CRPD). Article 1 provides:

¹⁴⁷ General Comment No 14, para 36.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

In addition, Article 17 provides that “every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others”. It is the Commission’s view that the right to respect for physical and mental integrity cannot be met where a person with disability is homeless and prevented from accessing homelessness support and welfare benefits.

Domestic level

On a regional level, the *European Convention on Human Rights* (ECHR) provides an essential framework to assess the human rights implications of a policy of no recourse to public funds in circumstances where the applicant is homeless and has ill-health or disability. Although there is no explicit reference to housing or health within the ECHR, the jurisprudence of the European Court of Human Rights has established that issues relating to housing and health or disability may form a key component of other rights contained within the Convention. For the purposes of this chapter, the following ECHR rights are relevant: Article 2 (right to life), Article 3 (freedom from inhuman and degrading treatment) and Article 8 (right to private and family life).¹⁴⁸

Local legislative context

In Northern Ireland, the legislative landscape is similar to that of England and Wales. Therefore, as discussed elsewhere in this report, immigration law relating to asylum seekers, and other people from abroad, amends housing and social security legislation, so as to exclude certain non-UK nationals from homelessness services and social security benefits. Often the extent of exclusion

depends, not on levels of need, but on the nationality or immigration status of the person requiring assistance. However, when considering levels of entitlement, there is an important distinction between homelessness and social security support, on the one hand, and social care assistance, on the other. Regardless of nationality or immigration status, social care assistance should be provided if necessary to avoid breach of the individual’s rights under the ECHR.

Therefore, for non-UK nationals who are ill and homeless, or disabled and homeless, and excluded from Northern Ireland Housing Executive (NIHE) or Social Security Agency (SSA) support, Trust assistance may potentially be provided. The Trusts may assist those in need under Articles 7 and 15 of the *Health and Personal Social Services (Northern Ireland) Order 1972*, (the 1972 Order), provided that the following conditions are met:

- **for persons subject to immigration control:** in order to qualify for assistance under Article 7 and/or Article 15 of the 1972 Order, individuals, subject to immigration control, must be ‘*destitute plus*’. This means that they must have additional needs that have not arisen solely due to destitution. In general, social care providers must satisfy themselves that the individual has needs above and beyond being destitute. Those with illness and/or disability have needs beyond destitution and, therefore, even if subject to immigration control, can be considered for support under Article 7 and/or Article 15.
- **for EEA nationals, refused asylum seekers, those with refugee status in another EEA state, and undocumented people:** assistance under Articles 7 and/or 15 of the 1972 Order can be provided if failure to do so would result in a breach of

¹⁴⁸ See: *R (on the application of Bernard) v London Borough of Enfield* [2002] EWHC 2282 Admin. The domestic courts held that the failure by a local authority to respond to an assessment of the applicant’s housing needs amounted to a breach of Article 8. Although maintaining that Article 8 of the ECHR does not require the State to provide everyone with a home, the court confirmed that the state may be required to take positive steps to ensure respect for private and family life within the context of housing and disability.

Convention rights or rights under the EC Treaty. As stated elsewhere in this report, it is the Commission's view that, if a person is destitute and unable to access any level of support, Trusts may be able to assist under this provision.

Article 7 of the 1972 Order provides that the Department of Health and Social Services shall make arrangements for the care and aftercare of individuals with illness. Article 15 states that the department can provide facilities, including the provision of residential care or accommodation, in order to discharge its duties in relation to "persons in need". Assistance under Article 15 may be given in kind or, in exceptional circumstances, in cash, provided that the Department has regard to the individual's eligibility for receiving assistance from other statutory bodies.

Findings

Extent of illness or disability among homeless non-UK nationals

Northern Ireland Housing Executive

For the purposes of this investigation, all instances of illness, disability and persistent alcohol misuse were considered as indicators of vulnerability. Following from this, on review of the Northern Ireland Housing Executive (NIHE) case files, 16 adults who had made a homeless application were identified by the investigators as vulnerable due to illness or disability. In contrast, based on the information available from a reading of case files, the NIHE granted priority need in only half of these 16 cases. The disparity between the investigators' assessments of vulnerability, and NIHE decisions on priority need, was most likely due to two issues:

- a tendency within the NIHE case files to disregard illness, as opposed to disability, for the purposes of granting priority need, and
- an inclination within the NIHE case files to discount alcohol misuse as an indicator of mental ill-health when assessing priority need.

The priority need criteria refer to "a person who is vulnerable as a result of old age, mental illness, or handicap or physical disability or other special reason".¹⁴⁹ While this does not refer explicitly to physical ill-health, the Commission is of the view that homeless people with physical illness should be considered for priority need within the catch-all category, "other special reason". Although mental illness is specifically categorised as priority need, the NIHE should provide more training on how to identify alcohol misuse as a potential indicator of underlying mental ill-health or as establishing priority need under "other special reason". In particular, based on the information uncovered as part this investigation, it would appear that more needs to be done to raise awareness in relation to alcohol misuse and its association with mental illness.

Of the 16 applicants identified by the investigators as vulnerable due to ill-health and /or disability, five were 'rough sleepers' and nine were in temporary accommodation. All of the rough sleepers were refused assistance because they did not meet Home Office worker registration requirements. Four had never registered their work; one had registered but, due to illness, had more than a 30-day gap in his worker registration certificate. Of the nine individuals in temporary accommodation, three were refused assistance. For two, the reason for refusal was that they had more than a 30-day break in their worker registration certificate and, in one case, the applicant was deemed intentionally homeless on account of leaving accommodation abroad. It was not apparent that any of these applicants (the five people sleeping rough or the three people in temporary accommodation) had been referred to the relevant Trust, even though they could have been assessed

¹⁴⁹ Article 5(1)(c) of the *Housing (Northern Ireland) Order 1988*.

for help under the *Health and Personal Social Services (Northern Ireland) Order 1972*. This is because the information recorded in the case files was not sufficient to enable the investigators to determine if a referral had been made.

Social Security Agency

From a review of Social Security Agency (SSA) case files, the investigators found that 29 out of 124 cases related to a claim for Income Support due to illness (Income Support: incapacity). Of these, 16 claims were allowed and 13 disallowed. In the majority, the reasons for disallowance related to various legislative barriers to benefit entitlement for persons from abroad. Therefore, eight were required to be on the Home Office's Worker Registration Scheme (WRS). Although all eight applicants were on the scheme, only one person was on for more than 12 months. Another person, an A2 national, failed to meet worker authorisation requirements; another was an EU national student, deemed not self-sufficient; and three others were found not to be "workers" within the meaning of EU law. Applications for incapacity-based Income Support are founded on a claim by the applicant that she or he has some form of illness. As stated elsewhere in this report, if an applicant is found ineligible for benefit as a person from abroad, they should be directed to the relevant Health and Social Care Trust so that they can be assessed for assistance. This is even more important where the applicant is presenting with illness. However, due to the lack of this type of information in SSA case files, it was not possible to tell if onward referrals to Trusts had been made.

The Trusts

Of the ten Trust case files reviewed, almost all involved some level of illness or disability. This included children and adults with physical disability, including epilepsy and heart defects; mental illness, in particular, drug and alcohol addiction; physical illness; and work related injury.¹⁵⁰ In addition,

detailed information was provided to the investigation in relation to people with illness during fieldwork interviews with Trust staff. The investigators also received one anonymised case study in relation to a client with mental illness, and were invited to observe a pre-discharge case conference concerning an individual who had been hospitalised due to mental ill-health. In all instances, Trusts were providing some level of support, ranging from an isolated offer of emergency support, to ongoing day-to-day accommodation and subsistence. This demonstrates that for people with illness or disability, as long as the Trusts were made aware of the case, they have been able to support non-UK nationals who have been excluded from homelessness support and welfare benefits. This, in itself, reinforces the importance, for other government agencies, of pursuing an appropriate onward referral.

The response from government agencies

As outlined above, in order to avoid breach of the individual's rights under the ECHR, Trusts may be able to provide help with subsistence and accommodation using Articles 7 or 15 of the 1972 Order. As already stated, the Commission is of the view that this basic level of assistance is unsatisfactory coming from a developed state such as the UK. Nevertheless, the availability of this basic level of support was at times misunderstood by the each of the government agencies.

It was not apparent that government agencies had full understanding of how domestic legislation, specifically the 1972 Order, might be used to help homeless non-UK nationals with illness or disability. While the investigators encountered examples of good practice by individual staff, some of whom did use the legislation appropriately, at no stage did the investigators find, or receive, guidance from any of the government agencies on this issue. Further, guidance from Trusts, the agency responsible for

¹⁵⁰ See: Chapter 4 for more detailed information on work related injury.

providing assistance under the 1972 Order, did not appear to exist. The absence of guidance was evident in the anxieties expressed by Trust staff as they tried to balance a sense of financial responsibility against a duty of care to the client:

“This is someone who came to Northern Ireland to work and became unwell in a longer-term way, and has given up work and we have provided a service, a very basic service just to maintain, I suppose, the wellbeing of the person in the interim and that is ongoing. And a family member is going to fly to Northern Ireland shortly to assist in terms of this person coming home. So this person, to our knowledge, doesn’t have entitlement in terms of their citizenship to any service but we need to maintain the person safely and well until they get other support or make other arrangements to go home [...]. Now, if this situation was to run on for a year or six months, or two years, I don’t really know what the Trust’s position will be, given the fact that we know it is an acute illness, disabling condition, and that there are arrangements in place for the person to return back to their own country.” (Trust interviewee)

A similar dilemma was evident among the NIHE staff. At times, they wished to assist but could not find the means to do so. In one particular case, when contact was made with the local Trust to ask for help, there was no response:

“I probably phoned them and they just popped me from one team to another and through to sensory impairment team and others, and the only thing they can assist with is hearing aids and finding out, you know, that end of things. That is really not what he needs...” (NIHE interviewee)

Investigators found that, in practice, assistance came from voluntary and charitable organisations, rather than from government agencies. Many voluntary organisations faced the decision-making dilemma of either assisting seriously ill and destitute individuals or adhering strictly to their funding criteria. Others admitted that they would

find innovative ways to ensure that people were not left destitute and without any form of help. As one interviewee explained:

“I have made partnerships up that we didn’t have, we had to try to go around or circumvent, or directly do something because, like, a man in front of me talking or writing poems about they throw soil down on top of my grave and all that, it is just drawing wee pictures of crosses and coffins, you know, and ‘I want to see somebody’; and they say ‘right send him to your doctor’ and your doctor will make an appointment in the Mater [Hospital].” (Voluntary organisation interviewee)

While voluntary organisations felt they could help in individual cases, they also identified systemic problems that required urgent attention from government agencies. As one interviewee explained: *“There is no structure and it is with these systemic issues that organisations like [us] can’t help. With mental health and addiction, people are at crisis point”*.

Finally, it was apparent that in various cases of ill-health and disability, the state agencies actually signposted these vulnerable individuals to charitable organisations for help. As one voluntary organisation explained:

“A women and her son spent several days in A and E before the social worker paid a taxi from the hospital to [us] and [we] do not have accommodation. [We] worked with them for two days but couldn’t get accommodation. [We] managed to get one night in a hostel but lost them after this. There was no follow-up from the Trust and no one knows where they went. The son was 17 and, because he was with his mother, it was a grey area in terms of whether or not the Trust had a duty to support.” (Voluntary organisation interviewee)

Once again, as in other areas of this report, the burden is going to voluntary organisations. While voluntary organisations have a crucial role to play in

terms of providing support and assistance, in the absence of appropriate protocols and official referral mechanisms, the Government should not seek to discharge its duty of care, where such a duty exists, by signposting 'ineligible' individuals to voluntary organisations for help.

The risks of 'rough sleeping'

Homelessness, in particular 'rough sleeping', can be a direct cause of ill-health. This can occur because of the harsh environment on the street, which places individuals at risk of serious physical illness due to cold weather conditions. The following is an extract from an interview with a homeless non-UK national, who had been sleeping on the streets, without access to accommodation, for several months:

Case study: A8 national

Gary had travelled to Northern Ireland from one of the A8 accession states. He came with friends to find work. When they first arrived, they did not know what to do and were unable to find accommodation. Gary explained that, initially, they slept on the streets for about five nights. During this time, the police searched them. Although the police brought Gary and his friends to a voluntary organisation, the experience of being searched in the street was humiliating:

"We didn't have any accommodation, we were about five days sleeping outside and the police checked us and then they brought us here. They wanted us to show them all the things that we have. Maybe they thought we were stealing or something. The problem is, it happened in city centre; they asked us to show them everything in front of everyone. It felt bad, like we were thieves or something. It is not a good feeling."

Gary went on to explain that the police contacted a local day centre which provided some food and a sleeping bag. Because Gary did not have a National Insurance number or worker registration, he was unable to stay in hostel accommodation: *"The problem is we don't have NINO. I slept in a hostel one day and they told me I couldn't sleep there anymore so I can't go back there"*.

Gary felt he had no option but to sleep on the streets. He did this for two months during the cold weather period. He explained:

"I was on streets for two months and then I ended up in hospital with lung infection, asthma and heart problems [arrhythmia]. Because I was sleeping outside, I was cold and it was raining during the night and they took me to hospital."

Gary was so ill that he remained in hospital for two months for treatment. However, during his time in hospital no one talked to him about his situation or addressed the fact that he was homeless:

"When I came out of hospital they did not find me anywhere to stay. They asked me where would I go after hospital and I told them [day centre]. I told the doctor there that I do not have any accommodation. I don't speak English very well and in the hospital they didn't understand me very well. There was no interpreter other than on admission to see about TB and they didn't do anything about accommodation."

Gary states that the Trust was not contacted and, while an interpreter was used to gather information regarding Gary's immediate health, interpreting was not made available to discuss his care on discharge. Gary went on to say that he was still sleeping on the

streets at night. During the daytime, he attends a local voluntary organisation where he can get some heat and food:

“Since then [hospital], I am here from 8am, I arrive, and at 10pm I leave. I don’t have money to stay in a hostel. It is £6.50 a night and I don’t have that money.”

Although sleeping rough, Gary continues to look for work.

Gary’s case illustrates the very serious risks that ‘rough sleeping’ presents for the individual’s state of physical health. Although in Gary’s case, he was admitted to hospital for treatment, there was no follow-up on discharge. This means that he was discharged, without assistance, to the same situation that had caused his ill-health in the first place. While Gary is likely to be excluded from homelessness assistance and social security benefits, the Trust may have been able to provide some level of support under Article 7 or Article 15 of the 1972 Order.

While ‘rough sleeping’ presents numerous risks to the individual’s physical health, those excluded from homeless support are also at risk of serious mental illness. A recent policy statement by the European Federation of National Organisations Working with the Homeless (FEANTSA) submits:

*The living conditions and social exclusion of homeless people is very stressful and the stress is undoubtedly among the primary factors that cause depression, schizophrenia, personality disorders and anxiety disorders to be common.*¹⁵¹

The World Health Organisation’s report on the health care needs of homeless people also notes the high rate of mental ill-health among this group, and the high incidence of dual diagnosis, that is, people diagnosed with mental illness and other

substance dependence. It also highlights the risks of early onset of major depression and alcohol misuse for this highly vulnerable group.¹⁵² From this investigation, it would appear that homelessness perpetuated mental illness, which in turn perpetuated homelessness. Further, mental ill-health and homelessness was exacerbated by exclusion from homelessness services. In the end, this often meant that longer-term intervention was required. As one voluntary organisation interviewee explained: *“I suspect that the destitution exasperates existing mental health problems and trauma”*.

All of this illustrates the very real and detrimental impact on the health and wellbeing of individuals excluded from homelessness assistance due to immigration status, who are often forced to sleep rough on the street. Further, it demonstrates how a strategy of exclusion is counterproductive from the Government’s point of view: those that may have required only limited, short-term homelessness assistance and welfare support instead need longer-term Trust care due to serious physical and/or mental illness.

Homelessness caused by a period of illness

In several instances, the investigators were provided with examples of illness leading to homelessness and potential destitution. In this type of case, depending on the length of illness, the individual was generally disintitiled to homelessness support and benefits. The following interview extract demonstrates this:

“You know, the number of people that have lost jobs through illness. They have been, you know, the responsibility of the hospital and the Trust for that long that by the time they are trying to engage back into the Housing Executive again, that period of absence from work is again making them ineligible.” (NIHE interviewee)

¹⁵¹ European Federation of National Organisations Working with the Homeless (2005) FEANTSA Policy Statement: Meeting the Health Needs of Homeless People, FEANTSA, Brussels.

¹⁵² Wright NMJ and Tompkins CNE (2005) *How Can Health Care Systems Effectively Deal with the Major Health Care Needs of Homeless People?*, World Health Organisation Regional Office for Europe, Copenhagen, p 11.

In effect, immigration rules, such as the Worker Registration Scheme (WRS), operate so as to include people when they are economically active and exclude them when they are out of work, which is when they are most vulnerable and in need of assistance. In particular, the investigators found that the onset of illness had negative consequences for families where, often, they were dependent on the employment of one individual. As explained by a Trust interviewee:

“We have on occasion come across that – where you have workers that come over here and maybe the husband who is the worker, for whatever reason isn’t able to work. There is a case where a man had been working and had started taking seizures, and so he was off work for quite a long time and we had to assist with that situation [...] Some families do find themselves quite isolated even within those communities.”

For families, problems resulting from illness arose in a variety of ways. In some instances, as illustrated above, the main worker became ill and, as a result, was unable to provide an income for the family. In other cases, a dependent family member was diagnosed with illness, leaving those on whose work the family member depended with the dilemma of whether they could take on a caring role, as the following interview extract shows:

“The one that came to us was a referral from hospital because this lady had fallen, as I said, fractured both her arms, which meant in terms of her personal care - her feeding herself – she could not do any of that. She was living with her daughter and son-in-law but they were working and their tenancy and their livelihood depended on them being able to work, because they didn’t have any entitlement to benefits [...].” (Trust interviewee)

The right to health involves not only primary health care but also appropriate facilities and services to promote recovery. This applies in relation to the type of case referred to above, where family

members are unable to access benefits that would allow them to care for dependents. It also applies in relation to persons with ill-health, who are forced back to work because they are unable to access assistance. In some cases, depending on the illness, returning early to work constitutes a serious risk to the person’s wellbeing. In the following extract, the interviewee explains how an individual, diagnosed with breast cancer, returned to work because she could not access social security benefits:

“And a new referral, I only got it on Friday, a girl from [A8 State]. And the referral is coming from [voluntary organisation] to ask for assistance to see if we can get any financial assistance for her because she has breast cancer and apparently she has gone back to work too early because of benefit uptake. And, as I say, [voluntary organisation] have done all they can and they are asking us to be involved because we can access other grants, if somebody has had cancer and, as I say, I only got the referral on Friday and I have to follow it through, but I think that sounds like somebody has returned to work too early.” (Trust interviewee)

These examples show the negative consequences of exclusion from homelessness assistance and welfare benefits for individuals, and their family members, where they have had a period of illness. Moreover, as with all findings discussed in this chapter, there is an absence of guidance for social workers to follow when responding to this issue.

Disability

Physical disability

During the investigation, information was received about the experiences of individuals with physical disability, who were excluded from accessing public funds. This information was provided in various ways, through interviews with government agency staff, review of case files and contacts with voluntary organisations. The investigators also met disabled, homeless people, who agreed to share their experiences for the purpose of the

investigation. It was apparent that people with physical disability faced significant hardship and, while it would be expected that there would be additional help for disabled, homeless persons, often this was not the case.

In a number of instances, government agencies were alerted to an individual case because the person concerned was admitted to hospital. In more than one case, the Trust accepted some level of care provision for individuals with long-term physical injury as the result of serious accidents. However, the following case study reveals that while Trusts provided support, the extent and nature of assistance was perhaps not always appropriate:

Case study: physical disability

Sam arrived in Northern Ireland in 2005. He settled into work and lived with his brother and sister-in-law. Shortly after four months, he was involved as a passenger in a serious car accident. Following the accident, Sam spent 11 months in hospital, two months in emergency care and nine in rehabilitation. During this time, Sam was offered three options for accommodation in residential care. He eventually chose to stay in a nursing home outside Belfast. When asked how he felt about the nursing home accommodation, Sam replied: *"I am here now and it is really hard to tell if it would be better for me if I was some place else. I am here now, it is difficult to say"*.

Sam said that he was in contact with the NIHE through his lawyer and through the Trust. Initially, *"it was really hard to actually get them to even register me to basically accept my application, accept my files"*.

Sam explained that because he was self-employed at the time, the situation was completely new and the NIHE did not know how to respond: *"It took a lot of time and*

effort to get them to even anticipate the application to sort of take the paperwork".

After intervention from his lawyer, clarification on Sam's immigration status was provided by the Home Office. Following this, the NIHE agreed, in principle, to accept Sam's application.

When the investigators met Sam on 25 September 2008, he was in receipt of Disability Living Allowance. However, the case had to go all the way to formal tribunal hearing before he was granted entitlement.

Sam found that, in general, the Trust had been helpful. It paid for his accommodation in the nursing home and for his attendance at an IT course. Sam stated that he wants to work; he is aiming to get an IT qualification: *"I want to demonstrate that I can be a useful member of society"*. However, Sam felt low at times: *"They [the Trust] are trying their best but everything takes them a lot of time. It goes very slowly. In October, it will be two years here"*. Sam revealed that he met with the Trust about once every four months. He met with them on the morning of his interview with the Commission's investigators: *"The meeting that we had today, I got notified last night. I prefer three day notices sort of thing to get prepared for all of this, get organised properly"*. Sam stated that because of the short notice his lawyer was not able to attend the meeting: *"It is probably not possible for the lawyer to plan things on such short notice"*.

The investigators asked Sam if there was anything that stood out about the process that he had been through. Sam replied:

"Basically, it is rather humiliating to keep asking for things. If you need something you have to ask all the time and it is a bit... certain things are obvious and evident and

being made to ask for those things all the time is obviously rather upsetting.”

Sam explained that the staff at the nursing home were very nice, but he was tired of being somewhere that is not his own home. When asked how he coped as a young man living in a nursing home environment, Sam said that when he first arrived, he couldn't imagine staying for any length of time but now, *“most time I spend in my room with the computer”*.

At the time of writing, Sam was still in a nursing home and the SSA stated: “The facts of the case are currently before the Social Security Commissioner to establish if the claimant has a right to reside in the UK”. The SSA further stated that he is currently in receipt of Incapacity Benefit.

This case study potentially raises several human rights concerns, including under Article 8 of the ECHR (right to private life), insofar as the accommodation provided may be regarded as inappropriate for Sam. This is because a person with a disability might benefit more from community care which promotes independent living, rather than placement in residential nursing care. In addition, the placement of younger people in an environment tailored for older people with varying degrees of ill-health is far from ideal. The *Convention on the Rights of Persons with Disabilities*, which the UK ratified in June 2009, provides a legal framework for a rights based approach towards independent living. At the time of interviewing Sam, neither the Trust nor the NIHE had offered support that would allow him to live independently in the community.

Mental illness

During this investigation, significant concerns arose in relation to people with mental illness.

Information was received about homeless non-UK nationals with varying degrees of mental ill-health. In many cases, mental illness was caused or exacerbated by the lack of public support. The following extract from an interview with Trust staff indicates the rapid deterioration in mental health due to withdrawal of working rights and exclusion from state support:

Interviewee 1: *“One of our daddies was working quite happily, making a living for his family. They had nothing to do with social services [the Trust] but because he was going to be deported, they stopped everything. The money was cut, everything, and so this man who was endeavouring to support his family...”*

Interviewee 2: *“And doing it very well!”*

Interviewee 1: *“Absolutely, didn't need help from anybody else. Because he received this piece of paper that said... as of today, all stopped.”*

Interviewee 2: *“Yes, and she, the lady, developed mental health problems, that brought us into their lives.”*

Often, following a period of care for mental illness, a break in employment meant that homelessness was inevitable because the individual was no longer entitled to access public support. As a result, accessing accommodation and benefits had become a new and challenging part of the workload for many mental health social workers:

“Accommodation is probably a big issue if they are admitted to acute admissions. Sometimes they lose, you know, a lot of the them are in casual work and then they don't have security of going back to that and, therefore, that does affect – if they don't sustain

the 12 months' employment and we would have a number then who aren't eligible for Housing Benefit and a lot of our accommodation is supported housing, which relies on Housing Benefit eligibility to claim." (Trust interviewee)

In this type of scenario, the investigators found that the level of response from the Trusts varied. While in some instances, individuals were provided with hospital care and help with accommodation and aftercare support, in other cases, intervention was more limited. From review of case files and interviews, the investigators were unable to discover any clear reasons for this difference in approach. Indeed, during interview, Trust staff disputed among themselves the extent to which they could provide accommodation and financial support. The following dialogue is representative of this:

Interviewee 1: *"I think we could possibly state it again. We provide the health care and the social care type service; it is a needs based service. Someone with a mental health problem will not be turned away because they are a foreign national. They will receive the services that we offer to our residents, as well as..."*

Interviewee 2: *"But to be fair, mental health services, for example, do not provide housing, do not provide benefits assistance; it provides..."*

Interviewee 1: *"It will provide that in the context of a mental health issue, if necessary, if it is assessed as being necessary but it's not if you have got a mental health problem; then we will help you with your housing."*

However, there was no guidance for Trusts on when accommodation might be provided as part of a mental health issue, or when mental illness is viewed solely as a mental health problem. During

one interview with a female non-UK national, it was revealed that, although she was currently accommodated in hospital for mental health reasons, support on discharge was doubtful. The following summary presents her situation.

Case study: mental ill-health

Jane is a non-EEA national who came to Northern Ireland in mid-2005. She came here to work and stayed initially with a friend. Jane later found accommodation tied to her employment. However, in 2008, after a period of illness, Jane became seriously unwell: *"Well before, different voices talk to me and when I am here [in Northern Ireland] different voices come to talk to me"*. With the help of a voluntary organisation, Jane tried to access a GP but was unable to do so. Her mental health deteriorated to such an extent that the voluntary organisation felt there was no option other than to appeal to the Director of the Health and Social Services Trust for help. By the time Jane was assessed, she was so ill she was detained under mental health legislation and admitted to hospital.

While talking with the investigators, Jane revealed: *"I still live in hospital"* and expected to be there for *"maybe one week more"*. When asked if she would get help with finding accommodation, Jane replied: *"I don't know, I don't know can I go to ask for a place for accommodation or not, I never know"*. Jane has been very happy with her treatment in hospital: *"The doctor look after me so good I don't need anything"*. But when asked if anyone has talked to her about what she will do on discharge, Jane explained: *"No. No social worker, only doctor, no social worker, only nursing aid and doctor visit"*.

Jane stated that she will most likely seek help from friends and acquaintances and

that she hoped for a job arranged through a friend, and that *“the boss will give me a room for living”*. In truth, however, she was really worried: *“I have no job, no accommodation, no food”*.

Towards the end of the interview, Jane revealed that she borrowed a large sum of money from the people who promised to bring her to Northern Ireland.

Jane desperately wants to remain here but because of the debt, she stated:

“I am lost. As long as I pay back the debts from home I will feel better. I still have one year and six months – that is enough [to pay the debt]”.

Jane hoped that she can remain well, but once she leaves hospital she is uncertain: *“Now I feel much better but it is really, really a worry”*.

In this type of case, in order to fulfil the right to health, Jane ought to have a period of care on discharge from hospital. As indicated, she will seek work. However, returning to work without aftercare will risk relapse and further deterioration of her mental health. This was confirmed during a pre-discharge case conference, regarding a non-UK national ineligible for homelessness support where health care professionals recognised the importance of aftercare support for persons with mental ill-health. The case related to a patient who had been detained under mental health legislation. The patient lost entitlement to housing and welfare benefits because the Worker Registration Certificate had lapsed. While health care staff offered medical assistance, there were concerns that, on discharge, the patient would not receive

help with accommodation and subsistence. As one medical professional stated: *“We can build a therapeutic relationship but this is much harder when you’re not sure what phone box they’re sleeping in”*. In this instance, Trust staff indicated that they would put forward a request for up to six weeks post-discharge support. However, at the time of the case conference, support from the Trust was not guaranteed.

In several instances, the investigators were informed that a lack of homelessness assistance had resulted in mental ill-health to an extent requiring detention under mental health legislation. This led the investigators to question if, potentially, lack of assistance could lead to otherwise avoidable detention, or even delayed discharge, under mental health legislation.

Arrangements for non-UK nationals to leave

As already explained, Trust assistance under the 1972 Order may be provided if necessary to avoid breach of the individual’s rights under the ECHR or, in the case of those subject to immigration control, if they are ‘destitute plus’.¹⁵³ However, for EEA nationals, people with refugee status in another EEA state, or those “unlawfully in the UK”, the *Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002* provides that Trusts may make arrangements to enable such a person to leave the UK. The explanatory note states that the Regulations “empower local authorities to make arrangements for travel and temporary accommodation in respect of certain categories of persons who are ineligible for certain benefits by virtue of paragraph 1 of Schedule 3 to the *Nationality, Immigration and Asylum Act 2002*.”¹⁵⁴ If travel arrangements are made, accommodation pending travel can be provided as follows:¹⁵⁵

¹⁵³ Paragraph 3 to Schedule 3 of the *Nationality, Immigration and Asylum Act 2002*; Article 7 and Article 15 of the 1972 Order as amended by Section 121 of the *Immigration and Asylum Act 1999*.

¹⁵⁴ In Northern Ireland, “local authority” means Health and Social Services Trusts, the Boards, the Department of Health, Social Services and Public Safety, or the Northern Ireland Housing Executive (See: Para 17 of Schedule 3 to the *Nationality, Immigration, and Asylum Act 2002*).

¹⁵⁵ Note that, if applicable, travel arrangements for refused asylum seekers are made through the UK Border Agency and not Social Services Trusts (see: Chapter 7 for more detail in relation to failed asylum seekers).

- **for EEA nationals or those with refugee status in another EEA state:** arrangements for accommodation pending travel can be made if the individual concerned has with them a dependent child.
- **for those “unlawfully in the United Kingdom”:** arrangements for accommodation pending travel can be made if the individual has not failed to co-operate with removal directions and if they have with them a dependent child.

When making travel and accommodation arrangements, the legislation states that this must be done at the lowest practicable cost, and:

[...] may not include cash payments [...] and must be made in such a way as to prevent the obtaining of services or benefits other than those specified in the arrangements.

Although Trust interviewees were unaware of the existence of this legislation, in a number of cases, because of the lack of public assistance, they reported offering help to individuals to enable them to return to their country of origin, for example:

“In mental health, we have discussed cases. Some weren’t eligible to access housing accommodation and, some, we have looked to pay for convalescent care by booking someone into a B and B and giving them accommodation for a number of weeks post-discharge, or discussing with them do they want to go back to their home country and actually facilitating air fares.” (Trust interviewee)

This type of assistance, often termed ‘repatriation’ by interviewees, ranged from one-off payments to cover the cost of flights, to more intensive assistance, such as facilitating links with destination hospitals to ensure a co-ordinated approach on return. The process of return to the individual’s home country also took place for people with physical disability. This occurred in one case where the person concerned had an accidental

injury resulting in long-term disability, as outlined below:

“A scenario is - I had a young fellow, a 21-year-old, had only been here three weeks; he was from, I think it is [A8 State]; I will have to check up. But anyway, he had been here three weeks, hadn’t signed up to the work, done anything like that, just worked, had a car accident, spinal injuries [...] and I had been liaising with the social workers because we were talking about he might have to go into some type of care and he would have no benefits. We would maybe have to pick up the tab for that, so I was thinking that [he] might have to go into some type of nursing care and he wouldn’t be able to pay our minimum contribution; he wouldn’t be able to pay any and that was fairly.... We were unsure of what was going to happen and I know [voluntary organisation] and all were involved in that. Now the end result of him was his father came home, came over here and actually did that young fella’s job for a while and then he went home. But I don’t know what would have happened if he didn’t choose to go home; I am unsure about that.” (Trust interviewee)

Although the investigators uncovered various examples of Trusts returning people to the country of origin, they did not appear to follow any guidance or clear decision-making processes, on when or how this should occur. In some instances, social work staff developed links with hospitals in the country of origin; in other cases, as in the case example above, no such links were made. Although not forcing return in the same way as deportation, given the lack of options for support in Northern Ireland, ‘repatriation’ in these particular circumstances is not entirely voluntary. In this context, it is important that Trusts take into account all the circumstances of the case and are reassured that, by returning to the country of origin, the individual is not subject to treatment or lack of treatment in a way risking potential violation of their human rights. In addition, before offering travel, Trusts should also assess the implications

for the individual's right to private and family life (Article 8 of the ECHR) if the individual has family or an established way of life in Northern Ireland.¹⁵⁶

Finally, voluntary organisations communicated to the investigators that they had offered return to home countries because there had been either no response, or limited help, from government agencies. Voluntary organisations stated that after trying without success to make a referral to mental health services, the only option was to consider flights home:

"[A8 national] male with manic depression - He ran out of medication and the GP would not register him as he was seen as a tourist. The mental health team would not take a referral unless it came from a GP. In the end, the Embassy agreed to pay his flight home." (Voluntary organisation interviewee)

However, voluntary organisation interviewees expressed concern about the eventual outcome for such individuals, which in most cases remained unknown. As one interviewee explained:

"He was a vulnerable adult with alcohol dependency. The Housing Executive signposted to [us]. He decided to return home. [We] tried to arrange support on return to [an A8 state] but were unable to do so. We're not aware of outcome." (Voluntary organisation interviewee)

The Commission has a number of concerns regarding current arrangements for travel and accommodation:

1. The legislation regarding travel arrangements for non-UK nationals is of serious concern. It fails to acknowledge adequately the fact that return may not always be an appropriate option. As demonstrated by this investigation, it is unsatisfactory to arrange for an individual to leave the UK if they are ill or disabled and no other arrangements have been made regarding their care in the destination country.
2. Where travel may be appropriate, the legislation permits accommodation pending travel in unduly limited circumstances, that is, only if the individual concerned has with them dependent children. In addition, it prevents assistance in cash which, as already highlighted in this report, is unsatisfactory, particularly if individuals must rely on voucher support alone.¹⁵⁷
3. While the legislation is unsatisfactory, Trusts have not issued any guidance to social workers to ensure direction or consistency in their decision-making on this issue.
4. Consequently, the day-to-day approach of social workers, while appropriate in terms of the instruction that they may receive from managers, risks being inconsistent. In addition, the response may even be inappropriate or unsuited to the individual's needs. As illustrated above, seriously ill or disabled individuals have been returned to the country of origin without any arrangements as to their reception or care in the home country.

¹⁵⁶ It is not in all cases that return to country of origin will engage Convention rights and much depends on the circumstances of the case. However, see: *R v Secretary of State for the Home Department, ex parte Razgar* [2004] UKHL 27. The House of Lords held by a majority of three to two that, taking into account the circumstances of the case, to force return of the claimant to Germany under the Dublin 2 Convention could result in breach of his rights to private life under Article 8 of the ECHR. See also: *D v UK* (1997) Application No 146/1996/767/964, where return to St Kitts was held to be a breach of Article 3 of the ECHR. The applicant was in the final stages of AIDS and had no prospect of treatment or family support in St Kitts.

¹⁵⁷ See, in particular: Chapter 4 for a discussion regarding concerns about the use of vouchers for assistance.

Racial intimidation

“It needs to be bricks through windows – an attack on property or person. You’re supposed to take the rest of it on the chin.” (Voluntary organisation interviewee)

Introduction

It became apparent, during the investigation, that a number of non-UK nationals had become homeless, or were threatened with homelessness, as a result of racial attacks. In this circumstance, entitlement to homelessness assistance from the Northern Ireland Housing Executive (NIHE) depended on eligibility as a person from abroad. However, even if eligible, the level of response from the NIHE also depended on whether the incident in question was classed as “intimidation”. During the fieldwork, the investigation sought to establish the decision-making process and the day-to-day response, where racial intimidation forms the basis for a homelessness claim. This chapter focuses on the findings in relation to applicants claiming homelessness on grounds of racial intimidation.

Human rights instruments

International level

In signing up to the *Universal Declaration of Human Rights* (UDHR), the UK has asserted its commitment to the principle that “everyone has the right to life, liberty and security of person” (Article 3). International human rights standards, in particular, the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), expand upon the meaning of the right to security of person and spell out its importance in relation to states’ obligations in combating racial discrimination. Article 5 of ICERD provides that states parties must guarantee everyone freedom from racial discrimination in the enjoyment of “the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution”.

States’ obligations in addressing racial discrimination include positive duties requiring an appropriate response when racist incidents occur. International human rights standards have long

established that incitement to, and acts of, racial discrimination, including acts of violence, must be prohibited and adequately addressed through the criminal law.¹⁵⁸ Therefore, investigation and prosecution of the perpetrators of racist acts forms a crucial part of the state’s duties toward victims of such acts. Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR) asserts that everyone is equal before the law and entitled to equal protection by the law, without discrimination. However, the state has a much wider duty to promote and protect the human rights of victims of racism which includes, but also extends beyond, criminal investigation.¹⁵⁹ Therefore, victims of racial incidents are entitled to basic human rights protection, including the right to life (Article 6 of the ICCPR), the right to be free from inhuman and degrading treatment (Article 7) and the right to private and family life (Article 17). Potentially, each of these rights may entitle the victim of a racial attack to services beyond the criminal justice system, such as health care, social assistance and help with re-housing.

Also relevant is the *Durban Declaration and Programme of Action Against Racism, Racial Discrimination, Xenophobia and Related Intolerance* (the Durban Declaration). This sets out specific actions for states parties to combat racism. The Commission notes that despite the Government’s commitment to do so, it has so far failed to produce a National Action Plan to combat racism, as agreed following the signing of the Durban Declaration in 2001. According to Part II of the Durban Declaration, states are urged:

[...] to establish and implement without delay national policies and action plans to combat racism, racial discrimination, xenophobia and related intolerance, including their gender-based manifestations.

¹⁵⁸ See, for example: Article 4 of ICERD and the *Durban Declaration and Programme of Action Against Racism, Racial Discrimination, Xenophobia and Related Intolerance* (the Durban Declaration), Part II, para 84.

¹⁵⁹ See, generally: ICERD and the Durban Declaration.

The Commission suggests that, had such a plan been enacted, many of the issues identified in this chapter might have been addressed.¹⁶⁰ It should be noted that the Durban Declaration was subject to review at an international conference in April 2009, with the aim of re-evaluating the goals set in 2001. In its outcome document, the Durban Review Conference reiterated its criticism of legislation and policy motivated by racism:

[The Durban Review Conference] condemns legislation, policies and practices based on racism, racial discrimination, xenophobia and related intolerance which are incompatible with democracy, transparent and accountable governance.

Finally, in terms of international human rights instruments, all state agencies involved in responding to racial incidents are required to have due regard to their own conduct and, in particular, to Article 2 of the ICERD, which states:

Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.

Regional level

European Community (EC) law is relevant for European Union (EU) nationals travelling to Northern Ireland in exercise of their ‘free movement’ rights.¹⁶¹ The following overview of EC law, as it relates to racial discrimination, is not exhaustive but intended to highlight some of the main provisions. Article 12 of the EC Treaty prohibits discrimination on grounds of nationality and Article 13 provides for non-discrimination on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Together, Articles 12 and 13 provide a mandate to the EU Council of Ministers to combat discrimination. As a result, Council Directive 2000/43/EC, of 29 June

2000, was enacted under Article 13. This is particularly relevant for the Government’s response to racial intimidation in terms of social assistance and homelessness provision. It provides for the principle of equal treatment between individuals irrespective of racial or ethnic origin and prohibits discrimination in the areas of *inter alia* social protection and social security, and social benefits.

In addition to the Council of Ministers, there is also the European Commission against Racism and Intolerance, which:

[...] is entrusted with the task of combating racism, racial discrimination, xenophobia, antisemitism and intolerance in greater Europe from the perspective of the protection of human rights, in the light of the European Convention on Human Rights, its additional protocols and related case-law. (Article 1, ECR statute)

Through its examination of state parties’ reports, the Commission makes recommendations to states on how to better combat, and respond to, racism.

Domestic level

On a domestic level, the relevant law can be found in the *Human Rights Act 1998* and the rights contained within the *European Convention on Human Rights* (ECHR). In terms of racial incidents, numerous human rights provisions are significant, including Article 2 (right to life), Article 3 (freedom from torture, inhuman and degrading treatment), Article 6 (right to a fair hearing in determination of civil rights) and Article 8 (right to private and family life). Article 14 is also important as it prohibits discrimination in the enjoyment of Convention rights.

State responsibility in relation to Convention rights exists even if a violation occurs due to the actions of a private individual. In relation to Article 3 of the ECHR, the European Court of Human Rights has stated:

¹⁶⁰ The Commission acknowledges OFMdfM’s Race Equality Strategy. However, it is of the opinion that this Strategy is not a satisfactory response to the commitments made in Durban in 2001. The Commission also notes that no action has been taken, by the Government, in relation to this Strategy for a number of years.

¹⁶¹ Free movement of persons is provided for under Article 39 of the EC Treaty.

The obligation imposed on High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals [...] State responsibility may therefore be engaged where the framework of law fails to provide adequate protection [] or where the authorities fail to take reasonable steps to avoid a risk of ill-treatment about which they knew or ought to have known.¹⁶²

In the context of racial attacks, state agencies are therefore required to take appropriate steps to ensure the individual's protection. Where domestic legislation prohibits such an approach, the state may be liable under the Convention.

Local legislative and policy context

The ordinary criminal law in Northern Ireland provides general protection to the public from violence and intimidation. Specific protection on the grounds of race can be found in the *Race Relations (Northern Ireland) Order 1997*, which prohibits discrimination on grounds of colour, race, nationality or ethnic or national origin.¹⁶³ In addition, the *Criminal Justice (No 2) (Northern Ireland) Order 2004* provides for aggravated sentencing in relation to 'hate crimes'. These sentencing provisions apply to indictable offences that are motivated by hate which is based on the victim's race, religion, sexual orientation, or disability.¹⁶⁴ However, beyond the criminal law, other agencies, such as the Northern Ireland Housing Executive (NIHE), have a role in contributing to the prevention of, and response to, 'hate crime'. In relation to racially motivated

attacks, the NIHE's Race Relations Policy cites 'Racial harassment and intimidation' as a main policy theme. Through its policy, the NIHE undertakes to carry out a number of actions, including maintaining an interagency protocol for the provision of services to victims and developing procedures for NIHE staff to deal effectively with racial incidents.¹⁶⁵

For the NIHE, the day-to-day approach to homelessness claims based on intimidation is provided for in the statutory Housing Selection Scheme developed by the Northern Ireland Executive and approved by the Department for Social Development (DSD). Therefore, under Article 22 of the *Housing (Northern Ireland) Order 1981*, the NIHE must submit to the DSD a scheme for determining how it will allocate tenancies to successful applicants for its accommodation. This scheme is known as the 'Housing Selection Scheme' (HSS). The most recent revision of the Scheme was made available in July 2007.

Similar schemes are operated by local councils in England and Wales, although the precise details of each may differ. In Northern Ireland, allocation of housing is on a points based system. The number of points awarded to an applicant determines her or his place on the social housing waiting list and the speed with which they are allocated accommodation. The scheme is applicable to 'full duty applicants' (FDA), that is, applicants found to be homeless within the meaning of Article 10 of the *Housing (Northern Ireland) Order 1988*. In general, applicants with FDA status are awarded 70 points and placed at the fore of the waiting list. However, the HSS also provides for 'intimidation points' amounting to a maximum and exceptional award of 200 points. Rule 23 of the HSS Rules sets out the circumstances in which an applicant is entitled to intimidation points:

¹⁶² *Mahmut Kaya v Turkey* (Application no 22535/93) 28 March 2000, para 115.

¹⁶³ The *Race Relations (Northern Ireland) Order 1997* was amended by the *Race Relations Order (Amendment) Regulations (Northern Ireland) 2003* to implement requirements of the EU Race Directive 2003/43/EC. These amendments give people greater protection from unlawful racial discrimination and harassment on the grounds of race, ethnic or national origins.

¹⁶⁴ Article 2 of the *Criminal Justice (No 2) (Northern Ireland) Order 2004*.

¹⁶⁵ Northern Ireland Housing Executive (2006) Race Relations Policy, p 21.

- (1) The Applicant's home has been destroyed or seriously damaged (by explosion, fire or other means) as a result of a terrorist, racial or sectarian attack, or because of an attack motivated by hostility because of an individual's disability or sexual orientation or as a result of an attack by a person who falls within the scope of the Housing Executive's statutory powers to address neighbourhood nuisance or other similar forms of anti-social behaviour.*
- (2) The Applicant cannot reasonably be expected to live, or to resume living in his/ her home, because, if he or she were to do so, there would, in the opinion of the Designated Officer, be a serious and imminent risk that the Applicant, or one or more of the Applicant's household, would be killed or seriously injured as a result of terrorist, racial or sectarian attack, or an attack which is motivated by hostility because of an individual's disability or sexual orientation or as a result of an attack by a person who falls within the scope of the Housing Executive's statutory powers to address neighbourhood nuisance or other similar forms of anti-social behaviour.*

In terms of the NIHE approach to homeless claims based on actual, or fear of, racial attack, Rule 23 establishes that where the individual's home is destroyed or seriously damaged as a result of a racial attack, or where they are at risk of death or serious injury due to racial attack, then, if eligible, she or he is entitled to the full award of 200 intimidation points. Consequently, the categorisation of an attack and/or property damage as racially motivated may be important for establishing intimidation points. However, following an amendment to Rule 23, the applicant may also be awarded 200 points if the intimidation is without a particular motive but perpetrated by someone who falls within the NIHE duty to address neighbourhood nuisance or anti-social behaviour.

This means that, potentially, an individual can establish homelessness on grounds of intimidation due to neighbourhood nuisance or anti-social behaviour.

Findings

'Ineligible' victims

Despite the serious nature of intimidation and the potential risk to life, eligibility rules in relation to individuals from abroad continue to apply. Therefore, 'ineligible' non-UK nationals will be denied homelessness assistance even if they establish that they have been subject to, or are at further risk of, serious injury due to racial attack:

"If someone reports an incident to the NIHE, they are advised to report to the police. But they have to be eligible to be considered for homelessness in the first place. If they have no recourse then they aren't eligible." (NIHE interviewee)

During the investigation, interviewees from the government agencies and the voluntary sector stated that racial attacks had formed the basis for a significant number of homeless applications made by non-UK nationals. In general, when presented with such a homeless claim, the investigation found that NIHE staff endeavoured to respond as best they could within the confines of the homelessness legislation. Indeed, the investigation uncovered examples of individual staff undertaking considerable responsibility to ensure some level of support for the applicant. Nevertheless, interviewees expressed frustration where eligibility rules prevented them from providing direct assistance:

"...it does frustrate one sometimes. [...] and I will always remember, the chief inspector rang and said... 'look, petrol bomb through the window, we would need to get her out' and we came in to help her and she had no access to public funds and she wasn't eligible and one felt very frustrated that one wasn't able to provide, you know, temporary accommodation or that. Now it ended up, I think we referred her

through [voluntary organisation] and they were able through someone like [a charitable organisation] to put her up. But if one believes through human rights, the right to a home in those type of circumstances should be there... We hadn't the authority to provide it, so it can be frustrating in that rare case that comes along [...] That is a personal view."
(NIHE interviewee)

On consideration of the NIHE case files, the investigators found there were 12 applicants (17.9 per cent overall) making a homelessness claim on grounds of racially motivated intimidation. One applicant was refused outright due to the 'no recourse to public funds' rule and, while five were refused on the NIHE decision that "you have accommodation and it is reasonable for you to occupy", at least one of these applicants would have had to satisfy the Worker Registration Scheme (WRS) before establishing entitlement to assistance. The following case study is an overview of an ineligible homelessness application on grounds of racial intimidation.

Case study: victim of racial attack

Joe is a non-EEA national who arrived in Northern Ireland in mid-2005. He had been in full-time employment since that date. After more than a year living in Belfast, Joe's home was attacked repeatedly over a period of two nights. Joe reported this to the Police Service of Northern Ireland (PSNI) and presented to the NIHE for help. Joe believed that the attacks were racially motivated.

On further inquiry, the NIHE received a report from the PSNI. This categorised the attacks as racial intimidation. However, in the interim, Joe provided his passport to the NIHE, which stated 'no recourse to public funds'. Consequently, a final decision letter was issued to Joe explaining that he was not eligible for help under the homelessness legislation. The case was closed.

In addition to examples from the NIHE case files, the investigators were provided with numerous case studies by voluntary organisations, outlining the types of circumstances in which they had advised and/or supported homeless non-UK nationals. Out of these, 18 case examples related to some form of racial intimidation. In one case, despite considerable efforts by the PSNI and the voluntary organisation concerned, funds for only two nights' accommodation could be found. As a result, it was reported that the family felt they had no option but to leave Northern Ireland and return to the country of origin. A further example was conveyed to the investigators by two voluntary organisations. In this case, the family arrived in Northern Ireland from one of the A8 states. Although the male member of the family had been working, he did not have 12 months' registered work, as required by the WRS. The adult members of the family were physically attacked in their home.

Case study: victims of racial attack

There was a family with twins in and around seven months old. They were attending to get help with a compensation claim following a racial incident.

At the initial meetings they stated that everything was ok and going well. Two weeks later during a meeting regarding compensation, the key worker asked again if everything was ok. At this point, the family happened to say 'yes but we are leaving and returning home next week'. They had been attacked in their home and gone to hostel accommodation but quickly lost this and were placed in another hostel. In addition, the male family member had lost his job. The Trust said it would support the family for seven days, or so, but then they must either pay or go home. They decided to go home without seeking further help.

The Commission notes that, in this case, the state has a heightened duty of protection because of the presence of children. In particular, the Commission refers to Article 6 of the United Nations' *Convention on the Rights of the Child* (CRC) which states that every child has the inherent right to life, and to Article 2 which prohibits discrimination on grounds of race or national origin in the enjoyment of this right. In this respect, the Commission suggests that the limited response from the state, as illustrated in the case study, may be open to challenge under human rights legislation.

The lack of options for individuals facing potentially life-threatening intimidation causes serious concern. This is particularly worrying in all cases, but even more so where the case involves children. If a homelessness claim is successful on grounds of intimidation but refused due to ineligibility, there should be some level of homelessness assistance and welfare support available. As one interviewee explained, while individual staff members are willing to help, the absence of guidance permitting staff to provide assistance is worrying:

"And then the local neighbours attacked it [home] and she had to leave that [...] And, meanwhile, we were trying to get her into private rental and tried to sort that out and I think she then went into private rental, in the end. At no time, did we say, 'go on to the street' but, again, I felt there should be some sort of clear demarcation here or some clear guidelines, well where you go with that case there. I felt I should be able to phone some sort of agency who could give me help and assistance, who I could direct to that particular group in Belfast and say, 'look, this is the circumstances, we need help here, this person needs somewhere to stay and needs money to do it'; there is nobody." (NIHE interviewee)

The fact that 'there is nobody' to assist when an 'ineligible' non-UK national applicant has experienced a serious racial attack is an affront to basic human rights and ought to be addressed.

Attacks on 'rough sleepers'

Through the investigation, it became apparent that while individuals had been subject to racial intimidation in their homes, racial attacks had also occurred on the street. One voluntary organisation interviewee explained that all 'rough sleepers' are at risk of physical assault, but this is particularly so for homeless non-UK nationals. Those who experience racial violence on the street are not entitled to intimidation points for the purposes of their homelessness claim:

"In order to be placed on the waiting list, an address is needed. Therefore, those with NFA [No Fixed Abode] can't get on. We can't accept applications from rough sleepers, although a hostel or B and B could be used as an address. We can't assess points without an address." (NIHE interviewee)

Nevertheless, intimidation is a reality for migrants who are forced to live on the streets. As one interviewee from the NIHE explained: *"There is people had their own throats slit, it is dangerous at night"*. Although the intimidation is not aimed at removing the individual from a particular address, it is intended to intimidate migrants from rough sleeping in areas used by other homeless persons who feel that it is 'their' space. Given the risks involved, it is essential that the victims of these attacks are able to access homelessness assistance.

Attitude of staff towards claims of racial attacks

The definition of a racial incident has been made clear in the Macpherson report following the inquiry into the circumstances surrounding the murder of Stephen Lawrence.¹⁶⁶ Therefore, a racial incident is any incident perceived to be racial by the victim or by any other person. As indicated by the NIHE during interview, it adopts this definition for the purposes of its homelessness inquiries. Indeed, for the most part, the investigators found that staff

¹⁶⁶ Macpherson, Sir W (1999) *The Stephen Lawrence Inquiry*, Cm 4262-1.

were extremely helpful and willing to assist those claiming homelessness on the grounds that they had been subject to, or were at risk of, racial attack. Often, staff would make extensive efforts to find alternative accommodation. As the following interview extract demonstrates:

“Well, basically, you sort of know yourself if somebody is from a foreign country and, say it is intimidation, they are saying they are being harassed because they are from [abroad] or whatever. Automatically, that is a red flag [...]. You know automatically to advise people, ‘look, if you are being intimidated, you are not under any obligation to stay here. We can always offer you temporary accommodation’. You would know sort of instinctively if, say, those sort of scenarios.” (NIHE interviewee)

While most staff recognised the potential for serious danger to the applicant, others were more sceptical about the basis for intimidation claims. In particular, in a small minority of interviews, there was a tendency to doubt the racial nature of an attack. This is in spite of the fact that the MacPherson report clearly states that a racial incident is based on the victim’s perception of the incident as being motivated by race. This reflected an element of denial about the racial motivation for incidents reported by non-UK nationals:

“You know, it is a fine line sometimes and, unfortunately, maybe you know, certainly the police recordings of things, this is being treated as a hate crime... I don’t want to get too political, but you know, simply because it was that person from abroad [...] I mean, if I get burgled in [a named area] and the police will do everything they can! ...if a foreign person gets burgled in [same named area], sure that is a hate crime [...] It is because of that new legislation, I think they are more likely to label it like that.” (NIHE interviewee)

Recognition of the racial context of a particular act is an essential part of ensuring the human rights of the victim. In addition, the denial of racism can lead to serious misjudgement as to the risks associated with the acts alleged. As Kelly states:

*[...] disbelief leads to denial - the refusal to acknowledge that people of minority communities are being picked out commonly, persistently, even systematically, for harassment. The disbelief also leads to ignorance about the connections between everyday harassment and attacks that sometimes result in murder.*¹⁶⁷

It is notable that one of the causal factors for the serious deficiencies in the police investigation regarding the murder of Stephen Lawrence was the “substantial number of officers of junior rank [who] would not accept that the murder of Stephen Lawrence was simply and solely ‘racially motivated’”.¹⁶⁸ The Macpherson report and recommendations relate primarily to the police investigation and prosecution of racially motivated crime, but there are of course lessons to be learned for other public sector bodies. As the report states, the “[...] conclusions as to Police Services should not lead to complacency in other institutions and organisations”.¹⁶⁹

The Commission stresses that, in most instances, the attitude of the NIHE staff toward racial incidents was appropriate and vigilant. However, it is important to highlight inconsistencies in approach. In practice, the denial of the racial element of an attack may mean that the victim does not establish intimidation points under the Housing Selection Scheme.¹⁷⁰ Instead, she or he may be awarded ‘priority need’ as a person who has been subject to violence and is at further risk.¹⁷¹ However, in this type of instance, while the victim may receive ‘full duty status’ she or he does not benefit from the same level of response as those who establish

¹⁶⁷ Kelly E (2000) ‘Racism, police and courts in Scotland’, *Scottish Affairs*, No 30, winter 2000, pp 141-159.

¹⁶⁸ Macpherson report, para 6.21.

¹⁶⁹ Above, para 46.27.

¹⁷⁰ Although it should be noted that, depending on the circumstances, the victim may receive intimidation points if the intimidation falls under the Housing Executive’s powers to address statutory nuisance.

¹⁷¹ Article 5(1)(e) of the *Housing (Northern Ireland) Order 1988*.

intimidation points and receive the higher award of 200 points on the Housing Selection Scheme.

Racial intimidation versus neighbourhood harassment

Property related crime is often viewed as a less serious form of offending behaviour. However, as this investigation shows, property related incidents can be perceived as a serious form of racial intimidation. In addition, research shows that while racial violence occurs in various guises, all forms of racial attacks are serious:

*Racial violence is not only manifested as brutal violent acts against the individual, but emerges in the form of everyday occurrences, which have the potential for violence, and which have a steady and negative impact on vulnerable individuals and communities.*¹⁷²

Based on review of case files and interviews with staff, the investigation uncovered a difference in practice in terms of whether a racial incident was classed as intimidation, as opposed to a less serious form of attack, known as ‘neighbourhood harassment’. As one interviewee explained, categorisation of the incident as neighbourhood harassment rather than intimidation may mean that the applicant is not awarded intimidation points and perhaps not even ‘full duty status’:

“We can’t give intimidation points unless it’s confirmed by the police or a solicitor. No intimidation points, no homeless as neighbourhood harassment is not a priority need.” (NIHE interviewee)

Based on review of case files, the investigators found that racial incidents classed as ‘intimidation’ in one office might be deemed ‘neighbourhood harassment’ in another. The Commission appreciates that the question of whether an incident amounts to intimidation or should, more appropriately, be deemed harassment, will not always be clear-cut. As senior staff explained, establishing that an incident amounts to intimidation depends on “the level of danger, threat

and risk of injury”. However, one voluntary organisation explained this in a rather different manner:

“It needs to be bricks through windows – an attack on property or person. You’re supposed to take the rest of it on the chin. But there is always a history that goes with this, for example, six or seven racial incidents, car damaged, et cetera. It is often seen as anti-social behaviour [...].” (Voluntary organisation interviewee)

Based on case file review, the investigators found a difference in approach depending on the district office in which the homelessness claim was received. Although demonstrated in a few instances only, if this were to be repeated it would be of serious concern. The Commission cannot offer an explanation for the difference and, rather than speculate, will demonstrate this apparent inconsistency through the following case studies.

Case studies: intimidation – unsuccessful applications

Example 1

Female applicant with one child. The applicant presented as homeless on the grounds of racial intimidation: the car windows were smashed while the car was parked at the house; perpetrator was physically aggressive to applicant; applicant left the property over the weekend for fear of further intimidation and presented to NIHE for help with temporary accommodation.

Outcome: NIHE decided that the applicant was not homeless or threatened with homelessness because the applicant already had accommodation and it was reasonable to expect them to continue to occupy it. However, three days after the applicant’s first contact with NIHE, PSNI recommended that the applicant was provided with temporary accommodation.

¹⁷² Bowling B and Phillips C (2002) in Goodey J (2007) ‘Racist violence in Europe: challenges for official data collection’, *Ethnic and Racial Studies*, 30(4) July 2007, p 571.

Following this, temporary accommodation was provided.

Example 2

Single male applicant. The applicant presented as homeless on grounds of racial intimidation: the front and back windows of his property were smashed; this was reported to and recorded by the PSNI. A supporting letter was sent to the NIHE from the PSNI. This detailed the current incident and two previous attacks, one of which resulted in scarring to the applicant's face.

Outcome: The NIHE decided that the applicant was not homeless or threatened with homelessness, on the basis that the applicant already had accommodation and it was reasonable for him to continue to occupy it.

Example 3

Male applicant with family (wife pregnant and two children). The applicant presented as homeless because he had been threatened with a knife and his wife had received verbal abuse. There was a supporting letter from the PSNI and a letter from the Health and Social Care Trust.

Outcome: The NIHE refused the application on the grounds that the applicant had accommodation and it was reasonable for him to occupy it. It was indicated that while there was antisocial behaviour in the area, there was not enough evidence to establish a threat against the family.

By contrast, claims of racial attacks were more readily accepted as intimidation in other offices, as the following examples show.

Case studies: intimidation – successful applications

Example 1

Male applicant with family (wife pregnant and two children). Applicant claimed homelessness because his car had been subject to three separate attacks and on the last occasion it was burnt out. This was confirmed by a voluntary organisation and the applicant reported the incident to the PSNI.

Outcome: Temporary accommodation was provided; homelessness application successful due to intimidation.

Example 2

Female applicant with one child. The applicant presented as homeless due to a threat from the local community, which was followed by men calling to the house and a broken window. The applicant's claim was supported by a letter from a voluntary organisation and from the PSNI.

Outcome: Temporary accommodation offered. The homelessness application was successful on grounds of intimidation.

Example 3

Male applicant with family (wife and two children). The applicant presented as homeless due to overcrowding and racial intimidation. There had been racial graffiti at the house. There was a supporting letter from the PSNI and a health visitor.

Outcome: Homelessness application was successful on grounds of intimidation.

It is important to recognise that housing officers often adopt a prompt response to homelessness claims involving racial attack. However, the examples provide strong evidence that this was not always the case. The Commission believes that

greater levels of training and awareness-raising are required to ensure a consistent approach across all NIHE district offices, in response to claims of racial intimidation.

The Commission notes that the NIHE has immense experience in dealing with homelessness claims on grounds of intimidation due to the particular circumstances of Northern Ireland. As one manager explained:

“The policy is borne out of the unique situation in NI and was originally confined to serious risks to do with paramilitaries and the situation prevailing to the circumstances of Northern Ireland [...] Over the years, this evolved and widened out to the extent where now the range of causes of intimidation are much wider.” (NIHE interviewee)

This bestows upon the NIHE a level of experience that is perhaps unique among housing providers in the UK. It is, however, important to ensure that ‘traditional’ forms of intimidation are not prioritised or automatically accepted as serious, while other ‘newer’ forms of intimidation, such as racial attacks, require greater levels of evidence or more serious threats.

In contrast to the case examples provided above, the following case study illustrates the willingness of the NIHE staff to recognise the dangers of intimidation where the reason is suspected to be sectarianism.

Case study: sectarian intimidation

During interview, an NIHE interviewee recalled a homelessness claim by a non-UK national, based on intimidation. The NIHE believed that the threats were aimed at the victim due to a perception regarding her religion:

Q: *“And in that instance then, was there any physical or criminal damage?”*

A: *“There was no physical attacks or no criminal damage, verbal abuse or... I think she was going out in the street, she was being shouted at. Now, the problem is that if it gets out, if something is going on and people know, it gets around or a Saturday night; there was too much drink in, you wouldn’t know what would happen in some of these locations.”*

Q: *“So, you didn’t need any police evidence in order to be able to move her?”*

A: *“Well, possibly we asked for it. I have to say our office is quite good, if that is the right way to put it. If there is a benefit of doubt, we tend to go with the applicant. We will look at the file to see whether the police came in. I think it was something, the police had said verbally that they were able to confirm that there was something going on and we gave the benefit of the doubt, which we would normally do and, again, not just for foreign nationals [...] You don’t always wait for the confirmation because it takes sometimes ages and ages, you know.”*

Q: *“And that woman would have got intimidation points then?”*

A: *“She would have got the full lot.”*

The incidents discussed in this example, namely verbal threats, were accepted as intimidation. Based on case files, the investigators found that similar and, indeed, greater levels of threat were not always accepted as amounting to intimidation where the motivation alleged was one of race. The Commission urges the NIHE to build upon its learning in identifying the risks associated with intimidation, and to apply this experience to all applications regardless of the perceived motive for intimidation.

The role of racial motivation

As explained by a senior staff member, when determining a claim based on intimidation, *“There are two things: the first is the level of danger, threat and risk of injury and the second is the source or cause of the intimidation”*. However, it was further explained that the motivation for intimidation is only a secondary matter. The primary basis for a claim based on intimidation is the seriousness of the incident and, provided the risk of intimidation is confirmed, the applicant’s claim for intimidation should be accepted regardless of motivation. Nevertheless, in interviews, it was not always clear that this approach was understood by staff. In a small number of instances, racial motivation was interpreted as the determining factor, as the following interviewee explained:

“There was an incident a couple of months ago. Someone’s car was set on fire – it was a foreign national but PSNI couldn’t say if it was racial.” (NIHE interviewee)

In another instance, the interviewee felt that racial motivation was necessary, and also whether or not an attack had been racial could only be confirmed by the police:

“If there is any violence at all, we ask for PSNI reports. [...] If no PSNI confirmation, we normally need an independent body, for example, Women’s Aid, but if it’s racial we need a police report.” (NIHE interviewee)

However, this is in contrast to the Housing Executive’s policy. Therefore, as discussed above, if considering racial motivation, the NIHE accepts and endorses the definition of racial incident as recommended by the Macpherson report. During interviews, the Commission’s investigators asked senior staff how the NIHE decides if an incident has been racially motivated. The following response was provided:

“If the person perceives it as racial, we accept that – it is the same for homophobia and all other grounds. The issue or causation is not the main consideration, it is the level of risk. We had a local case of a foreign national in flats and the kids in the area were damaging all cars in the street – he perceived this as racial and we accepted it.” (NIHE interviewee)

The Commission recognises that all statutory agencies have a role to play in tackling racism. However, with regard to the issue of homelessness, the NIHE’s input is critically important. The investigation shows that while the NIHE adopts the Macpherson definition of a racial incident, this definition is not adopted universally by all staff, or across all district offices. The Commission understands that the NIHE may require contact with the PSNI to establish whether, or the extent to which, an attack has taken place. However, contrary to the views expressed by a minority of staff, the NIHE should not require PSNI verification to determine that an attack has been racial. In addition, staff should be clear that the main basis for awarding intimidation points is the seriousness of the threat and/or attack and, while motivation is relevant, it is only a secondary factor.

Conclusions and recommendations

Introduction

As revealed in the preceding chapters of this report, the Commission had access to a large amount of material during this investigation. This enabled the consideration of various forms of evidence which expose the serious human rights concerns for homeless non-UK nationals who are at risk of destitution, but excluded from accessing public funds. Many of the report's findings are related to legislative exclusions, which prevent non-UK nationals from receiving homelessness assistance and welfare benefits. Consequently, the Commission makes several recommendations aimed at the urgent amendment of primary legislation. As much of this legislation relates to immigration, it is an 'excepted' matter (not devolved to the Northern Ireland Executive) and, therefore, requires UK-wide amendments. However, this should not detract from the fact that the local Executive has a role to play in bringing about this legislative change. Pending these wider legislative amendments, the Commission is of the view that other aspects of the recommendations can be locally administrated. In the interim period, the Commission recommends that the three government agencies, forming the focus of this investigation, make changes to the way in which they work to ensure better protection of the rights of homeless non-UK nationals.

The Commission's recommendations are organised under three main headings:

1. Legislative amendments
2. Government agency practices, and
3. Specific areas of concern
 - exploitation and UK immigration rules
 - asylum seekers and refugees
 - domestic violence
 - ill-health and disability, and
 - racial intimidation

The Commission acknowledges that, as with the realisation of many human rights, a number of these recommendations may have cost implications. However, it is likely that access to homelessness assistance will prove more cost effective because, at present, the way in which the system operates is often counterproductive. In many cases, access to homelessness assistance would prevent the need to rely on other government agencies, such as Health and Social Care Trusts and/or voluntary organisations for emergency intervention and support. In addition, exclusion from homelessness services can result in, or exacerbate, illness which, in the end, requires long-term, intensive care and assistance. The investigation has provided various examples of individuals who would have required only limited, short-term homelessness assistance instead of needing longer-term support. Moreover, the Commission is of the view that there is limited rationale for prohibiting any individual from exercising the right to work. In particular, the investigation finds that prohibiting work for asylum seekers, and refused asylum seekers, leads to a situation of destitution and, ultimately, reliance on public funds, which is necessary to avoid a breach of the *European Convention on Human Rights* (ECHR). All of this suggests that access to the basic means of shelter and subsistence would produce long-term benefits that far outweigh the immediate monetary costs.

In the current context, the Commission reminds the Government of the Committee on Economic, Social and Cultural Rights' General Comment 4, on the right to adequate housing. It states: "the obligations under the Covenant continue to apply and are perhaps more pertinent during times of economic contraction."¹⁷³ This is particularly so for those living in unfavourable conditions, which should include destitute persons whether they have UK nationality or a right of residence.

¹⁷³ General Comment No 4, para 11.

Finally, at the time of writing this report, the Government was examined by the United Nations' Committee on Economic Social and Cultural Rights. A number of the concluding observations are relevant to the findings in this report including the Committee's recommendation that the Government "take into consideration the *Homelessness Scotland Act 2003* as best practice, especially its provision relating to the right to housing as an enforceable right".¹⁷⁴ The background to the Act comes from the Homelessness Taskforce, which recommended the following:

*[...] over time, the rights possessed by those assessed as being in priority need under the 1987 Act should be extended to all those assessed as homeless and that therefore the priority need distinction should be eliminated. This will however need to be managed and phased so that accommodation and services are made available to those who do not currently come within the definition of priority need and so that those who are in the greatest need are not disadvantaged.*¹⁷⁵

The Act requires local housing authorities in Scotland to progressively realise the right to housing for all persons assessed as homeless through abolition of the 'priority need' test by 2012. This means that, from such day as the Scottish Ministers appoint, the local authority shall secure that permanent accommodation becomes available for those who are found homeless or threatened with homelessness whether or not they have priority need. Since progressive realisation is a key concept in economic and social rights, the Commission welcomes the Committee's recommendation and urges that the UK government consider a framework for responding to homelessness similar to that in the *Homelessness (Scotland) Act 2003*.

Legislative amendments

At present, the legislation governing access to homelessness services for non-UK nationals is unduly restrictive. The findings from this investigation confirm that it is disproportionately weighted towards the Government's aims of regulating migration, paying little regard to the consequences for individual rights. As a result, the legislation excludes homeless and potentially destitute persons from homelessness assistance and welfare benefits, and permits statutory support in very limited circumstances only if necessary to avoid a breach of ECHR rights. This represents a negative approach to human rights, taking heed only when it is likely that basic rights are at serious risk of being, or have already been, violated. Instead, the UK should adopt a more positive approach in line with international human rights standards, encouraging state agencies to promote rights by ensuring access to homelessness services in a way that ensures destitution does not arise in the first place. Therefore, legislation should be amended to reflect the Government's commitments under domestic and international human rights instruments. In light of this, the Commission makes the following recommendation:

1. Regardless of nationality or immigration status, the Government should ensure that everyone within the territory of the UK has access to an adequate standard of living sufficient for that person and her or his dependents. Public authorities must take all appropriate measures, including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of this right. No one shall be allowed to fall into destitution.

¹⁷⁴ Concluding Observations of the Committee on Economic, Social and Cultural Rights (2009) The United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories, 22 May 2009, para 29.

¹⁷⁵ The Homelessness Taskforce (2002) *Helping Homeless People: An Action Plan for Prevention and Effective Response*, Scottish Executive, para 27. Available: <http://www.scotland.gov.uk/library3/society/htff.pdf> [17 July 2009].

The Commission is of the opinion that everyone has the right to adequate accommodation appropriate to their needs. In particular, the Commission makes the following recommendations:

2. The Government should ensure that everyone has access to appropriate emergency accommodation.
3. For the purposes of ensuring Recommendations 1 and 2, the Government should discontinue the transitional arrangements relating to the new A8 and A2 accession states, (the Worker Registration Scheme and Worker Authorisation arrangements) (see Chapter 6).
4. In light of this report and the conclusions arrived at by the European Committee of Social Rights, the Government should review the current habitual residence test (see Chapter 5).
5. For the purposes of ensuring Recommendations 1 and 2, the Government should amend homelessness legislation so that those who are sleeping on the street, without any other means to access welfare benefits or accommodation, are given 'priority need' (within the meaning of the *Housing (Northern Ireland) Order 1988*) (see Chapter 3).
6. Pending Recommendations 1 and 2, the Government should allow people who are subject to immigration control to access social assistance if it is likely that they will become destitute. They should not have to show that they are 'destitute plus' (as currently required by Section 121 of the *Immigration and Asylum Act 1999*) (see Chapter 4).

7. Pending Recommendations 1 and 2, the Government should review Section 4 of the *Asylum and Immigration Act 1999* to ensure that refused asylum seekers are provided with greater levels of access to accommodation and financial support.
8. Pending Recommendations 1 and 2, the Government should amend homelessness legislation to ensure that family members, who are at present 'ineligible' non-UK nationals, can make a homelessness application in their own names rather than the current practice, which requires the application to be submitted by the 'eligible' partner (see Chapter 3).
9. Pending Recommendations 1 and 2, the Government should develop a fund that can be accessed by relevant voluntary organisations which accommodate or otherwise support individuals who have no, or limited access to, public funds.

The Commission strongly believes that everyone has a right to social security. In particular, the Commission makes the following recommendations:

10. Pending Recommendations 1 and 2, the Government should revise the eligibility criteria for a Crisis Loan payment in order to provide assistance for non-UK nationals facing destitution (see Chapter 5).

11. Pending Recommendations 1 and 2, the Government should amend the legislation permitting travel arrangements for non-UK nationals to leave the UK. The legislation should require 'local authorities' to consider the implications of the travel arrangements for the individual's rights, namely, her or his rights under Article 8 (right to private and family life) and Article 3 (freedom from inhuman and degrading treatment) of the ECHR. In addition, the legislation should allow accommodation pending travel for all destitute persons whether or not they have with them a dependent child. In order to ensure the dignity of the individual, cash assistance should not be prohibited (see Chapter 9).
12. The Northern Ireland Assembly should ensure implementation of clause 5 of the Housing (Amendment) Bill which provides for a statutory right of review and appeal of homelessness decisions (see Chapter 3).

Government agency practices

Many of the investigation findings relating to the Northern Ireland Housing Executive (NIHE), the Trusts, and the Social Security Agency (SSA) stem from the restrictions contained within domestic legislation and, therefore, will not be adequately addressed without the legislative amendments as contained in Recommendations 1 to 12. However, even without legislative amendment, the Commission is of the view that there are alterations that each agency should make to ensure better protection of non-UK nationals' rights. In this section, the Commission outlines recommendations, some of which apply equally to all three government agencies and others that are specific to each.

The Northern Ireland Housing Executive, the Trusts and the Social Security Agency

In order to ensure that, as the *Human Rights Act 1998* requires, the actions of the three relevant agencies are human rights compliant, the Commission makes the following recommendation:

13. All relevant staff across the three agencies should receive at least a basic level of human rights training. This training should take account of the Government's obligations under domestic and international human rights instruments. In particular, human rights training should cover the applicability of human rights standards to homeless non-UK nationals who are at risk of destitution (see Chapters 3 to 5).

The Commission is strongly committed to the principle of non-discrimination, enshrined in international and domestic law, and makes the following recommendations:

14. All relevant government agency staff should receive anti-racism training that is evaluated and updated, and compliant with the Macpherson report (see Chapters 3 to 5).
15. All government agency staff, including Trust staff, should be familiar with when, and how, to refer a homeless non-UK national, who is excluded from accessing homelessness assistance and welfare benefits, to the relevant Health and Social Care Trust for an assessment of her or his entitlement to assistance (see Chapters 3 to 5).

The Commission believes that everyone has the right to access essential public services in a language and a medium that they understand. The Commission makes the following recommendation:

- 16.** Each of the three government agencies should use appropriately experienced and accredited interpreters. Specially trained interpreters should be used in difficult cases, for instance, where the applicant has complex needs. Unless it is an emergency, face-to-face interpreting services should be offered. Government agencies should end the practice of using children to interpret. In addition, the practice of asking friends and family members to interpret without first offering an interpreting service should end. Government agencies should make time allowances where there are language barriers; in particular, consideration should be given to providing extra time for meetings and/or interviews (see Chapters 3 to 5).

International standards acknowledge the need for reasonableness. The Commission therefore recognises that it is not possible to translate all communication letters between government agencies and non-UK nationals. However, the Commission makes the following recommendations:

- 17.** The government agencies should include within each letter a standard statement, translated into several languages, explaining the purposes and urgency of the letter and how to contact the government agency for further information, explanation or a review of any decisions. In addition, government agencies should assess the extent to which certain letters, or parts thereof, can be standardised and therefore translated in advance (see Chapters 3 to 5).

- 18.** The government agencies should develop, agree and effectively disseminate reliable interagency protocols. The protocols should identify any potential gaps in service provision and ensure that, in all circumstances, there is a referral route so that a homeless non-UK national, who is excluded from homelessness assistance and welfare benefits, can be assessed to establish if they are entitled to any other form of support. Appropriate and formalised, referral arrangements should be included. In addition, the interagency protocols should outline the approach to be adopted for daytime and 'after hours' services. Following on from this, the government agencies should produce an interagency guide for their staff, outlining options for assistance and referrals for homeless non-UK nationals (see Chapters 3 to 5).

As the report has shown, voluntary sector organisations provide an invaluable source of support for homeless non-UK nationals that should be appropriately acknowledged and enabled to continue. However, the Commission makes the following recommendation:

- 19.** In responding to homeless non-UK nationals, government agencies should continue to engage with the voluntary sector. Where there is a statutory duty to assist, government agencies should not signpost to voluntary organisations for accommodation services without ensuring that the organisation is provided with appropriate financial support.

The Northern Ireland Housing Executive

The Commission makes the following recommendations (see Chapter 3):

- 20.** Inquiries in relation to eligibility ought to be evidenced in writing in the specific section of the homelessness application form. Findings relating to 'priority need' should always be recorded even if it is determined that the applicant is ineligible for homelessness assistance.
- 21.** The NIHE should develop human rights compliant guidance, outlining the circumstances in which having accommodation abroad can result in a finding that homelessness has been intentional.

The Trusts

The Commission makes the following recommendations (see Chapter 4):

- 22.** The Department for Health, Social Services and Public Safety should develop guidance, setting out the Trusts' responsibilities to homeless and potentially destitute non-UK nationals. The guidance should cover the Trusts' responsibilities to children, families with children, and single adults.
- 23.** At present, when Trusts decide to provide assistance to a homeless non-UK national under the 1972 Order or under the *Children (Northern Ireland) Order 1995*, the amount does not appear to be based on a clear assessment of need. While it may not be possible to set out minimum amounts, the Trust should develop guidance to ensure that payments to families are based on a proper account of potential costs, for example, accommodation, food, clothing and travel.

As well as the right to private and family life, the Commission is committed to the principle that in adoption, or any other child placement proceedings, the best interests of the child shall be the paramount consideration. Therefore, the Commission makes the following recommendation:

- 24.** Children should not be removed from their family, or threatened with removal, on the sole basis that those with parental responsibility are ineligible for homelessness assistance and welfare benefits.

In recognition of the right of every person to human dignity, the Commission makes the following recommendation:

- 25.** The use of voucher support as the sole means of support should end as soon as is feasibly possible.

The Social Security Agency

The Commission notes that decision-makers currently receive written guidance on benefit legislation and application. However, in order to better equip front line staff in their role as first point of contact, the Commission makes the following recommendations (see Chapter 5):

- 26.** All SSA staff should be issued with, and regularly trained, on an easy to read basic guide to the benefit legislation as it applies to non-UK national applicants. In particular, SSA staff should receive guidance on referral of applicants to the Social Fund and recording thereof.

- 27.** Pending review of the habitual residence test, in order to be able to demonstrate that the test has been applied consistently, SSA staff responsible for evidence gathering should be provided with a standard form to ensure that, in all cases, the same information is requested. All case files should contain an accurate record of how the decision on the habitual residence test was arrived at.

Specific areas of concern (Chapters 6 to 10)

The investigation has provided detailed findings in relation to the following specific areas of concern: exploitation, asylum seekers and refugees, domestic violence, ill-health and disability, and racial intimidation. As with the recommendations for each of the government agencies, many of the findings regarding these specific areas of concern will not be addressed without the legislative amendments as contained in Recommendations 1 to 12. Nevertheless, in the meantime, the Commission considers that there are a number of measures that ought to be taken, which can improve the Government's response to non-UK nationals who experience homelessness related to one or more of the following:

Exploitation

The Commission reiterates its belief that every person has a right to access social security and to be free from all forms of exploitation. Therefore, the Commission makes the following recommendations to the Government (see Chapter 6):

- 28.** Pending discontinuation of the Worker Registration Scheme, there should be access to homelessness assistance and welfare benefits for those who have worked but who, for whatever reason, have not registered on the scheme. In addition, registration of a change of employment should not be a requirement of the WRS.

- 29.** Until the WRS is discontinued, the fee should be abolished.
- 30.** To ensure that workers can assert their rights, Worker Registration should not lapse if the individual is claiming unfair dismissal on loss of employment.
- 31.** Where an individual is out of work due to work related injury, WRS status should not impact on her or his entitlement to homelessness assistance and welfare benefits.

The Commission asserts that everyone has the right to be protected from sexual exploitation and sexual and other forms of trafficking. It is strongly committed to the rights of all victims to appropriate material, medical, psychological and social assistance. Therefore, the Commission makes the following recommendation to the Government:

- 32.** There should be homelessness assistance and welfare benefits for non-UK nationals who have been brought to the UK as a result of trafficking. The Government should consider how support can be provided even where victims do not wish to report their experiences to the 'Competent Authority'. In addition, the Commission urges the Government to view its commitments under the *European Convention on Human Rights* as minimum obligations and to build upon the assistance that it provides to victims. In particular, the Government should ensure that the reflection period for victims of trafficking, which is currently 45 days, is extended in line with international best practice.

Asylum seekers and refugees

The Commission holds firm the belief that everyone has the right to work, and makes the following recommendation to the Government (see Chapter 7):

- 33.** All asylum seekers should be allowed to work pending the outcome of their application or, in the case of failed asylum seekers, until such time as they can be removed from the UK. Where possible, other individuals subject to immigration control should be allowed to work.

The Commission is committed to the principle that every child who is temporarily, or permanently, deprived of her or his family environment has the right to special protection and assistance for as long as they need it. In particular, the Commission makes the following recommendation to the relevant agencies:

- 34.** Where a doubt arises in relation to the age of a child, agencies should provide full support, including accommodation and subsistence, until it is established that the individual is not a minor.

The Commission is deeply concerned about the practice of accommodating children in unsupervised private accommodation, for example, bed and breakfasts. In order to ensure the right of every child to be protected from all forms of violence, maltreatment, neglect, exploitation and harassment, the Commission makes the following recommendation to the Trusts:

- 35.** The practice of accommodating minors in unsupervised and un-vetted private accommodation should end without delay.

Domestic violence

The Commission embraces the principle that everyone has the right to be free from all forms of violence and harassment including, but not limited to, domestic violence. In order to comply with this right and to ensure the care and protection of victims, the Commission makes the following recommendations (see Chapter 8):

- 36.** The Government should provide all victims of domestic violence with appropriate material, medical, psychological and social assistance and, in particular, advice on benefit and accommodation options, irrespective of their entitlement to public funds. Victims of domestic violence should be entitled to Social Fund assistance.
- 37.** The Government should extend the domestic violence rule to include all non-EU nationals who have entered the UK subject to a visa stating that they have no recourse to public funds. In addition, the application fee under the domestic violence rule should be abolished and legal aid provided to all victims.
- 38.** Trusts should devise, disseminate, and implement human rights compliant guidance on their duty to support all non-UK national victims of domestic violence who are ineligible for homelessness assistance and welfare benefits.

Ill-health and disability

The Commission is dedicated to the fact that everyone has the right to the highest attainable standard of physical and mental health and believes that everyone should be provided with support prior to, and after, discharge from alternative care, to assist towards independent living. The Commission further believes that public authorities should take all appropriate measures to promote the rights of older persons and those who are disabled to lead a life of independence. In this regard, the Commission makes the following recommendations (see Chapter 9):

- 39.** The NIHE should ensure that individuals presenting as homeless, with serious physical ill-health, can be considered for 'priority need' (within the meaning of the *Housing (Northern Ireland) Order 1988*).
- 40.** The NIHE should ensure that staff can identify alcohol and substance misuse as a potential indicator of mental ill-health or as an 'other special reason' for 'priority need'.
- 41.** The Government should ensure access to accommodation and welfare benefits to allow appropriate aftercare for non-UK nationals who are ineligible for homeless assistance and welfare benefits where they are ill or have been recently disabled.
- 42.** Pending amendment of the legislation (as per Recommendation 11), Trusts should issue guidance on travel arrangements, and accommodation pending travel, for ill or disabled non-UK nationals to ensure that the arrangements are implemented according to a clear decision-making process and one that is compatible with international human rights standards.

Racial intimidation

The Commission is committed to the fundamental principles of equality and non-discrimination and holds firm the belief that everyone has the right to be free from all forms of violence and harassment. Therefore, the Commission makes the following recommendation (see Chapter 10):

- 43.** The Government should ensure that all victims of intimidation have access to appropriate support including, where relevant, homelessness assistance.
- 44.** The NIHE should develop specific training for housing officers, outlining how to respond to homelessness applications made on grounds of racial intimidation. For all district offices, training should ensure that there is a consistent approach by staff when determining whether an attack has taken place and how to assess whether an incident should be categorised as intimidation as opposed to neighbourhood harassment. In addition, the training should be Macpherson compliant so that all staff are aware of the Macpherson definition of a racial incident, which is any incident perceived by the victim, or any other person, as racist.

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Appendix 1: Methodology

The investigation aimed to establish the law and policy relating to homeless non-UK nationals and to assess the day-to-day approach of the three government agencies, the Housing Executive, the Social Security Agency, and the Health and Social Care Trusts. However, in conducting the investigation, it was not the intention to obtain a representative, quantitative account of government agency practices in relation to non-UK nationals across Northern Ireland. Rather, the investigation considered the approach of each agency based on three geographical locations using, for the most part, case file review and semi-structured interviews with staff. The methodology is therefore purposive and largely qualitative. For the most part, the experiences and views of government agency staff, voluntary sector organisations and non-UK nationals have been used to inform the findings of the report.

The government agencies

Documentary analysis

The Commission issued the terms of reference to the three government agencies on 30 May 2008, and requested an initial meeting with each agency to discuss the requirements of the investigation. In the course of these meetings, each agency was asked to provide various information including guidance and case file access. The investigators also requested agency staff for interview. The investigators subsequently reviewed and analysed guidance, forms and correspondence from the three agencies. In the case of the Social Security Agency, the investigators were also granted access to the agency's intranet facility.

Case files

The investigators were provided with access to case files by each of the government agencies. For the NIHE and the SSA, information obtained from case files was entered into an SPSS database for analysis. The following is an overview of the case files reviewed within each agency.

Northern Ireland Housing Executive

Case files were reviewed by the investigators if district managers indicated during initial interview either that the office received regular applications from non-UK nationals or that the applications received, although small, were of direct relevance to the subject of the investigation. As a result, case files were reviewed from each of the district offices except Belfast West, where a smaller number of four applications had been received from non-UK nationals over the year preceding the period of the investigation. In Belfast West, staff indicated that, for the most part, applications from non-UK nationals related to the social housing waiting list and were not homelessness claims.

As NIHE district offices do not record applicants by nationality, it was agreed that each district office would review case file records and identify a list of files by name. The investigators then reviewed the files to determine if the applicant was a non-UK national. NIHE staff and the investigators recognised that this was a crude method but, nevertheless, the only way to extract homelessness claims made by non-UK nationals who might potentially have no, or limited, access to public funds. Depending on the number of applicants identified, the investigators reviewed all files provided by the district office or, if this was not manageable, an appropriately sized sample. A total of 132 case files were reviewed. In order to understand the processes involved in arriving at a final decision and for comparison, the investigators asked for case files made up of both negative and positive outcomes. Table 1 provides a breakdown of the case files reviewed by district according to the type of application (a homelessness application or application to be placed on the waiting list for social housing).

Table 1 NIHE Case files reviewed by district and type of application

District Office	Number of case files reviewed	Number of homeless applications	Number of applications for HSS only
HSU	46	46	0
Belfast East	10	10	0
Belfast North	18	16	2
Belfast South	15	10	5
Belfast West	0	0	0
Shankill	9	1	8
Dungannon	27	27	0
Cookstown	2	2	0
Total	127	112	15

Table 1 shows that, by far, the majority of case files reviewed was in the HSU in Belfast and this was followed by Dungannon and Belfast North. This is reflective of the caseload for non-UK nationals across the district offices considered.

The Trusts

The investigation focused on the delivery of services by the three Health and Social Care Trusts responsible for the areas covered by the investigation. The following groups made up the main focus of the investigation:

1. Children's services (Dungannon, Cookstown, Belfast West, Belfast South & East, Belfast North)
2. Emergency Duty Teams
3. Adult services (Dungannon, Cookstown, Belfast)

For the purposes of the investigation, case file access was provided with client consent. As with the other agencies in this investigation, the Trusts do not record client information by nationality. In practice, case file access was arranged via

individual social workers who identified active cases on their workload. Provided that client consent was obtained, the investigators were provided with onsite access to the file. In total, the investigators reviewed 10 case files. The Trusts' case files differ significantly from the types of information held by the NIHE and the SSA. It was therefore not appropriate to use an SPSS database, but rather to make a detailed qualitative note of the information within each file.

In terms of the case files reviewed, nine related to the Belfast Trust and one from the Northern Trust (Cookstown). Despite repeated telephone requests, access to relevant case files from the Southern Trust (Dungannon) was not provided in time. This was despite the investigators extending the fieldwork period for the investigation specifically to accommodate the Trust.

Social Security Agency

The investigators had contact with relevant offices within the three geographical locations covered by the investigation: Belfast, Cookstown, and Dungannon. Case files were reviewed by the investigators if district or office managers indicated during initial interview either that the office received regular applications from non-UK nationals or that the applications received, although small, were of direct relevance to the subject of the investigation. As a result, case files were reviewed from each of the offices listed below. The investigators requested a sample of positive and negative sample of case files relating to Income Support and Jobseeker's Allowance. In addition, the investigators had access to a small number of Social Fund applications.

Social security offices do not record applicants by nationality and, as with the NIHE, it was agreed that each office would review case file records and identify a list of files by name. Again, depending on the number of applicants identified, the investigators reviewed all provided by the office or,

if this was not manageable, an appropriately sized sample. In total, 124 case files were reviewed plus nine Social Fund case files. Table 2 provides a breakdown of the case files reviewed by district offices according to the type of application.

Table 2 SSA Case files reviewed by district offices and type of application

Office	Income Support	JSA	Social Fund
Shaftesbury Square	12	25	0
Falls Road	3	3	0
Hollywood Road	4	5	4
Shankill Road	1	4	0
Dungannon	11	18	0
Cookstown	23	15	0
Corporation Street	0	0	5
Totals	54	70	9

Interviews

The interviews with each of the government agencies followed a semi-structured interview schedule exploring:

- the numbers of non-UK nationals presenting for homelessness support
- the circumstances leading applicants to request homelessness support
- referral options
- work with other agencies
- the working approach in individual cases (including decision-making processes and follow-up)
- training in relation to eligibility and claims by non-UK nationals
- communication (interpreting and translation)

- human rights training and any human rights concerns, and
- suggestions and recommendations for the future.

In addition to semi-structured interviews, the investigators also met with senior management and Department representatives at various stages throughout the investigation.

Northern Ireland Housing Executive

In terms of the NIHE, the investigators conducted a total of 25 interviews with management level and front line staff in each of the district offices covered by the investigation. Many of the interviews involved multiple participants. In total, 43 staff members were interviewed. The breakdown of interviews completed by area is as follows:

Table 3 NIHE interviews by district

NIHE / District Office	Number of interviews
HSU	5*
Belfast East	3
Belfast North	3*
Belfast South	4*
Belfast West	1*
Shankill	1*
Dungannon	6*
Cookstown	2*
Total	25

**indicates multiple participants in at least one of the interviews noted*

The Trusts

The investigators conducted a total of 14 interviews with management level and frontline Trust staff in each of the areas covered by the investigation. The majority of interviews involved multiple participants; the total number of Trust interviewees was 38. At no stage did the investigators find a person with overall responsibility for adult services within each Trust. Although the investigators were provided with key contacts within each Trust, most contacts related to children's services. The investigators undertook a considerable amount of work within each Trust area to track down persons responsible for the delivery of services to adults and to co-ordinate an interview. Interviews with those responsible for adult services generally involved a representative from mental health services, disability (including learning disability) and sensory impairment, older persons and, in some instances, the Emergency Duty Team (EDT). Table 4 outlines the interviews by area.

Table 4 Trusts interviews by area

Area	Number of interviews
Belfast West Children's Services	2
Belfast South & East Children's Services	1*
Belfast North & West Children's Services	3*
Belfast Adolescent Team	1*
Belfast 'Adult Services'	1*
Belfast EDT	1*
Cookstown Children's Services	1*
Cookstown 'Adult Services'	1*
Dungannon Children's Services	2*
Dungannon 'Adult Services'	1*
Total	14

**indicates multiple participants in at least one of the interviews noted*

Social Security Agency

Finally, the investigators conducted a total of 25 interviews with management level and frontline staff within the relevant SSA offices across each of the three areas covered by the investigation. Again, in many instances, the interviews involved multiple participants. The total number of interviewees was 35. Table 5 shows the breakdown of interviews by area.

Table 5 SSA interviews by area

Office	Number of interviews
Shaftesbury Square	8*
Falls Road	1*
Hollywood Road	7*
Shankill Road	1*
Dungannon	2*
Cookstown	5*
Decision Making Services	1*
Total	25

**indicates multiple participants in at least one of the interviews noted*

Observations

Northern Ireland Housing Executive

In two instances, the investigators observed house visits during which applicants completed a housing form with NIHE visiting staff.

The Trusts

In one instance, the investigators observed a case conference for a non-UK national due to be discharged from long-term hospital care. Towards the end of the fieldwork period, the investigators were also invited to observe a workshop organised by the Department focusing on social care issues and non-UK nationals.

Social Security Agency

The investigators were walked through each stage of the benefit application process from a customer telephoning for information through to decision making. This included observing face-to-face interviews for National Insurance and/or benefit applications across the offices. The investigators also observed a number of SSA interviews to assess entitlement by non-UK nationals for Income Support, Jobseeker's Allowance, and National Insurance numbers.

NGO fieldwork

The investigators contacted a range of non-governmental organisations throughout the course of the investigation. Initial meetings were held with several key stakeholders in the scoping stages of the investigation. Telephone surveys were conducted with all hostel accommodation providers in Belfast, Cookstown and Dungannon and follow-up interviews were carried out with those who had experience of accommodating non-UK nationals. The investigators similarly contacted a wide range of voluntary and community based organisations to establish whether they had any experience of dealing with homeless non-UK nationals, and subsequently conducted over thirty interviews with voluntary sector staff and other relevant individuals. The investigators were also provided with records and case studies from several voluntary organisations. As the next section will outline, voluntary organisations also facilitated meetings between the investigators and homeless individuals.

Interviews with homeless people

As part of the investigation, a leaflet was produced inviting non-UK nationals, who had experienced homelessness, to take part in an interview. The leaflet was translated into several languages and, with agreement, distributed to a number of voluntary organisations providing accommodation and/or advice to non-UK nationals. As a result, 14 individuals took part in interviews for the investigation.

Appendix 2: Glossary

Asylum seeker: Defined as someone who has made a formal claim for asylum within the UK and whose claim is being processed.

A8 nationals: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia.

A2 nationals: Romania and Bulgaria.

Destitution: The Oxford English Dictionary defines destitution as “the state of being extremely poor and lacking the means to provide for oneself”. The legislation specifically defines destitution as the inability to access accommodation and meet essential living expenses for the next 14 days (Section 95(3) *Immigration and Asylum Act 1999*).

Discretionary leave: A grant of limited leave applied for one of a defined number of reasons. Discretionary leave can last for three years; it can then be extended or permission can be sought to settle permanently. Alongside humanitarian protection, it replaced exceptional leave to remain in April 2003.

EEA nationals: Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, UK.

Exceptional leave to remain: A discretionary status now replaced by humanitarian protection and discretionary leave. It was granted for various reasons, mostly on compassionate or humanitarian grounds.

Habitual Residence Test: This is a test to establish whether a welfare benefits, or homelessness, applicant who has recently returned to the UK after living abroad, or is a new arrival in the UK, has a ‘centre of interest’ in the common travel area (which consists of the UK, Republic of Ireland, Channel Islands and the Isle of Man). No person will be treated as habitually resident unless he or she has a right to reside in the UK, the Channel Islands, the Isle of Man, or the Republic of Ireland. People who do have a right to reside will still have to show that they are habitually resident.

Humanitarian protection: A grant of limited leave to stay in the UK for someone who has been refused asylum but who can “demonstrate they have protection needs”, such as risk of the death penalty, unlawful killing and torture or inhuman or degrading treatment or punishment.

Indefinite leave to remain: Technical term for the permission an asylum seeker, or other non-EEA national, needs to be given to settle in the UK permanently.

International Organisation for Migration (IOM): An independent non-governmental organisation that operates around the world to facilitate migration including return. The Government grants them 100 per cent of funds required to administer the VARRP programme from the European Refugee Fund.

Overstayer: A person who stays in the UK for longer than the period of time they have been granted.

Public funds: For the purposes of Section 115 of the *Immigration and Asylum Act 1999*, public funds are: income based Jobseeker's Allowance, Attendance Allowance, Severe Disablement Allowance, Invalid Care Allowance, Disability Living Allowance, Income Support, Working Families' Tax Credit, Disabled Person's Tax Credit, a Social Fund Payment, Child Benefit, Housing Benefit, Council Tax Benefit.

Refugee: The term 'refugee' is used in this report to describe a person in the UK who has been given a positive decision on their asylum claim and has been granted a type of 'leave to remain'.

United Kingdom Border Agency (UKBA): The department of the Home Office responsible for overseeing the granting of asylum decisions and visa applications.

Appendix 3: List of organisations

The authors wish to acknowledge the fact that all relevant hostel accommodation providers participated in a telephone survey during the scoping phase of the investigation.

In addition, staff from the following organisations based in Belfast, Cookstown and Dungannon contributed throughout the course of the fieldwork.

- An Munia Tober
- Belfast City Council
- British Red Cross (Northern Ireland)
- Bryson One Stop Service for Asylum Seekers
- Chinese Welfare Association
- Citizen's Advice Bureau
- Cookstown Migrant Workers Project
- Council for the Homeless Northern Ireland
- Crossfire Trust
- Dungannon and South Tyrone Borough Council
- Embrace (NI)
- EXTERN
- Home Plus
- Housing Rights Service
- Law Centre (NI)
- Morning Star
- Multicultural Resource Centre
- Multi Disciplinary Homeless Support Team
- Northern Ireland Council for Ethnic Minorities
- Northern Ireland Council for Refugee and Asylum Seekers
- Northern Ireland Women's Aid Federation
- Peripatetic nurse – homelessness
- Polish Welfare Association
- Queens Quarter Housing
- Refugee Action Group
- Salvation Army
- Simon Community
- Starting Point
- Society of St Vincent de Paul
- South Tyrone Empowerment Project
- The Welcome Centre

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