

Public Accounts Select Committee Agenda

Wednesday, 27 May 2015

7.00 pm,

Committee Room 1

Civic Suite

Lewisham Town Hall

London SE6 4RU

For more information contact: Katie Wood (Tel: 0208 31 49446)

This meeting is an open meeting and all items on the agenda may be audio recorded and/or filmed except for items numbered 4 on the Agenda. For legal reasons, this item will be considered in private with the press and public excluded.

Part 1

Item		Pages
1.	Minutes of the meeting held on 14 April 2015	1 - 4
2.	Declarations of interest	5 - 8
3.	No Recourse to Public Funds - response to recommendations	9 - 128
4.	ICT Strategy (To be considered in Part 2)	129 - 130
5.	Select Committee work programme	131 - 148
6.	Referrals to Mayor and Cabinet	

Public Accounts Select Committee Members

Members of the committee, listed below, are summoned to attend the meeting to be held on Wednesday, 27 May 2015.

Barry Quirk, Chief Executive
Tuesday, 19 May 2015

Councillor Jamie Milne (Chair)	
Councillor Mark Ingleby (Vice-Chair)	
Councillor Abdeslam Amrani	
Councillor Chris Barnham	
Councillor Maja Hilton	
Councillor Ami Ibitson	
Councillor Roy Kennedy	
Councillor Helen Klier	
Councillor Jim Mallory	
Councillor Crada Onuegbu	
Councillor Alan Hall (ex-Officio)	
Councillor Gareth Siddorn (ex-Officio)	

MINUTES OF THE PUBLIC ACCOUNTS SELECT COMMITTEE

Tuesday, 14 April 2015 at 7.00 pm

PRESENT: Councillors Jamie Milne (Chair), Mark Ingleby (Vice-Chair), Chris Barnham, Maja Hilton, Ami Ibitson, Roy Kennedy and Crada Onuegbu and

APOLOGIES: Councillors Abdeslam Amrani, Helen Klier and Jim Mallory

ALSO PRESENT: Katie Wood (Scrutiny Manager) and Selwyn Thompson (Head of Financial Services)

1. Confirmation of the Chair and Vice-Chair

1.1 RESOLVED:

That Councillor Jamie Milne be confirmed as the Chair of the Public Accounts Select Committee.

That Councillor Mark Ingleby be confirmed as Vice-Chair of the Public Accounts Select Committee.

2. Minutes of the meeting held on 10 March 2015

2.1 RESOLVED:

That the minutes of the meeting held on 10 March 2015 be confirmed as an accurate record of proceedings.

3. Declarations of interest

3.1 None.

4. Select Committee work programme 2015/16

4.1 Katie Wood, Scrutiny Manager, introduced the report and the draft work programme for the Public Accounts Select Committee for the 2015/16 municipal year.

- The work programme incorporated suggestions from the committee, standard items, suggestions from officers, items arising from previous scrutiny and issues that the committee is required to consider by virtue of its terms of reference.

4.2 In the discussion that followed the following key points were raised:

- Shared services could be a key part of reducing expenditure and more comprehensive information on possible options could be beneficial.
- The update on asset management would be presented to committee at the July committee meeting, meaning that there was potential for

the discussion on that item to feed into the review on income generation.

- The contract monitoring report due to go to committee in December could include information on adult social care contracts and their impact on local employment.

4.3 **RESOLVED:**

That the Public Accounts Committee work programme for the 2015/16 municipal year be agreed.

5. **Income Generation Review - evidence session 1**

5.1 Katie Wood, Scrutiny Manager, introduced the report for the income generation review. Committee members were requested to draw out areas of particular interest and identify areas for further evidence in the form of witnesses/ and or visits.

5.2 In the discussion that followed the following key points were raised:

- An entrepreneurial culture within the Council and a cultural shift in how income generation was viewed could be a positive thing. However, it would be difficult to precisely quantify any increases in income as a result of such a change.
- Full cost recovery where possible as well as maximising income were key factors.
- Central Government legislation meant that in some cases charging more than actual costs for a service was not permitted.
- The parking service was an area where income generation had increased in Lewisham, with parking charges experiencing the largest increase in price over recent years.
- Cross-selling services and a commercial culture within the Council would need to be looked at carefully as there could be negative aspects if staff were not fully engaged with the changes or if the customer experience was negatively affected.
- Additional information on Lewisham's proposal for a mutual for the youth service could be useful.
- Outsourcing services had the potential to save money in certain circumstances, but in other instances, bringing services back into Council control could be most beneficial. It would be important to assess the full financial and service quality implications of any proposal. Reducing inefficiencies and good management were key to profitability.
- The Oldham model of a trading arm for adult social care was interesting but there was concern as to whether it could be defined as a mutual and uncertainty about the potential benefits of such a proposal.
- Advertising on the Council website could be highly detrimental to the user experience. It was likely to only generate income if website usage was sufficiently high.

- Other sources of advertising income including identifying potential sites for place advertising, were being investigated and the committee would hear information on this as part of the report they were due to receive at the evidence session in July.
- The London Borough of Camden’s wi-fi scheme seemed innovative and a good source of income. This was an area that could be further researched to see whether there was any potential for replication.
- The model of the London Borough of Brent’s approved inspection status for building regulations was seen as interesting. Selling services competitively could be a useful source of income and could potentially be replicated in different service areas. It would be key to balance any investment costs with the risk element and the potential profit to assess the feasibility of any such project.

5.3 Selwyn Thompson, Head of Financial Services addressed the committee regarding Lewisham’s draft income strategy, appendix A of the report.

- This document was to provide a guide for service managers and to help ensure that fees, charges and other income sources were guided by specific principles and managed in a consistent way.
- The guiding principles for fees and charges were: full cost recovery; market rates where possible; rates rising with inflation; rates benchmarked to neighbouring authorities and/or similar voluntary or private sector organisations; agreed subsidies where deemed necessary; demand understood; concessions being strategically agreed and applied in consistent and transparent manner; and fees being efficiently collected.
- A fees and charges working group had been established which included the Head of Finance, three additional Heads of Service and the Cabinet Member for Resources.

5.4 **RESOLVED:**

That the draft income strategy be noted.

That further evidence be taken from the London Boroughs of Camden, Brent, and Hammersmith & Fulham in the form of witnesses and/or visits.

That the Committee receive additional written evidence from Oldham Council.

6. Referrals to Mayor and Cabinet

6.1 There were no referrals to Mayor and Cabinet.

The meeting ended at 8.35 pm

Chair: _____

Date: _____

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Agenda Item 2

Committee	Public Accounts Select Committee	Item No.	2
Title	Declarations of Interest		
Wards			
Contributors	Chief Executive		
Class	Part 1	Date	27 May 2015

Declaration of interests

Members are asked to declare any personal interest they have in any item on the agenda.

1 Personal interests

There are three types of personal interest referred to in the Council's Member Code of Conduct:-

- (1) Disclosable pecuniary interests
- (2) Other registerable interests
- (3) Non-registerable interests

2 Disclosable pecuniary interests are defined by regulation as:-

- (a) Employment, trade, profession or vocation of a relevant person* for profit or gain
- (b) Sponsorship –payment or provision of any other financial benefit (other than by the Council) within the 12 months prior to giving notice for inclusion in the register in respect of expenses incurred by you in carrying out duties as a member or towards your election expenses (including payment or financial benefit from a Trade Union).
- (c) Undischarged contracts between a relevant person* (or a firm in which they are a partner or a body corporate in which they are a director, or in the securities of which they have a beneficial interest) and the Council for goods, services or works.
- (d) Beneficial interests in land in the borough.
- (e) Licence to occupy land in the borough for one month or more.
- (f) Corporate tenancies – any tenancy, where to the member's knowledge, the Council is landlord and the tenant is a firm in which the relevant person* is a partner, a body corporate in which they are a director, or in the securities of which they have a beneficial interest.
- (g) Beneficial interest in securities of a body where:-
 - (a) that body to the member's knowledge has a place of business or land in the borough; and

- (b) either
- (i) the total nominal value of the securities exceeds £25,000 or 1/100 of the total issued share capital of that body; or
 - (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person* has a beneficial interest exceeds 1/100 of the total issued share capital of that class.

*A relevant person is the member, their spouse or civil partner, or a person with whom they live as spouse or civil partner.

(3) Other registerable interests

The Lewisham Member Code of Conduct requires members also to register the following interests:-

- (a) Membership or position of control or management in a body to which you were appointed or nominated by the Council
- (b) Any body exercising functions of a public nature or directed to charitable purposes, or whose principal purposes include the influence of public opinion or policy, including any political party
- (c) Any person from whom you have received a gift or hospitality with an estimated value of at least £25

(4) Non registerable interests

Occasions may arise when a matter under consideration would or would be likely to affect the wellbeing of a member, their family, friend or close associate more than it would affect the wellbeing of those in the local area generally, but which is not required to be registered in the Register of Members' Interests (for example a matter concerning the closure of a school at which a Member's child attends).

(5) Declaration and Impact of interest on member's participation

- (a) Where a member has any registerable interest in a matter and they are present at a meeting at which that matter is to be discussed, they must declare the nature of the interest at the earliest opportunity and in any event before the matter is considered. The declaration will be recorded in the minutes of the meeting. If the matter is a disclosable pecuniary interest the member must take no part in consideration of the matter and withdraw from the room before it is considered. They must not seek improperly to influence the decision in any way. **Failure to declare such an interest which has not already been entered in the Register of Members' Interests, or participation where such an interest exists, is liable to prosecution and on conviction carries a fine of up to £5000**
- (b) Where a member has a registerable interest which falls short of a disclosable pecuniary interest they must still declare the nature of the interest to the

meeting at the earliest opportunity and in any event before the matter is considered, but they may stay in the room, participate in consideration of the matter and vote on it unless paragraph (c) below applies.

- (c) Where a member has a registerable interest which falls short of a disclosable pecuniary interest, the member must consider whether a reasonable member of the public in possession of the facts would think that their interest is so significant that it would be likely to impair the member's judgement of the public interest. If so, the member must withdraw and take no part in consideration of the matter nor seek to influence the outcome improperly.
- (d) If a non-registerable interest arises which affects the wellbeing of a member, their, family, friend or close associate more than it would affect those in the local area generally, then the provisions relating to the declarations of interest and withdrawal apply as if it were a registerable interest.
- (e) Decisions relating to declarations of interests are for the member's personal judgement, though in cases of doubt they may wish to seek the advice of the Monitoring Officer.

(6) Sensitive information

There are special provisions relating to sensitive interests. These are interests the disclosure of which would be likely to expose the member to risk of violence or intimidation where the Monitoring Officer has agreed that such interest need not be registered. Members with such an interest are referred to the Code and advised to seek advice from the Monitoring Officer in advance.

(7) Exempt categories

There are exemptions to these provisions allowing members to participate in decisions notwithstanding interests that would otherwise prevent them doing so. These include:-

- (a) Housing – holding a tenancy or lease with the Council unless the matter relates to your particular tenancy or lease; (subject to arrears exception)
- (b) School meals, school transport and travelling expenses; if you are a parent or guardian of a child in full time education, or a school governor unless the matter relates particularly to the school your child attends or of which you are a governor;
- (c) Statutory sick pay; if you are in receipt
- (d) Allowances, payment or indemnity for members
- (e) Ceremonial honours for members
- (f) Setting Council Tax or precept (subject to arrears exception)

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Agenda Item 3

Public Accounts Select Committee			
Title	Response from Mayor and Cabinet to the recommendations by the Select Committee from the review on No Recourse to Public Funds.		
Contributor	Scrutiny Manager	Item	3
Class	Part 1 (Open)	27 May 2015	

1. Purpose

The attached report provides committee members with details of the response from Mayor and Cabinet to the recommendations made by the Public Accounts Select Committee as part of their review on those with No Recourse to Public Funds.

2. Summary

At its meeting on 5 February 2015, the Public Accounts Select Committee made recommendations to Mayor and Cabinet as part of its in-depth review into those with No Recourse to Public Funds. This report provides an update and sets out the response to those recommendations. At its meeting on 13 May 2015, Mayor and Cabinet resolved that the report be submitted to the Public Accounts Select Committee as a response to their recommendations.

3. Recommendations

- 3.1 That the response to the Select Committee's recommendations listed in paragraph 11 of the report to the Mayor and Cabinet on 13 May 2015 be noted.

4. Mayoral Response

- 4.1 A report from the Executive Director for Children and Young People and the Executive Director for Customer Services was considered at the Meeting of Mayor and Cabinet on 13 May 2015.
- 4.2 The Mayor resolved that the report be submitted to the Public Accounts Select Committee.

Background Documents

Appendix A – Report to Mayor and Cabinet 13 May 2015 - No Recourse to Public Funds: Findings from officer led review and pilot scheme

Minutes of the meeting of Public Accounts Select Committee on 5 February 2015.

If you have any questions regarding the report, please contact Kevin Flaherty, Head of Business and Committee (020 8314 9327) or Katie Wood, Scrutiny Manager (020 8314 9446).

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MAYOR AND CABINET			
REPORT TITLE	No Recourse to Public Funds: Findings from officer led review and pilot scheme		
KEY DECISION	Yes	ITEM NO.	
WARD	All		
CONTRIBUTORS	Executive Director for Children and Young People Executive Director for Customer Services		
CLASS	Part 1	DATE	13 May 2015

1 Summary

- 1.1 No recourse to public funds (NRPF) is a term used to refer to people from abroad who are subject to immigration control and have no entitlement to welfare benefits or public housing. Although people with NRPF have no entitlement to most state support, local authorities may owe some people with NRPF a duty of support in terms of housing, subsistence or other services as part of their duties under the Children Act 1989 and the Care Act 2014 or where the refusal to provide support would result in a breach of the family's Human Rights or breach their Treaty rights.
- 1.2 In Autumn 2013, a report presented to the Council's Executive Management Team identified a rapid growth in the number of families with NRPF presenting to the Council seeking financial support under our duties flowing from the Children Act 1989. The report raised concerns about the service issues arising from these pressures and the implications this was having for the consistency and equity of our assessment function. Following on from this report, officers began a review of operational practice. The review identified a number of issues with the Council's operating model which meant that the needs of families were not being consistently and fairly assessed and provided for. Following this review, the Council started a pilot in June 2014 to set up a new team to put additional capacity into conducting assessments and managing cases. This pilot will formally close at the end of May 2015.
- 1.3 As part of their scrutiny role, between July 2014 and February 2015 the Council's Public Accounts Select Committee (PASC) undertook an in depth review of the Council's approach to managing NRPF. Their review was triggered by the significant growth in spend for this client group which had grown from £700k in 2010 to over £5m by the end of the financial year 2013/14.
- 1.4 This report provides background and evidence relating to the legal responsibilities for local authorities, how Lewisham and other authorities are

responding to these in practice and the financial, legal and equalities implications of these. As well as setting out the local authority approach, with options to be considered for the future support for these families, the report also provides details on the engagement process and representations which have been received from other parties who work with this client group.

2 Purpose of report

- 2.1 To provide an overview of the legal responsibilities of the Council in relation to children and families with NRPF.
- 2.2 To explain the Council's current and previous approaches to dealing with applications for support from families with NRPF, including outlining the findings of the officer led review of NRPF between October 2013 and January 2014 and the NRPF pilot which has been in operation since June 2014.
- 2.3 To seek a decision on the preferred option for the ongoing management of NRPF cases following the conclusion of the NRPF pilot at the end of May 2015.
- 2.4 To respond to the recommendations of the PASC as part of their NRPF review which took place between July 2014 and February 2015.

3 Recommendations

It is recommended that the Mayor agrees:

- 3.1 to note the legal responsibilities of the Council in relation to children and families with NRPF
- 3.2 to note the findings of the officer led review and PASC review on the Council's approaches to NRPF
- 3.3 to note the representations from other parties in relation to the Council's legal responsibilities and approaches
- 3.4 It is recommended that the Mayor approve option 2 in this report as set out in paragraph 9.3 of this report to extend the current pilot model for a further year.
- 3.5 That the report be reported to the Public Accounts Committee

4 What is NRPF

- 4.1 NRPF applies to a person who is subject to immigration control in the UK and has no entitlement to welfare benefits or public housing. These restrictions are set out in Section 115 Immigration and Asylum Act 1999.

- 4.2 Whilst most state benefits are classed as ‘public funds’ and therefore people with NRPF are excluded from receiving them, there are some state provided services which are not classed as public funds including assistance from the emergency services and support provided under social services legislation.
- 4.3 Families with NRPF are therefore entitled to present to local authorities seeking support under the Children Act 1989. Section 17 of the Act sets out a general duty upon local authorities to ‘safeguard and promote the welfare of children within their area who are in need’. Under the Act, the local authority has a duty to assess families presenting as in need and have the power to provide services to those children and families which ‘may include providing accommodation and giving assistance in kind or in cash’.
- 4.4 Alongside the above, local authorities also must consider whether the adults within the family presenting are excluded from support under Schedule 3 Section 54 of the Nationality, Immigration and Asylum Act 2002. The categories of people excluded from support are:
- A person granted refugee status by another EEA state and any dependents
 - An EEA national and any dependents
 - A refused asylum seeker who has failed to comply with removal directions
 - A person unlawfully present in the UK
 - A failed asylum seeker with a dependent child

However, although the groups above are excluded from support, the local authority also must consider whether the refusal to provide support would result in a breach of the family’s Human Rights or in the case of EEA nationals would breach their Treaty Rights.

5 Profile of people with NRPF approaching local authorities

- 5.1 Because there is no current system to comprehensively measure the number of people leaving the UK (only those entering), there is no way of measuring with certainty the number of people with NRPF in the UK. However, a study by the London School of Economics (LSE) gave a central estimate that in 2007 there were 725,000 irregular migrants and children of migrants in the UK. The LSE estimates that two-thirds of irregular migrants live in London. Reports estimate that two-thirds of the total number of irregular migrants are refused asylum seekers and at least 50,000 are individuals who have overstayed their visa.¹

¹ Migrants Rights Network (2009) ‘Irregular Migrants: the urgent need for a new approach’

- 5.2 Over the last year, records of cases being supported or approaching Lewisham Council have been analysed. The current profile of cases being supported is as follows:
- 47% of families have Nigerian nationality, 37% have Jamaican nationality and 7% have Ghanaian nationality. The remaining 9% of cases are from a diverse range of countries across the world.
 - The majority of families are either visa-overstayers (66%) or have been granted limited leave to remain with NRPF (19%).
 - Data available on NRPF Connect shows broadly similar trends. The most frequently occurring nationalities are Nigerian (36%) Jamaican (18%) and Ghanaian (10%). The remaining 36% of cases are from 91 countries across the world.
- 5.3 It is important to note that local authorities are not responsible for providing support to asylum seekers. This support is provided by the Home Office separately. The families being supported by Lewisham, and indeed all local authorities, usually entered the country on a valid visa which they have subsequently overstayed. They have often been in the country for a number of years. They have typically had children in the country and developed networks to enable them to support themselves and meet the needs of their children for a considerable period of time. Most are not known to social services departments before their presentation to the local authority to seek support under section 17 of Children Act.

6 The officer led review of NRPF in Lewisham

- 6.1 On 18th September 2013, Lewisham's Executive Management Team received a report from the Director of Children's Social Care as part of their regular budget monitoring. The report addressed the financial and service delivery pressures associated with supporting people with NRPF. The report identified a number of external factors contributing to the rising costs in this area, particularly linked to Home Office processes. There was a significant lack of communication between the Home Office and the Council which meant that as families' status changed, the Council was unaware of this, or it was supporting families about whom it held inaccurate information. The casework for these families appeared static. Support which could have been given to enable the families to move away from dependency upon the Local Authority was not being provided.
- 6.2 Following on from this report, an officer led review was commissioned to identify whether our current approaches to assessing and supporting this group were fit for purpose to ensure the Council was meeting its duties to children in need, and enabling families to progress to care for their children within a mainstream environment of independent living.

- 6.3 The officer led review of NRPF approaches was conducted between October 2013 and January 2014. During this period evidence on the Council's approach was gathered from interviews with a range of professionals involved with assessing and managing NRPF cases in Lewisham. This included front-line social workers and managers, legal services, fraud officers and the Home Office. In addition, interviews were held with other London local authorities to compare demand levels and approaches for assessment and case management. Existing NRPF clients' views were sought together with those of local solicitors (details of findings in paragraphs 10.2 and 10.3).
- 6.4 Alongside this, detailed analysis of existing caseloads was completed to review the level and type of need triggering presentation. Analysis was also conducted to map growth in demand and the resource implications of this.
- 6.5 The review included individual case analysis to examine how the assessment approach had worked in practice and the evidence which was being used to establish whether an accurate decision on whether there was a child in need to which the local authority owed a duty, and how those children's needs were being met.
- 6.6 The review also included a desk-top analysis of legislation, national and local policy and research on this client group.
- 6.7 On 17th January 2014, a report was presented to the Director of Children's Social Care outlining the key findings from the review. These are outlined below:
- 6.8 Demand had risen rapidly over the last five years with the number of cases being supported rising from 31 cases in 2010 to 244 by 2013. The cost to the Council associated with this support during this period grew from c. £700k to over £5m. This cost was predicted to grow to over £8m based on current trends. Our support costs were also not in line with other local authorities. Research conducted by the NRPF Network in 2011² suggests that Lewisham's spend on this group at the time was amongst the top third of 51 authorities surveyed. Additionally, evidence gathered from interviews with other local authorities as part of the review identified that by 2013, Lewisham had a caseload of 244 as against 131 cases in Southwark, 41 cases in Islington and 20 in Wandsworth.
- 6.9 Lewisham did not have a specialist team responsible for dealing with NRPF cases. The function was spread across children's social workers who dealt with NRPF assessments alongside their safeguarding and child protection work. This spread of decision making across such a wide group of social workers

² NRPF Network (2011) 'Social Services Support to People with No Recourse to Public Funds: A National Picture'

meant that decision making processes and evidence requirements were not consistent. The model was also not in line with other boroughs with 24 of the 51 authorities surveyed by Islington Council having set up specialist NRPF teams.

- 6.10 Assessment practices were not evidentially led. Time constraints and a lack of training on the complex rules surrounding immigration and entitlements for this group meant that very little investigation was actually being conducted into whether there was evidence to support claims for services. As a consequence the Council was not robust enough in its assessment of a family's history, resources, parenting capacity and whether in fact the family was destitute or homeless. Although detailed data on case acceptances was not collected at the time, service managers reported that at least 50% of cases were accepted for support following presentation to the local authority. The NRPF Network's 2011 report also identified significant variations in the number of cases accepted for support following assessment, ranging from as high as 90% to as low as 0%. The report identified 'the discrepancy in acceptance rates between local authorities is too significant to be explained by trends in client referrals alone, and serves to highlight the inconsistency of practice between local authorities'. For current acceptance rates please see para 8.1.
- 6.11 The significant characteristic of the families presenting for services from a NRPF background is that they are usually self-referring. This means that they present in circumstances separate from the mainstream interagency referral route to children's social care, where background histories and concerns are usually already flagged. This means that there is a heightened requirement upon assessing officers to collect full and accurate detail from the adults as to their histories and circumstances, before deciding on appropriate levels of support. The reasons for presentation for services are also usually quite distinct from families subject to interagency referral. NRPF referrals are, by their nature, overwhelmingly motivated by economic need.
- 6.12 It is of note that, in 2013/14 of the 21,037 referrals received through the interagency network to children's social care, where children's welfare has already been flagged as a possible issue, only 9.8% of families were identified as requiring an in depth Child in Need assessment for services under s17 Children Act.
- 6.13 By way of comparison, although the local authority duty towards children and families with NRPF is similarly derived from the Children Act, over 95% of the families presenting to the local authority have no needs, other than those relating to finance or housing, which would otherwise have triggered social care involvement. Housing, and particularly the affordability of housing in London, was identified as the key driver for presentation to the local authority. In the overwhelming majority of cases there are no other welfare needs.

- 6.14 Resource constraints in the service meant that once a case had been accepted for support, there was very little further involvement with the family to either review ongoing eligibility or to support the family to regularise their position and access mainstream benefits or employment support. This meant that very few cases stopped receiving support each year. The NRPf network's research showed that once again, this was not in line with other Councils who reported that 62% of cases were transitioned away from local authority support within 2 years.
- 6.15 The Council's property procurement and payment processes were administratively burdensome and locating these functions within social care was not enabling the authority to make use of the skills held elsewhere in the organisation which would improve value for money for cases the Council were supporting.

7 The NRPf pilot

Team structure

- 7.1 The review recommended that the Council invest in the development of a specialist NRPf team for a six month period, to be overseen by a project board chaired by the Director of Children's Social Care to test the impact of more corporate investment in assessing and managing NRPf cases. The team would be responsible for managing elements of the assessment process for all new cases presenting to the authority and ongoing management of cases to support the swifter resolution of local authority support. Funding was agreed for a six month period by our Corporate Expenditure Panel on 21st February 2014 and the pilot took over responsibility for assessment of new cases from 16th June 2014. The majority of the existing caseload transferred to the new team between July and November 2014.
- 7.2 On 4th November 2014, funding was agreed for a further six months to enable the process for reassessing and transitioning historic caseloads to be effectively tested as the length of time required to transition c. 300 cases had meant this had not been achieved in the first six months. The pilot will formally end on 29th May 2015.
- 7.3 The funding for the pilot was used to recruit:
- A specialist NRPf manager with experience of social care and immigration related advocacy.
 - caseworkers recruited from social care and housing backgrounds with experience of conducting evidentially led assessment processes for vulnerable children and families.
 - An embedded Home Office worker to conduct immigration status checks and share information with relevant departments to support the resolution of cases.

- A business support officer to manage all payment and performance matters.
- Specialist support in other areas of the organisation for fraud investigation, housing procurement, legal advice.

Assessment processes and criteria

7.4 The pilot introduced a revised two stage assessment process for all new cases presenting to the local authority.

- On the first day, all new cases presenting to the authority are seen by a caseworker in the pilot team. The caseworker takes the family through a face to face assessment seeking to gather evidence on the family's needs and eligibility as outlined in paragraph 7.5.
- If it appears on the evidence available that that the family is in need and is not excluded from support then temporary accommodation and short-term subsistence are provided. If the evidence identifies that the family is not in need, or another course of action (i.e. presentation to another authority) is appropriate, the family will be advised of this and given the reasons for this decision. In some cases a human rights assessment will be required which will be completed by the pilot team.
- Families requiring a more in depth assessment will be booked a further appointment for a face to face interview and advised by their caseworker as to the information and evidence required to complete their assessment. This will usually be the next working day. At this appointment, the same need and eligibility criteria as outlined in paragraph 7.5 are used to guide the interview. The difference in the process at this stage is that there is more time and evidence for the caseworker to review with the family.
- The caseworker will usually have to take a number of follow up enquiries after this assessment, for example contacts to landlords, schools, GPs etc. A further face to face interview may also be required with the family. This process usually takes between two weeks and a month but can take longer depending on the complexity of the case and the willingness of the family to engage constructively with us to provide the evidence we have requested. During this time the family will continue to be provided with temporary accommodation and subsistence.
- Following the completion of all relevant assessments, including an in depth Child in Need assessment and/or Human Rights Assessment if they are required, the family will be advised of the decision on whether the local authority considers that there is a child in need in the family to whom the local authority owes a duty.
- If the local authority owes the family a duty, the caseworker will instruct the Council's housing procurement service to identify more settled accommodation for the family. If the Council does not owe a duty, the family will be given notice to vacate the temporary accommodation and

will be advised on the next steps they need to take. This may include a referral to Choices, the Home Office's Assisted Voluntary Returns Programme.

7.5 The key parts of the assessment into the needs of the children and families presenting are set out below. These are in line with the good practice guidance issued by the national No Recourse to Public Funds Network:

- *Which is the appropriate authority to undertake the full assessment .*
 - This includes establishing information such as where the family lives now and has lived previously, where the children attend school and which GP the children are registered with.
 - If following the completion of the triage assessment, the conclusion is that the appropriate authority is not Lewisham then contact will be made to the relevant children's social care department or specialist NRPF team and details of the reason for the referral being made will be given to that department. We have developed a network across our neighbouring boroughs and will always seek confirmation that the relevant authority will undertake their assessment and the family will then be referred and provided with financial assistance to travel to the relevant Council office if this is required.
 - If it is not possible for a referral to be completed on the day and the family is homeless that night, accommodation will be provided until appropriate arrangements can be put in place to ensure an assessment is undertaken by the other authority. This may include a full section 17 assessment if that local authority believes it to be necessary.
- *Whether exclusions apply in line with sch 3 of the Nationality, Immigration and Act.*
 - This involves checking the current immigration status and immigration histories of the adults linked to the family's claim via our embedded Home Office worker, investigating Zambrano rights and reviewing the details of any current applications or reconsideration requests to establish whether these have sufficient grounds to not be deemed 'hopeless or abusive'.
 - If following the completion of the triage assessment, the conclusion is that the family's immigration status may exclude them from support, a Human Rights Assessment is conducted to establish whether a refusal would amount to a breach of their human rights and this includes whether there are any practical or legal barriers to return. This process is supported by our legal team.

- o If the conclusion of this assessment is that there are no Human Rights grounds to provide local authority support, the family is referred to Choices, the Home Office commissioned assisted voluntary returns programme.
- *Whether the family is destitute or homeless and therefore there is a child in need*
 - o The need which triggers presentation to the local authority for the vast majority of NRPF cases is that the family has insufficient funds or housing to meet the needs of their children. In conducting its assessment of need, the authority must therefore establish whether there is evidence of this need.
 - o In assessing whether the family is destitute and therefore in need, the Council uses the definition of destitution outlined in s95 of the Immigration and Asylum Act 1999. This states that someone is destitute if they or their dependants do not have adequate accommodation or any means of obtaining it and/or they cannot meet essential living needs.
 - o As stated by Justice William Davis in a recent application for Judicial Review successfully defended by this authority, insofar as destitution is asserted, this involves a high threshold which the authority is entitled to reach a conclusion has not been overcome based on the information available.
 - o This assessment involves conducting credit checks, reviewing bank statements, identifying previous employment histories and why these have ended, assessing available support networks and why these have ended and establishing whether current accommodation has been legally terminated.
 - o There is clear case law in R(MN & KN) v LB Hackney and R(N&N) v LB Newham - [2013]EWHC 1205(Admin) which entitles Local Authorities to conclude a family is not destitute if the adults do not provide sufficient information to enable a finding of destitution to be made.
- *Whether there are any further safeguarding or children in need concerns.*
 - o The details of cases presenting to the local authority are sent to the children's social care Multi Agency Safeguarding Hub (MASH) for an electronic check to establish authenticity of relationships, to protect children against trafficking or being exploited for accessing resources as well as to check whether other agencies have or do raise safeguarding concerns.
 - o Families are also given the opportunity to tell us during their assessment about any particular concerns. Caseworkers all

have experience working on the front-line with vulnerable people and have received training on the identification of safeguarding issues. If the family, caseworker or MASH assessment raises concerns, these are passed immediately to children's social care for a fuller assessment of the family's needs.

- o If the first phase of assessment identifies the local authority may owe a family a duty under s17 Children Act, temporary accommodation will be provided to the family whilst a full Children in Need assessment will be conducted by an appropriate social worker.
- The outcome of the assessment will be communicated to families at an appointment with their caseworker and is provided in writing if the applicant requests it.

Casework processes

7.6 In addition to the assessment process above for new cases, the pilot team is also responsible for managing existing cases. Each caseworker has a caseload of approximately 46 cases. They are responsible for:

- Conducting annual reassessments of each case to determine whether the local authority continues to have a duty to support in line with the requirements above.
- Conducting regular immigration status checks on the family, notifying the Home Office of any relevant change of circumstance and providing information to the family's solicitors and/or the Home Office in relation to their application as requested.
- Supporting the family to access mainstream benefits by applying for code changes via the Home Office if the family is eligible for this.
- Dealing with day to day concerns relating to housing and payments and making referrals to other departments (including children's social care) if this is appropriate.
- Helping the family resettle away from local authority support if they are either granted leave to remain or access to benefits. This includes liaising with our in house property procurement specialists to identify private rented sector properties, helping the family to make a claim for benefits and providing them with information on schools, health services and Council services if the family is moving outside of Lewisham as part of their resettlement.

8 Impact & learning from the pilot

Numbers of new cases presenting and support decisions

8.1 Since the start of the pilot, the new team have made decisions on 277 new cases presenting for support. This is equivalent to approximately 6 new cases presenting each week. Of these 8 are now receiving ongoing support from the local authority and a further 27 have received some form of temporary support during the last year. For 16 of these cases, temporary support is ongoing pending more detailed investigations on their cases. This is an acceptance rate of 13% which is a significant reduction in the number of cases accepted from support on the year prior to the pilot when acceptance rates were over 50%. This rate of acceptance is now in line with acceptance rates reported by our neighbouring boroughs who have recently put in place dedicated teams of this type. For example, Lambeth Council who introduced a dedicated team a few months after Lewisham report that their acceptance rate is now 15%.

8.2 The breakdown of reasons for the local authority determining, following its assessment, that the family is not owed a duty are set out below:

- **Not Destitute (18%).** Nearly all cases still had both accommodation and income (from benefits, part-time working, full time working or a partner working). In a small number of cases, applicants were found to be running a business or generating an income by sub-letting part of their property or illegally sub-letting. Average income £970pm, although there have been cases where income was in excess of £2K pm
- **Fraud Referrals (11%).** These were all significant cases involving complex networks, significant income and/or other assets. In one case the claimant owned undeclared property in Surrey.
- **No Home Office Application or Appeal (10%).** Of which 2.5% never had an application in or an immigration history with the Home Office and so were likely to be an illegal entrant. For those who had made an application, the average time since their last active claim or appeal before approaching Lewisham is 18 months.
- **EU Nationals (9%)** The majority were refused because they were not exercising Treaty Rights but in a few cases applicants were eligible and therefore supported to make a full claim for benefits. One applicant was supported to set up his own business. Most applicants come from Netherlands (originally from Nigeria), Poland, Spain and Portugal.
- **Not Homeless (8%)** Approached before any eviction notice or order granted or illegally evicted by landlord. In all cases of illegal eviction, applicant supported to regain entry.
- **No Evidence to Support Claim at all (8%)** These are applicants who ask for support but have no identity documents, no passport, no proof of where they live or that any accommodation has been lost and no financial information.
- **Stronger History with Another Borough (6%)** Majority referred to Southwark but there have also been small number of cases from Lambeth, Greenwich & Croydon. Other local authorities have included Hackney, Nottingham and Northampton.

- **Refusal to Co-operate (4%)** Mostly this involves not being prepared to sign the consent to Lewisham making necessary enquiries but it has included a refusal to answer any questions at all.
- **Didn't Return for Assessment when given an Appointment (4.5%)**
- **Already Supported by NASS (1.5%)**
- **Domestic Violence Concession (1.5%)** which enables some individuals affected by domestic violence to claim financial support from the Home Office.
- **Failure by Home Office to apply Transitional Rules in Article 8 Repeat Claims (2.5%)**
- **Other (16%)** this includes a wide range of cases including:
 - Applicants who were returning nationals or had a right to return because of settled status
 - People with extensive or sufficient support networks including family and friends
 - Single adults with no care needs
 - Those who had indefinite leave to remain and so entitled to work and/or claim benefits
 - Those whose applications were abusive or hopeless
 - Those already in receipt of support
 - Recent asylum claims yet to be picked up by NASS

8.3 The investment in resource at the initial stage of assessment in clear, evidence led and consistent assessment of the presenting family's needs is the main difference in the new approach against the previous operating model and explains the difference in acceptance levels. The overall framework of assessment has not changed significantly. Destitution and immigration checks were always part of children's social care processes for establishing whether there is a child in need and are in line with NRPF Network guidance; they are also common to most local authorities. However, the extent to which the family's claims of destitution or homelessness were investigated varied greatly in the past. It is now integral to the process. It is a complex assessment which involves gathering evidence from a number of sources to pull together a picture of their actual circumstances and the appropriate response to those circumstances. The level of resource which was in place previously and the fact that it had been disbursed in a fragmented way across a whole social work department meant that the Council did not have the capacity required to undertake adequate assessments. The pilot has addressed this issue.

8.4 The active involvement of our fraud department to help ensure that the evidence we collect is genuine and that the information contained within it accurate has been important to this process. In total, the pilot team have referred 29 cases to our fraud department on the basis of more serious concerns being raised which triggered the need for more thorough fraud investigation.

Reassessment for existing caseload

- 8.5 In total to date the pilot team have completed full reassessments of 97 cases transferred to the new team since November 2014. The reassessment process has been put in place to ensure that all cases accepted before evidential assessment processes were put in place receive a more thorough investigation of their circumstances. To date, approximately 25% of these reassessments have resulted in a change to the support they receive from the local authority. In the majority of cases this is because caseworkers have identified undeclared income, for example through working.
- 8.6 We are also working with the Home Office family removals service on 38 existing cases who have been receiving local authority support for some time but have not had an application, appeal or reconsideration request for a considerable period. It is our duty under schedule 3 of the Nationality, Immigration and Asylum Act 2002 to notify the Home Office of these cases. We are putting in place face to face sessions with the Home Office to explain return home options and ensure relevant paper-work is served where this is appropriate.

Case resolution

- 8.7 Since November 2014 when the majority of the existing caseload was fully transferred from children's social care to the pilot team, the Council has been successful in obtaining code changes for 94 families enabling them to access state benefits to which they would otherwise not have been entitled. We have put in place a comprehensive resettlement package for these families, including support to find affordable privately rented properties, make benefit claims, seek work and locate schools and services if they are moving from Lewisham.
- 8.8 We are in the process of investigating how we can provide access to in house local authority employment support to parents who have the right to work but not to claim benefits, who are not entitled to support via Jobcentre Plus. We have also recently agreed to fund a dedicated Home Office decision maker to work solely on cases being supported by Lewisham to seek to have decisions made on their immigration applications more quickly.
- 8.9 Alongside putting in place a more evidentially led and consistent assessment process, one of the key priorities for the pilot was to develop a case-management approach which provided more intensive support for families to whom the local authority owed a duty to ensure that their immigration status could be resolved more quickly. This is a key priority for the Council because ultimately, the best interests of the child are achieved when their parents have a settled immigration status, either in the UK or elsewhere, which enables them to access employment, benefits and state services on a par with their peers.

Challenge to our approach

- 8.10 The Council's approach has received a high level of scrutiny over the past year. In total we have received 32 representations from solicitors which required detailed responses and 12 pre-action protocol letters. To date two cases have been to court. In both cases, the courts have found in Lewisham's favour. In the most recent case, the high court judge expressly endorsed the phased assessment approach stating: 'There is no dispute as a matter of law that it is open to [Lewisham] to discharge duty by conducting staged assessment. Therefore initial assessment open to [Lewisham] and justified.'
- 8.11 However, it is important to note that Lewisham has recently received a Pre Action Protocol letter challenging the overall approach we take to assessing this group. The claim questions the legal basis of the initial stage of the eligibility assessment which is not only used by Lewisham but is common practice amongst local authorities and is based on the NRPF guidance issued by the NRPF Network. The claim comes from Project 17, a local advocacy organisation which works with families with NRPF. Their website states that their objective is to ensure that local authorities comply with the duties imposed on them by section 17 of the Children Act 1989. Representations received from Project 17 and other advocacy organisations in relation to the Council's approach have been included in this report in paragraph 10.5 and appendices 3 to 5.

Other boroughs

- 8.12 Over the last year, we have been working closely with our neighbouring boroughs to share our learning from the first phase of the pilot. Bromley, Greenwich, Lambeth and Southwark Councils are now working jointly with us on a Department for Communities and Local Government (DCLG) counter fraud project specifically focused on NRPF cases. The DCLG have provided funding to standardise our assessment process, develop a shared assessment and case management system and to conduct a more thorough analysis of trends in local authority presentations for people with NRPF. The bid is based on the initial evidence from the first six months of the Lewisham pilot which has identified the impact of evidentially led assessment processes. In the longer term we are looking at possible options to deliver the NRPF assessment and case management function as a shared service.

9 Options for the future of NRPF assessment and case management in Lewisham

- 9.1 The current NRPF pilot will end on 29th May 2015. The Mayor is therefore asked to make a decision, based on the evidence contained in this report, as to

the preferred option for the future of the Council's approach. Three options have been prepared and are outlined below.

9.2 OPTION ONE: Mainstream the pilot as a permanent Council service in its current form

Pros

- 9.2.1 Establishing the pilot team as a permanent approach to dealing with NRPF applications will enable the Council to continue to manage cases as set out in the previous sections of this report. This will mean that dedicated capacity is in place across the organisation to ensure that assessment processes for need when triggered by homelessness and destitution are evidentially and consistently assessed. It is expected that, based on the evidence outlined in this paper, the Council would be likely to accept some form of duty to support in approximately 35 new cases per year. This is of course subject to any legislative changes which may affect the local authority's duties.
- 9.2.2 Investing in the dedicated capacity for an NRPF team ensures that the ongoing work to support the regularisation and resettlement of existing cases could continue. The Council will be able to pursue plans with the Home Office to put in place a dedicated decision maker to expedite decisions on Lewisham families with unresolved immigration status.
- 9.2.3 Establishing the service as a permanent team will make the process for recruiting and retaining skilled and experienced officers in this field easier. This will ensure that the overall quality of decision making remains high and that those receiving services receive better continuity of service.
- 9.2.4 Mainstreaming the pilot will provide a sound base for the Council to pursue stronger joint-working with other London boroughs and build the foundations for a shared service model for NRPF.

Cons

- 9.2.5 Annual investment of £700k will be required for staffing the team and support services and will need to be built into the Council's base budget.
- 9.2.6 This is not the preferred option for the advocacy organisations who have made representations included within this report. The Council is likely to continue to receive challenge from these organisations.
- 9.2.7 Although the pilot has been in operation for a year, the complexity of the service and the length of time it has taken to transition cases to the new team means that there is still a lot that the Council can learn in terms of the overall structure and model which is likely to be required in the longer term. In particular, it is expected that over the next year the Council will be able to notably reduce the number of cases which continue to require local authority support as a result of the work being

done with the Home Office to seek code changes so that families can access benefits and the imminent project to put in place a dedicated decision maker. Based on the successes of this second year in this regard, it may be the case that the level of resource required for a permanent team will be smaller than is currently the case.

9.3 OPTION TWO: Extend the current pilot model for a further year

Pros

- 9.3.1 The benefits outlined in 8.2.1 and 8.2.2 will also be achieved if option two is selected. However, committing to funding for one year only will mean that the benefits associated with the new assessment and case management approaches will only be secured for one year.
- 9.3.2 As explained in 8.2.7, there is a significant amount of work the Council can undertake over the next year to seek to reduce the number of cases requiring local authority support whilst complying with our duties. If the pilot is extended in its current form for a further year, a decision can then be made on the shape and scale of a mainstreamed team which is likely to be at a lower cost than the £700k which is currently the predicted cost for the team.

Cons

- 9.3.3 One off funding of £700k will be required for a further year of the pilot.
- 9.3.4 This is not the preferred option for the advocacy organisations who have made representations included within this report. The Council is likely to continue to receive challenge from these organisations.
- 9.3.5 The Council will continue to need to recruit to posts within the new structure on a temporary basis although the pressure will be less significant than in the first year of operation when recruitment was on 6 month contracts.
- 9.3.6 The Council would be unlikely to be able to pursue a shared service model during this next year and may need to wait until a more permanent decision on the operating model is taken at the end of the first year.

9.4 OPTION THREE: Do nothing

Pros

- 9.4.1 This is the preferred option of the advocacy organisations who have made representations included within this report. The threatened class action judicial review would probably not be pursued. However, this does not mean the Council would receive no further legal challenge given that individual challenges were issued prior to the pilot commencing.
- 9.4.2 The additional funding outlined could be reviewed and may not be at the same level. However, the Council would still need to consider whether further resourcing in children's social care would be required to enable

social workers to conduct assessments of this type effectively alongside their other safeguarding and child protection duties.

Cons

- 9.4.3 It is likely that if the service returns to the operating model in place before the pilot then the issues identified in paragraphs 6.1 to 6.15 will still be concerns. In particular, the Council risks not ensuring that it is appropriately complying with its duties to adequately assess need and ongoing eligibility in line with the Children Act 1989 and the Nationality, Immigration and Asylum Act 1999.
- 9.4.4 The specialist identification of children in need within a largely self-referring cohort would be lost, particularly with reference to the expertise needed to identify those children at risk from trafficking/exploitation issues. Families would lose their single point of contact with the Council. Children within a NRPF family also benefit from the focus of a specialist approach, particularly if their family is assisted early with stable, long term affordable family housing and transition into the mainstream, services not within the resources of a generalist Children's Social Care Service.
- 9.4.5 Establishing the pilot team was a lengthy and complex process and reintegrating the service back to the model in place before the pilot will take considerable time and cause significant disruption and risk for both new cases presenting to the authority and those already being supported.
- 9.4.6 The expertise of the current team would be dispersed and lost to the Council, and to those families benefitting from the support they are receiving to move out of Local Authority support and into mainstream benefits and employment. The case work and focus on this aspect of the work was completely absent prior to the pilot.
- 9.4.7 The estimated costs of continuing with the operating model prior to the pilot for the local authority was estimated to be committed annual spend of c. £15m by the end of financial year 2017/18. The Council would need to consider how to fund this.

10 Engagement and Representations from third parties

- 10.1 In reaching a decision on the preferred option for the ongoing management of NRPF in Lewisham, the Mayor is also asked to note the following engagement, reviews and representations which have informed the pilot and the options presented above:
- 10.2 Before the start of the pilot, we sent 200 questionnaires to NRPF families who were currently being supported by the Council. We asked them a series of questions about the planned assessment process and the ongoing support for families. We received completed questionnaires from 39 families. A summary of their responses is below:

- o 38 people said that they agreed that ‘that having a specialist team will make it easier to know who to contact when you need to’
- o 35 people said that they thought individuals should be asked to provide evidence of where they have been staying when they apply for support
- o 38 people said that checking status with the Home Office at the start of the application process would help to make the process fairer.
- o 35 people said the Council should do more to ensure that support goes to those most in need by asking people about the money they receive from friends, family, religious or other institutions.
- o 36 people answered yes to the question ‘Would having a named caseworker help you?’
- o In terms of the support they would like to receive from their caseworker, the most popular choices were – help to access training (24), improved Home Office liaison (16) and help to access work (14).

10.3 An online questionnaire was sent via email on 27th February 2014 to 21 solicitors and representatives who were identified by Children’s Social Care as having regular contact with them in relation to NRPF cases A full list of the organisations who were asked to participate is in appendix 2. The questionnaire covered each of the areas of the assessment outlined in paragraph 7.5 of this report and asked for feedback on the types of checks the authority would undertake. We received 2 responses. As the submissions were anonymous we cannot confirm which organisations responded. However, a summary of the responses is below:

- o One response agreed with the development of a specialist team. The second response stated that ‘This is badly worded and unclear. Is this a single point of contact for Lewisham officers, if they need assistance from colleagues with expertise, or a single point of contact for members of the public. The former is a good idea, the latter not’
- o On the question of what checks the Council should undertake, one response agreed with the checks which should be undertaken and gave no further information, the second stated ‘The law is clear. Lewisham should comply with it. One would expect them to do all these checks as a matter of course anyway. Lewisham need to confirm that they will never let a dispute with another borough get in the way of providing urgent support to somebody in need. The dispute with the other borough can be resolved later’
- o Respondents were asked ‘What one thing would you suggest to ensure that resources are applied fairly and appropriately?’ We received one response to this as follows: ‘The obvious solution is to encourage the UKBA to make decisions in a more timely manner. Lewisham should be doing this. Previously there was legal aid available for these cases, and immigration solicitors could threaten the Home Office with judicial review if they delayed for too long in making decisions. There is no legal aid

anymore, so individuals cannot threaten the home office in this way. The increased costs that Lewisham faces are thus a product of UKBA inefficiency, and legal aid cuts.

- 10.4 The NRPf service manager and other officers have held two face to face meetings with advocacy organisations. The first, on 24th July was held with the wider Advice Providers Forum to explain the new process the Council was using and to seek feedback. Project 17 and the Southwark Law Centre amongst other organisations attended this event. The second meeting on 5th March 2015 was requested following the PASC meeting on 5th February. This was attended by Project 17, Shelter, Eaves, Coram Children's Legal Centre and the Migrants Rights Network.
- 10.5 The chair of PASC has also received written representations on the Local Authority's approach from Project 17, Coram Children's Legal Centre and Shelter. These representations were received as part of its NRPf review, a summary of which is below. These representations are included in appendices 3--5. Officers were given sight of the Project 17 submission and prepared a response to this for the chair of PASC. This is also included in appendix 6. In addition, further correspondence with Project 17 relating to the specific cases raised in their letter to PASC was sent by officers on 17th March 2015.

11 Public Accounts Select Committee Review

- 11.1 On 18th February 2014, the Public Accounts Select Committee concluded its review of the Council's approach to NRPf and presented its recommendations to Mayor and Cabinet. The report made eight recommendations which fall into three broad themes. Officer responses to these have been included below.
- Recommendation: Exerting pressure on central government to raise the profile of costs being borne by local authorities in supporting families with NRPf.
Officer response:
 - The Council's Chief Executive sits on a DCLG steering group whose remit includes representing the local authority position on responding to cost pressures relating to No Recourse to Public Funds.
 - The Mayor's Office will write to the Home Secretary at an appropriate point raising concerns relating to the increased financial pressure being experienced by local authorities in providing support to this group.

- Recommendation: Supporting the NRPF pilot approach for more robust and evidence led assessment approaches and management of procurement approaches to reduce the costs of support.

Officer response:

- o This paper sets out the evidence on the pilot approach and seeks a decision from the Mayor on whether and in what form the pilot should continue.

- Recommendation: Working with other London authorities on a more coherent and joined up approach to working with families with NRPF.

Officer response:

- o The Council is currently working with Bromley, Greenwich, Lambeth and Southwark Councils as part of the DCLG counter fraud project. This will form the ongoing basis of joint working with other boroughs.

12 Financial implications

Spend for 2014/15

- 12.1 At the start of June 2014 the Council was supporting 286 families with NRPF. The financial commitment for these families was £6.2m. The budget set for this was £350k therefore representing an unfunded budget pressure of £5.85m.
- 12.2 However, the Council had additionally predicted a growth in the number of cases which would be supported. Based on previous rates of acceptance the combined total spend for the 286 cases and new cases accepted during the financial year would make the total predicted spend for the financial year 2014/15 c. £8m.
- 12.3 Following the first year of the pilot, the anticipated year end overspend spend for 2014/15 on NRPF families is £6.0m which is a reduction of £2.0m on previous forecasts.
- 12.4 This is off-set against an investment of £700k in the development of the pilot team and the other associated costs.

Spend for 2015/16 based on the options outlined above

- 12.5 If the Council pursues options one or two outlined in section 10 of this report which would see the continued operation of the pilot operating model for at least a further year, we would expect to see spend reduce to £4.3m for the financial year 2015/16. This forecast is based primarily on the work to resettle 94 cases who have now been granted access to state benefits. The full effect of the resettlement of these cases is £3.8m but the projection has been

adjusted to account for the fact that resettlement processes are complex and may take a number of months to achieve.

- 12.6 If the Council pursues option three, the 'do nothing' option outlined in this report, spend is projected to rise to c. £8.2m for the financial year 2015/16. This projection is based on the average rate of growth in spend for the financial years 2012/13 and 2013/14 of £2.2m per annum.
- 12.7 Overall, the Council has a legal and fiduciary duty to set and maintain a legal balanced budget each year and must manage the budget accordingly to achieve this.

13 Legal implications

- 13.1 The main body of the report references the principal statutory duties and powers within which the Council supports children in need and their families pursuant to s17 Children Act 1989, and families in which the adults have No Recourse to Public Funds.

13.2 s54 and Schedule 3 of Nationality Immigration and Asylum Act 2002

From 8 January 2003, local authorities' power to house, support and provide other community care services to various categories of immigrants were removed. Paragraph 1 (1) lists the duties and powers of the various Acts for which such persons will not be eligible. The list includes community care services (as amended by the Care Act 2014) and the Children Act s17, 23C, 24C and 24B and s2 the Local Government Act 2000. There are 5 classes of ineligible persons:

- someone with refugee status abroad (eg granted asylum/refugee status in another EEA country) and their dependants
- EEA nationals and their dependants
- failed asylum-seekers and their dependants certified by the Secretary of State as having failed to take reasonable steps to leave the UK
- refused asylum seekers who have failed to comply with removal directions
- non asylum-seeker immigrants in breach of immigration laws eg overstayers

In order to make the schedule compliant with the Human Rights Act, local authorities have the power or duty to provide services to the 5 ineligible classes if it is necessary for the purpose of avoiding a breach of a person's Convention rights or their rights under the Community Treaties.

- 13.4 Councils acquired new powers to provide temporary accommodation and return travel with the Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002 SI No 3078. These

Regulations empower local authorities to make travel arrangements for EEA nationals and refugees to return to their European country of origin. They introduced a new power to provide temporary accommodation to the family of a dependent child in the above 2 categories and to a person who is unlawfully in the UK, provided s/he has not refused to cooperate with removal directions.

13.5 The nature of the duties and powers arising under s17 was recently discussed by Mr Justice Cobb in *R (AM) v Havering LB* [2015] EWHC 1004(Admin), including issues of territorial responsibility.

13.6 The relevant parts of s17 Children Act are set out below:

Provision of services for children in need, their families and others.

(1) It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part) —

(a) to safeguard and promote the welfare of children within their area who are in need; and

(b) so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs.

(2) For the purpose principally of facilitating the discharge of their general duty under this section, every local authority shall have the specific duties and powers set out in Part 1 of Schedule 2.

(3) Any service provided by an authority in the exercise of functions conferred on them by this section may be provided for the family of a particular child in need or for any member of his family, if it is provided with a view to safeguarding or promoting the child's welfare.

(4) ...

(4A) Before determining what (if any) services to provide for a particular child in need in the exercise of functions conferred on them by this section, a local authority shall, so far as is reasonably practicable and consistent with the child's welfare—

(a) ascertain the child's wishes and feelings regarding the provision of those services; and

(b) give due consideration (having regard to his age and understanding) to such wishes and feelings of the child as they have been able to ascertain.

(5) Every local authority—

(a) shall facilitate the provision by others (including in particular voluntary organisations) of services which "it is a function of the authority to provide by virtue of this section, or section 18, 20, 22A to 22C, 23B to 23D, 24A or 24B and

(b) may make such arrangements as they see fit for any person to act on their behalf in the provision of any such service.

(6) The services provided by a local authority in the exercise of functions conferred on them by this section may include providing accommodation and giving assistance in kind or in cash.

(7) Assistance may be unconditional or subject to conditions as to the repayment of the assistance or of its value (in whole or in part).

(8) Before giving any assistance or imposing any conditions, a local authority shall have regard to the means of the child concerned and of each of his parents.

(9) ...

(10) For the purposes of this Part a child shall be taken to be in need if—

(a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;

(b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or

(c) he is disabled, and "family", in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he has been living.

(11) For the purposes of this Part, a child is disabled if he is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed; and in this Part—

- "development" means physical, intellectual, emotional, social or behavioural development; and

- "health" means physical or mental health.

13.7 *Section 17* is to be read with *Schedule 2, Part 1* which contains the following:

Para.1(1): "Every local authority shall take reasonable steps to identify the extent to which there are children in need within their area..."

Para.3(1): "Where it appears to a local authority that a child within their area is in need, the authority may assess his needs for the purposes of this Act at the same time as any assessment of his needs ..."

Para.4(2): "Where a local authority believe that a child who is at any time

within their area – (a) is likely to suffer harm; but (b) lives or proposes to live in the area of another local authority they shall inform that other local authority.”

13.8 Mr Justice Cobb has helpfully commented upon each aspect of the Local Authority:

The nature of the duties

- i) *Section 17* imposes general and overriding duties on local authorities to maintain a level and range of services sufficient to enable the authority to discharge its functions under *Part III* of the CA 89: see *R(G) v Barnet* at [20-21]/[79-85]/[91]/[106];
- ii) *Section 17* does not of itself generate a targeted, specific duty to an individual child: *R(G) v Barnet* at [113];
- iii) *Section 17* and *Schedule 2, para.1* and *para.3* together create a duty on the authority to assess the needs of each child who is found to be in need in their area: *R(G) v Barnet* at [32]/[77]/[110]/[117]; *R(VC) v Newcastle* at [21];
- iv) *Section 17* does not impose a duty to provide services, or accommodation: *R(G) v Barnet* at [85]/[93]/[106]/[135]: "a child in need ... is eligible for the provision of those services, but he has no absolute right to them" [85]; *R(VC) v Newcastle* at [21] and [27];
- v) Any refusal to provide assessed services under *Part III* of the CA 1989 is amenable to challenge by way of judicial review: *R(VC) v Newcastle* at [25]; in this respect, discretionary statutory powers must be exercised to promote the policy objectives of the statute: *Padfield V MAFF* [1968] 1 All ER 694 at 699, and *R(J) v Worcester* at [47]; where there is an assessed need for services, any decision not to provide services will be subject to "strict and ... sceptical scrutiny": *R(VC) v Newcastle* at [26];
- vi) In relation to the provision of housing/accommodation to a child in need, there is a specific and separate statutory code; although the local authority has the power to provide accommodation to a family under *section 17*, social services departments should not be converted into quasi-housing departments; *section 17* is primarily designed to accommodate homeless children, not homeless families; in short, *section 17* should not be construed in such a way as to "drive a coach and horses through the housing legislation": *R(G) v Barnet* at [45-47]/[93]/[138];
- vii) *Section 1* of the *Localism Act 2011* ("a local authority has power to do anything that individuals generally may do") was not intended to be used to override a clear statutory scheme, including that set out in *Part III* of the CA 1989 in relation to provision of services; it can however be used by local authorities to enter into contracts or leases: *R(MK) v LB Barking & Dagenham* at [84/85].

Who is a 'child in need'?

viii) The identification of a 'child in need' engages a number of different value judgments, to be determined by asking a range of questions such as "what would be a reasonable standard of health or development for this particular child? How likely is he to achieve it? What services might bring that standard up to a reasonable level?" etc: *R(A) v Croydon* at [26]; in the context of providing services, these evaluative questions are better determined by the public authority, subject to the control of the courts by way of judicial review (though see (ix) below); there are no right or wrong answers (ibid);

ix) Assessment of the facts (i.e. whether a child is 'in need') is not readily susceptible to judicial review; where the existence or non-existence of a fact is left to the judgment and discretion of a public body and that fact involves a broad spectrum ranging from the obvious to the debatable to the just conceivable, it is the duty of the court to leave the decision of that fact to the public body to whom Parliament has entrusted the decision-making power: *Pulhofer v Hillingdon LBC* at p.518;

x) A child without accommodation is a child in need: *Northavon ex p Smith* at [p.406], *R(G) v Barnet* at [19];

xi) Where there is a dispute of fact (i.e. on the issue of whether a child is a child in need) in judicial review proceedings, in the absence of cross-examination, the facts in the defendants' evidence must be assumed to be correct (*Westech* at [27]).

On whom does the duty to assess arise?

xii) The duty is placed on the authority in which the 'child in need' is physically present; the key words of the operative section (*section 17(1)*) particularly when read with *paragraph 4(2)* of *Schedule 2* are "within their area": *Stewart* at [23]; *R(M) v Barking & Dagenham* at [15]; (although Bean J in *R(HA) v Hillingdon* contemplated something other than a "simple geographical test" in order to avoid the 'dumping' cases, he does not state what that is);

xiii) More than one local authority can owe a duty to assess under section 17 to the same child in need who may be physically present in their area, at the same time: *Stewart* at [30] (in that case the children attended school in LB Wandsworth and resided in LB Lambeth; both were judged to owe a duty to assess); *R(J) v Worcester* at [13].

Co-operation between authorities

xiv) Where more than one local authority is involved in assessing a child in need or offering services, it is essential that they should co-operate with each other and share the burdens: *Stewart* at [28]; *R(M) v Barking & Dagenham* at [17]; [At [28], in *Stewart*, the Court stated that "In a case where more than one authority is under a duty to assess the needs of a child, there is clearly no

reason for more than one authority to in fact assess a child's needs and there is a manifest case for co-operation under section 27 of the Children Act and a sharing of the burden by the authorities".].

xv) The basic principle that the duty is owed by the authority of the area in which the child is physically present will not generally operate unfairly against one particular authority; the 'traffic' is not all one way: *Stewart* at [30];

xvi) There should be no passing the child "from pillar to post" while the authorities argue about where he comes from: *R(G) v Southwark* at [28(3)]; needs should be met first and redistribution of resources should if necessary take place afterwards (*R(M) v Barking & Dagenham* [17]);

xvii) Specifically in London, local authorities are required under Guidance to "develop and support a culture of joint-responsibility and provision for all London children (rather than a culture of 'borough services for borough children')" (*London Child Protection Procedures: 6.1.2*).

On whom does the power to provide services fall?

xviii) There is a power in the local authority to provide services to a child in need who was physically present in its area at the time of the assessment, but who had moved outside its area at the time of provision: *R(J) v Worcester* at [31];

Where there is uncertainty, how should section 17 be construed?

xix) *Section 17* should be construed in a way which advances the core aims to promote the welfare and best interests of children in need: *R(J) v Worcester* at [47];

xx) *Part III* of the *CA 1989* was intended to reflect the obligation in *article 18(2)* of the *United Nations Convention on the Rights of the Child* to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and to ensure the development of facilities and services for the care of children; see *R(G) v Barnet* at [68]."

13.9 The pilot scheme adopted by the Council follows these principles, and reflects the observation in *Stewart* at [28].

13.10. The recommendations made in this report raise a number of legal issues which have been identified by Project 17 in their threatened claim for Judicial Review. The Pre Action Protocol letter is in appendix 8 of this report. The Council's position is as follows:-

13.10.1 Eligibility Criteria

i. Project 17 contend that the Council has erred in law in applying certain eligibility criteria to determine whether a family with NRPf is eligible for support: (a) territorial responsibility; (b) destitution; and (c) not excluded from support under Schedule 3 of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”). The Council believes these points are unfounded.

(a) Territorial Responsibility

i. As set out in this report, the Council seeks to determine which local authority is most appropriate to make a comprehensive assessment of an applicant’s needs, and then to signpost the applicant to that authority for detailed assessment and provide support (where required).

ii. Accordingly, where the applicant happens to be in the area of the Council, and her connection with the Council is tenuous but she/ the family has a more permanent or long-standing relationship with another local authority, the applicant will be signposted to that other authority for assessment and support (where applicable). The Council is of the view that this is an entirely lawful approach, and consistent with the judgment of Mr. Jack Beatson QC (as he then was, sitting as a Deputy) in R (Stewart) v. Wandsworth LBC [2001] EWHC 709 (Admin) at [28]:

In a case where more than one authority is under a duty to assess the needs of a child, there is clearly no reason for more than one authority to in fact assess a child's needs and there is a manifest case for co-operation under section 27 of the Children Act and a sharing of the burden by the authorities.

iii. If that evaluation will take some time, and if support is otherwise called for, the Council will in the meantime provide the applicant with support.

iv. This approach is also in line with Mr Justice Cobb’s analysis above.

(b) Destitution

i. The Council looks to see whether an applicant can meet her essential living needs. The Council also obtains evidence through the MASH process with respect to the health and development of any children concerned, and to see if there are any safeguarding concerns. In the circumstances, the Council adheres to the principles of section 17(10) of the 1989 Act.

(c) Immigration Status and the Schedule 3 criteria

i. The report sets out that clear enquiries are made as to the immigration status of the applicant, through the in house resource.

ii. The Council considers carefully any intimation that an applicant is a *Zambrano* carer, make enquiries to confirm this is the case, and has provided support where there is evidence that the applicant falls within the *Zambrano* principles. For further details please see Appendix 7.

iii. The report sets out the degree to which the Convention considerations are considered, and that a careful evaluation of an applicant's circumstances in light of Convention principles is carried out.

13.10.2. Failure to comply with the duty to assess

i. The report sets out that a triage process is in place to assess applicants for services. In a recent application for judicial review involving the Council (claim brought by *Esther Giwa*), it was noted by the Administrative Court that there was no dispute as a matter of law that it is open to the Council to discharge its duty by conducting a staged assessment. The initial assessment carried out by the Council in that case was held to be open to it, and justified.

ii. The application of the s17 process / areas to be considered is also commented on by Mr Justice Cobb see (viii) and (ix) above.

13.10.3. Section 149 of the Equality Act 2010

i. This report deals with the approach to the Councils duties under section 149 of the Equality Act 2010 .At the pilot stage, public sector equality considerations have been incorporated. Officers acknowledge that it was recognised the vast majority of applicants for section 17 support were women primarily from Nigeria and Jamaica.

ii. A full Equalities Analysis Assessment (EAA) is attached to this report.

13.10.4 Discrimination

i. The position with respect to alleged breaches of the Equality Act 2010 with respect to *Zambrano* carers is dealt with in the report. The pilot scheme evaluates carefully applicants who indicate status under the principles of *Zambrano*.

13.10.5. Material error of fact

i. It is correct that no judicial review challenges to the Council's decision-making have succeeded. In a small number of cases, decisions have (for a variety of reasons) been revisited with different outcomes. This does not mean that the system is inherently flawed and unlawful.

13.10.6. Best Interests

i. The report sets out how the best interests of children and their families is addressed in the approach of the pilot.

13.10.7 Leading Counsel has read this report, and has advised that a decision to mainstream the pilot scheme (as per Option 2) is lawful and reasonable.

14 Best Interests of Children

14.1 In making the decision, the Mayor should have regard to whether the decision is in the best interests of the children who are affected by the proposed arrangements. In this regard, paragraph 8.9 above should be noted in particular, as well as the comments about children in the EAA.

15 Environmental implications

15.1 There are no specific environmental implications arising from this report

16 Equality implications

16.1 A full Equalities Analysis Assessment has been included in appendix 1.

Equalities Legislation

The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

16.2 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

16.3 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful

discrimination, advance equality of opportunity or foster good relations. The Mayor should pay careful attention to the EAA.

- 16.4 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>
- 16.5 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
1. The essential guide to the public sector equality duty
 2. Meeting the equality duty in policy and decision-making
 3. Engagement and the equality duty
 4. Equality objectives and the equality duty
 5. Equality information and the equality duty
- 16.6 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

17 Background documents and Report Author

- 17.10 There are no background documents to this report.
- 17.11 If you would like any further information about this report please contact Justine Roberts on 020 8314 7051.

18 Appendices

- o Appendix 1: Equalities Analysis Assessment
- o Appendix 2: List of solicitors invited to participate in consultation for establishing the pilot
- o Appendix 3: Representation from Project 17
- o Appendix 4: Representation from Shelter
- o Appendix 5: Representation from Coram Children's Legal Centre
- o Appendix 6: Officer response to Project 17
- o Appendix 7: Zambrano rights
- o Appendix 8: Pre Action Protocol from Project 17

EQUALITY ANALYSIS ASSESSMENT (EAA)

Name of Proposal	▪ Extension of the No Recourse to Public Funds (NRPF) pilot
Lead Officer	▪ Shirley Spong, NRPF Service Manager
Start Date Of EAA	▪ January 2014
End Date Of EAA	▪ April 2015

Step 1: Background to the EAA

Public Sector Equality Duty

This Equality Analysis Assessment (EAA) has been undertaken in line with the equality duties specified in section 149 of the Single Equality Act 2010. The Equality Duty requires local authorities to have **due regard** to the need to:

- 1 **eliminate unlawful discrimination**, harassment, victimisation and any conduct prohibited by the Act
- 2 **advance equality of opportunity** between people who share a protected characteristic and people who do not share it and
- 3 **foster good relations** between people who share a protected characteristic and people who do not share it

What is NRPF & what are the council's duties?

- NRPF applies to a person who is subject to immigration control in the UK and has no entitlement to specified welfare benefits or public housing. Most people seeking to enter the UK will be required to show that they are able to maintain and accommodate themselves or be supported by friends or family (sponsors) without claiming public funds. It includes people coming to study or entering the UK as visitors and applies to those who fail to leave when their permission to be in the UK expires (overstayers) as well as those who have entered the UK illegally. It does not apply to people who have made a claim for asylum or those seeking to stay in the UK on the grounds of humanitarian protection. These restrictions are set out in Section 115 Immigration and Asylum Act 1999.
- Most social security benefits are classed as 'public funds', including:
 - Means tested benefits such as Income Support, Universal Credit, income-based Jobseekers Allowance, income-related Employment Support Allowance, Housing Benefit and assistance with Council Tax
 - Benefits paid in respect of children such as Child Benefit and Benefits paid to those with a long term illness or disability such as Disability Living Allowance, Attendance Allowance and Personal Independence Payment
- A small number of NRPF applicants who have been granted the right to work may become entitled to contributory benefits if they have been employed and paid national insurance contributions for a sufficient period of time.
- Most public services are not classed as public funds including assistance from the emergency services and support provided under social services legislation. Separate legislation seeks to exclude people from social service support by restricting entitlement on the grounds of their immigration status from specific provisions.

- Therefore local authorities must consider whether the **adults** within the family presenting are excluded from support under Schedule 3 Section 54 of the Nationality, Immigration and Asylum Act 2002. The categories of people excluded from support are:
 - A person granted refugee status by another EEA state and any dependents
 - An EEA national and any dependents
 - A refused asylum seeker who has failed to comply with removal directions
 - 'Failed' asylum seekers with a dependent child (or children) certified by the Secretary of State as having failed to take reasonable steps to leave the UK
 - A person unlawfully present in the UK

- Although adults in the groups above are excluded from support (including support provided under the Children Act), this restriction does not apply to children and the local authority must also consider whether the refusal to provide support would result in a breach of the family's Human Rights or in the case of EEA nationals would breach their Treaty Rights.

- Families with NRPF can therefore present to local authorities seeking support under Children Act 1989. Section 17 of the Act sets out a general duty of local authorities to 'safeguard and promote the welfare of children within their area who are in need'. Under the Act, a child in need is defined as a child who is unlikely to achieve or maintain a satisfactory level of health or development, or their health and development will be significantly impaired, without the provision of services; or a child who is disabled. The local authority has a duty to assess families presenting as in need and have the power to provide services to those children and families which 'may include providing accommodation and giving assistance in kind or in cash'.

Review of NRPF services

In Autumn 2013, officers began a review of how the council was responding to its duties under the Children Act in terms of assessing and providing services to families with NRPF. The review identified a number of issues with the council's operating model which meant that the needs of families were not being properly assessed and provided for. A summary of the findings of the review is below:

- Demand had risen rapidly over the last five years with the number of cases being supported rising from 31 cases in 2010 to 244 by 2013. The cost to the council associated with this support during this period grew from c. £700k to over £5m. Our support costs were not in line with other local authorities. Research conducted by the NRPF Network in 2011¹ suggests that Lewisham's spend on this group at the time was amongst the top third of 51 authorities surveyed. In 2013 Lewisham was supporting 244 families whilst our neighbouring borough Southwark was only supporting 131 cases.

- Lewisham did not have a specialist team responsible for dealing with NRPF cases. The function was spread across children's social workers who dealt with NRPF assessments alongside their safeguarding and child protection work. This model was also not in line with other boroughs with 24 of the 51 authorities surveyed by Islington Council having set up specialist NRPF teams.

- Assessment practices were not evidentially led. Time constraints and a lack of training on the complex rules surrounding immigration and entitlements for this group meant that very little investigation was actually being conducted into whether there was evidence to

¹ NRPF Network (2011) 'Social Services Support to People with No Recourse to Public Funds: A National Picture'

support claims for services. As a consequence the council was not robust enough in its assessment of a family's history, resources, parenting capacity and whether in fact the applicant destitute and homeless. Although detailed data on case acceptances was not collected at the time, service managers reported that at least 50% of cases were accepted for support following presentation to the local authority. The NRPF Network's report also identified significant variations in the number of cases accepted for support following assessment, ranging from as high as 90% to as low as 0%. The report identified 'the discrepancy in acceptance rates between local authorities is too significant to be explained by trends in client referrals alone, and serves to highlight the inconsistency of practice between local authorities'.

- Although the local authority duty towards children and families with NRPF is derived from the Children Act 1989, over 95% of the families presenting to the local authority had no needs, other than those relating to finance or housing which would otherwise have triggered social care involvement. Housing, and particularly the affordability of housing in London, was identified as the key driver for presentation to the local authority.
- Resource constraints in the service meant that once a case had been accepted for support, there was very little further involvement with the family to either review ongoing eligibility or to support the family to regularise their position and access mainstream benefits or employment support. This meant that very few cases stopped receiving support each year. The NRPF network's research showed that this was not in line with other councils who reported that 62% of cases were transitioned away from local authority support within 2 years.
- Our property procurement and payment processes were administratively burdensome and locating these functions within social care was not enabling the authority to make use of the skills held elsewhere in the organisation which would improve value for money for cases we were supporting.

NRPF pilot & equality objectives

Following this review, the council started a pilot in June 2014 to set up a new team to put additional capacity into conducting assessments and managing cases. The broad objective of the pilot was to develop clear, evidence based eligibility assessments for NRPF applicants and to achieve the following outcomes:

- NRPF applicants to receive a fair and consistent assessment process
- Applicants who satisfy the destitution assessment receive services provided within a clear legislative framework
- People with NRPF who approach Lewisham are dealt with promptly and transparently to avoid delay in delivery of support to those in genuine need
- Lewisham officers benefit from working within a clear framework
- Lewisham council resources are applied fairly, appropriately and within legally defined parameters

This pilot will formally close at the end of May 2015 and the Mayor is being asked to take a decision as to whether the pilot should be mainstreamed, extended or stopped.

Approach to the Equalities Analysis Assessment

As this change relates to service structures and procedures, this EAA has been conducted to consider the equalities implications arising from the review of NRPF, the pilot and the various options being presented to the Mayor on the future of this service.

Lewisham's arrangements for managing NRPF before the pilot was in place were complex and spread across multiple children's social care teams. The consequence of this operating model was that the quality and accuracy of information held on cases was variable and required a significant amount of officer time, sometimes involving direct contact to some of the 286 clients, to assure the authority that the data collected was robust enough to complete a comprehensive EAA.

This EAA has therefore been conducted in stages:

- The first stage between January 2014 and May 2014 involved gathering research and national evidence on NRPF families and conducting questionnaire exercises with known clients, their advocates and solicitors all of whom are primary stakeholders.
- The second stage of the EAA conducted between June 2014 and April 2015 has involved the detailed cleansing and analysis of 286 existing NRPF cases as well as more effective collection of reliable equalities information on new cases presenting to the local authority of which there have been 277 to date. Voluntary sector agencies were invited to an open forum held on the 24 July 2014 where the revised process for people seeking assistance from the local authority who were subject to NRPF (including the triage approach to assessment) was explained.

The findings of the first stage and second stages of evidence gathering have been analysed here together to provide a comprehensive overview of the equalities implications of our review and pilot.

Step 2: Summary of the changes to the service

Prior to the implementation of the pilot in June 2014, all NRPF cases were assessed in the first instance by the Referral & Assessment team in children's social care. Cases were spread amongst social workers who were responsible for conducting destitution assessments, children in need assessments and human rights assessments for all families presenting. The absence of specialist NRPF knowledge and the investigation of eligibility led to an *ad hoc* approach that lacked consistency and was time consuming to conclude. Arrangements had been developed in a piecemeal way that led to a wide range and variance in the support offered to people. In some instances there was a lack of control measures in place to manage the costs of support arrangements and as a result, there was little sense of a fair or consistent service being offered.

The review and pilot changed the operating model above by:

- Formalising the process and evidence requirements for conducting initial stages of the assessment around establishing:
 - o Which is the appropriate authority to undertake the full assessment. This includes establishing information such as where the family lives now and has lived previously, where the children attend school and which GP the family are registered with.
 - o Whether exclusions apply in line with Sch 3 of the Immigration and Asylum Act 1999
 - o Whether the family is destitute
 - o Immediate safeguarding concerns

- Setting up a new specialist team to deal with the assessments outlined above which increased the capacity of the council to conduct more detailed investigations into the circumstances of families presenting seeking support.
- Putting in place a casework function to enable more ongoing management of cases and to seek to resolve immigration matters more quickly.

What is critical in terms of the changes made to the service is to note that **the council has not made a change to policy in terms of who is eligible to receive services**. The Children Act 1989 and the Immigration and Asylum Act 1999 set out in law who is eligible for services. It is the local authority's duty to comply with this law. What is at the local authority discretion is how to organise resource and local assessment processes to meet its legal requirements.

The pilot and proposed models for the ongoing operation of services for NRPF families therefore only deal with our processes and structures to establish whether a family is owed a duty. They do not change eligibility criteria.

Step 3: National and local data and research on people with NRPF

National level research on NRPF

As part of the review of NRPF conducted between October 2013 and January 2014, two key reports were used to provide information on families with NRPF in terms of their numbers and characteristics. A summary of the information relevant to this EAA derived from these reports is below:

- Migrants Rights Network (2009) 'Irregular Migrants: the urgent need for a new approach'
 - Because there is no current system to comprehensively measure the number of people leaving the UK (only those entering), there is no way of measuring with certainty the number of people with NRPF in the UK. However, a study by the London School of Economics (LSE) gave a central estimate that in 2007 there were 725,000 irregular migrants and children of migrants in the UK. The LSE estimates that two-thirds of irregular migrants live in London. Reports estimate that two-thirds of the total number of irregular migrants are refused asylum seekers and at least 50,000 are individuals who have overstayed their visa.²
- NRPF Network (2011) 'Social Services Support to People with No Recourse to Public Funds: A National Picture'
 - There is no single approach for capturing accurate data on NRPF cases being supported by local authorities. However, based on evidence from 51 authorities across the UK there were approximately 6,500 people with NRPF being supported by local authorities in the financial year 2009/10 at a cost of £46.5m. However, as there has been a rapid increase in the number of NRPF applicants seeking support from local authorities since 2010, this figure is likely to have increased significantly.
 - The cases typically being referred to the local authority were most frequently visa overstayers, victims of domestic violence and failed asylum seekers.

Given the complexities involved in even determining how irregular migrants there are in the UK, there is no national level data on the equalities implications of NRPF.

Local authority data on NRPF applicants

² Migrants Rights Network (2009) 'Irregular Migrants: the urgent need for a new approach'

Over the last year, the council have begun to collect more comprehensive data on families presenting to the local authority for support and have undertaken a detailed analysis of the cases already receiving support. A breakdown of the information on existing cases being supported by the council is provided below:

- Almost all of our current NRPf caseload is families where a woman is the primary applicant. The average age of applicants is 36 and the average number of children per family is 2 (although 25% have three children or more and this is much higher than the national average of 14% of households in the UK)³ Applications for support are most common from single parents. This pattern remains similar for new cases presenting to the local authority.
- 47% of the cases being supported by the local authority prior to the pilot were applicants of Nigerian nationality, 37% were Jamaican, 7% were Ghanaian and the remaining 9% were from 24 other countries around the world. The pattern for new presentations to the local authority over the last year is broadly similar with 50% of new applications from those of Nigerian nationality and 29% of new applications from those with Jamaican nationality.
- Data available on the national NRPf Connect database shows broadly similar trends. The most frequently occurring nationalities are Nigerian (36%) Jamaican (18%) and Ghanaian (10%). The remaining 36% of cases are from 91 countries across the world.
- The majority (66%) of those currently being supported are classified as visa overstayers, with a further 19% having been granted limited leave to remain. The remainder include illegal entrants, failed asylum seekers on reporting restrictions and those whose status is yet to be determined.
- Over the last year the council has been approached by 277 new NRPf cases which were previously unknown to the authority. Most had been in the country for a significant period of time before presenting to us.

Comparison of the profile of NRPf applicants against the borough as a whole

Reliable data is not available on the numbers of people subject to NRPf restrictions living or approaching authorities for support across London. This would be the relevant 'pool' of people against which Lewisham's rates of presentation and acceptance should be measured. However having a diverse Black & Minority Ethnic population, it is possible that informal networks and reputational issues mean that NRPf applicants may disproportionately seek support from Lewisham. In this context, relevant data from the 2011 census shows that:

- While children and young people (0-19 years) make up 25% of the population, older residents (over 65) make up just 9.4% – at 34 years, the average age of our population in Lewisham is young compared to other London boroughs.
- According to published statistics, the population of males and females in Lewisham is nearly identical (133,300 women to 133,200 men)
- Across England as a whole just 7.2 per cent of all households are lone parent families. In London the figure is 9.7 per cent and for Inner London it is 11.6 per cent. In Lewisham, 17.8 per cent of all households are lone parent families - by far the highest rate in London. At a national level, women account for 92% of lone parent families.
- Lewisham is the 15th most ethnically diverse local authority in England, with over 40% of residents from a black and minority ethnic (BME) background. The largest BME groups are Black African (11%) and Black Caribbean (13%). However, 74% of Lewisham's school population are from black and minority ethnic (BME) communities, illustrating the significantly changing profile of the borough.
- A third of Lewisham residents were born outside the UK whilst 24.7% were born in countries outside the extended EU (16% of Lewisham residents not born in the UK have been here for less than 10 years). Nearly one in ten households does not contain a resident who has

³ Office National Statistics 2012

Step 4: Engagement informing proposals

Engagement with existing families with NRPF being supported by the council

Before the start of the pilot, we sent 200 questionnaires to NRPF families who were currently being supported by the council. The purpose of the engagement was to give them an overview of the planned assessment processes and seek their feedback on these. We received completed questionnaires from 39 families. A detailed outline of responses is below:

- Do you agree that making a claim for support would be made easier and quicker if people were told from the beginning what information they would need to provide? 39 people said yes
- Do you agree that having a specialist team will make it easier to know who to contact when you need to? 38 people (97%) said yes, 1 person (3%) said no and explained: "I think this will waste money because people can search online if they want someone to contact."
- Do you agree that it is important that Lewisham assesses everyone's case using the same policy and applying it to everyone equally? 34 people (87%) said yes and 5 people (13%) said no. Those who said no gave reasons including: 'Everyone case is not the same', 'Some people might not be in the same situation as others and might need more help'
- Do you agree that checks should be made on where people live? 34 (87%) people said yes, (10%) people said no and 1 person did not answer. Those who said no gave reasons including: 'Because you didn't live in that place shouldn't matter.', "People should claim from anywhere to make things easier.", "Supposed of domestic violence and have to move from borough.", "I'm using myself as e.g. fled? From Hackney because of domestic violence."
- We will usually check what you say with the Home Office at the start of the application process before completing our assessments. Do you agree that this will help us to assess everyone's case fairly? 38 (97%) people said yes 1 did not answer
- There is often delay when we need to contact the Home Office to check a person's immigration status and whether they have made an appeal and on what grounds. Lewisham would like to make this process quicker and simpler by sending information requests to a person's solicitor or advisor (where they have one). Would you, if asked agree to this? 39 people said yes
- Would having a named case-worker help you? 36 (92%) people said yes, 2 (5%) people said no 1 person did not answer
- What kind of help would you like from your case worker? 24 people said help to access training, 16 people said help to liaise with the Home Office and 14 said help to find work.
- We will review your case regularly. How often do you think it is reasonable to review support? 14 (36%) people said every 4 months, 19 (49%) people said every 6 months, 6 (15%) people said some other time – of these 6 people: 2 said monthly; 1 said they are not sure; another said every 3 months; 1 said once a year; and the sixth person did not specify.

Equalities analysis of respondents

38 people completed this form however not all the questions were answered:

Gender: 35 (92%) female, 2 (8%) male

Disability: 35 (92%) people said they did not have a disability, 2 (5%) people said they did, 1 (3%) person did not answer

Ethnicity – 33 (87%) people said Black and minority ethnic background, 1 (3%) person said white other, 2 (5%) people preferred not to say, 2 people did not answer

Age: 37 (97%) described themselves as aged 18-65, 1 (3%) person preferred not to say

Sexual orientation: 26 (68%) people described themselves as straight/heterosexual, 4 (11%) preferred not to say, 8 (21%) people did not answer

Religion/ Belief: 33 (87 people said yes they did have a religion or belief, 1 person would prefer not to say, the rest did not answer

Pregnancy /Maternity: 1 person said yes they were pregnant or on maternity leave, 34 said no they were not, the rest did not answer

Engagement with solicitors

Additionally, an online questionnaire was sent via email on 27th February 2014 to 21 solicitors and representatives who were identified by children's social care as having regular contact with them in relation to NRPF cases. The questionnaire covered each area of the planned assessment process outlined earlier in this EAA, the development of a specialist team and the casework function. We received 2 responses. As the submissions were anonymous we cannot confirm which organisations responded. However, a summary of the responses is below:

- One response agreed with the development of a specialist team. The second response stated that 'This is badly worded and unclear. Is this a single point of contact for Lewisham officers, if they need assistance from colleagues with expertise, or a single point of contact for members of the public. The former is a good idea, the later not'
- On the question of what checks the council should undertake, one response agreed with the checks which should be undertaken and gave no further information, the second stated 'The law is clear. Lewisham should comply with it. One would expect them to do all these checks as a matter of course anyway. Lewisham need to confirm that they will never let a dispute with another borough get in the way of providing urgent support to somebody in need. The dispute with the other borough can be resolved later'
- Respondents were asked 'What one thing would you suggest to ensure that resources are applied fairly and appropriately?' We received one response to this as follows: 'The obvious solution is to encourage the UKBA to make decisions in a more timely manner. Lewisham should be doing this. Previously there was legal aid available for these cases, and immigration solicitors could threaten the Home Office with judicial review if they delayed for too long in making decisions. There is no legal aid anymore, so individuals cannot threaten the home office in this way. The increased costs that Lewisham faces are thus a product of UKBA inefficiency, and legal aid cuts.'

Summary of findings from the engagement

A specialist team

- Overall, there was support for setting up an integrated team if it was comprised of specialists with expertise on NRPF

Formalising the assessment process

- Existing families with NRPF being supported agreed that standardising the assessment process and making it clear what information needed to be provided was a good idea. However, some respondents specifically stated that needs would vary. Respondents also agreed with the approaches to verifying the circumstances of families presenting.
- The one detailed response we received from solicitors said that the approach we adopted must comply with the law and that checks to establish this should be part of the process

Casework function

- Existing families with NRPF being supported agreed that cases should be reviewed, that having a named caseworker would be helpful and that they would value support around training, employment and Home Office liaison.

Step 5: Impact Assessment

For the purposes of conducting this impact assessment, we have examined the equalities impact of the assessment and case-management functions separately. This is because the impact of each function on the protected characteristics is different.

Protected Characteristic	Impact	Comments
Age	Negative for assessment/ positive for case-management	<p><u>Assessment</u></p> <ul style="list-style-type: none"> ○ Although being a child <i>per se</i> is not a protected characteristic under the public sector equality duty, we have nevertheless carefully considered the impact of this review on children, as they may be viewed as a sub-group of 'age'. The procedures maintain protection for children who are in a family unit which is destitute and/or have other needs falling within the ambit of section 17 of the Children Act 1989. This means that any child dependant of an adult applicant who is unable to meet their essential living needs, or who has no or inadequate accommodation and lacks the means to acquire more appropriate accommodation will qualify. The purpose of the pilot has been to ensure that appropriate investigation is undertaken into the parent's ability to meet children's needs. ○ As a result of the assessment process, more families with children are refused as not meeting the eligibility requirements. <p><u>Case management</u></p> <ul style="list-style-type: none"> ○ As a result of the more intensive case management process the council has put in place and closer partnership working with the Home Office, 94 families to date have been given access to benefits who may not otherwise have been issued this code change. This has a positive impact on ensuring that children within families are able to access benefits in the UK on an equal grounding with their peers. ○ We have put in place more intensive case-

		management approaches for resettlement meaning that families now have dedicated support to make alternative housing arrangements which are within the financial means of the parents. This involves support for relocation to new schools and services for the children in the family.
Disability	Neutral for assessment/ neutral for case-management	<p><u>Assessment and case management</u></p> <ul style="list-style-type: none"> There is no evidence to suggest that levels of disability amongst NRPF families is higher than the general population. Where there is a disability, every case is different and income may be affected differently depending on personal circumstances and the exact nature of the disability. The eligibility assessment is designed to allow a case-by-case consideration on the basis of the information and evidence provided by that applicant and that established by the caseworker as part of the assessment process. Adults whose needs arise other than by destitution are referred to adult social care for assessment under Part 1 of the Care Act 2014, while disabled children undergo a full Child in Need assessment and this may include referral to additional specialist services such as those for children with complex needs. There is therefore no particular equalities implication arising from the approach for people with disabilities and it should be noted that the disability element of the assessment process has not changed. Additionally, children and families with disabilities retain their caseworker and social worker to support disability related issues where the local authority accepts a duty to the family.
Gender Reassignment	Neutral for assessment/ neutral for case-management	<p><u>Assessment and case management</u></p> <ul style="list-style-type: none"> There is no evidence to suggest that there are higher numbers of people who have undergone gender reassignment amongst NRPF families than the general population. There are therefore no particular equalities implication arising from the approach for this group for either assessment or case management.
Pregnancy & Maternity	Neutral for assessment/ neutral for case-management	<p><u>Assessment and case management</u></p> <ul style="list-style-type: none"> Although there are higher numbers of women than men approaching the council for support, whether the mother is pregnant and any implications this may have for health, ability to work or provide for herself & her family is considered as part of the assessment process. The way in which pregnancy impacts assessment processes and support levels has not changed and therefore the specific impact on pregnancy and maternity is neutral. There is no impact on how the council manages cases on an ongoing basis for pregnant women.
Ethnicity	Negative for assessment/	<u>Assessment</u>

		<p>Positive for case management</p>	<ul style="list-style-type: none"> ○ By its very nature the NRPF restriction applies to people from abroad who are likely to be from ethnic minority backgrounds. Specifically in Lewisham, it is likely that Black African and Black Caribbean families from Jamaica and Nigeria will be more affected. However establishing exclusions is a necessary part of the local authority process to comply with our legal duties. ○ While it is true that the numbers of people who will receive support from the local authority has reduced, it is the council's position that the approach it has adopted is necessary to ensure that the authority complies with its duties outlined in Schedule 3 Section 54 of the Nationality, Immigration and Asylum Act 2002. Previous approaches which were not consistently and evidentially assessing immigration status and destitution meant that the authority was not fully compliant with its duties. ○ In 10% of cases we have refused assistance because the applicant had no active application or appeal with the Home Office. Applicants are advised on their possible options (including making a claim for asylum if, based on their circumstances it is appropriate to do so). However, some applicants may have exhausted available avenues to remain in the UK and they are referred to the voluntary return programme (Choices) run by Refugee Action, who are experienced at dealing with children and families in these circumstances. ○ In 41% of the cases we did not support the reason for this relates to the family being not destitute, claiming fraudulently or not cooperating with the destitution assessment. In these circumstances the authority has no reason to believe the family cannot support themselves. ○ Although not subject to NRPF restrictions Lewisham has, as a result of changes to the right to reside tests for benefits affecting EU nationals, also seen a significant increase in applications from EU citizens no longer entitled to Housing Benefit or Jobseekers allowance. These restrictions have a similar economic impact on applicants as those subject to NRPF. 10% of all new cases refused came from European applicants predominantly from the Netherlands, Poland, Spain and Portugal. Most were refused on the grounds that they were not exercising Treaty rights and a refusal would not constitute a breach of any Treaty rights. <p><u>Case management</u></p> <ul style="list-style-type: none"> ○ As a result of the more intensive case management process the council has put in place and closer partnership working with the Home Office, 94 families to date have been given access to benefits who may not otherwise have been issued this code change. This has a positive impact on ensuring that fewer families are subject to the NRPF restriction. ○ We have put in place more intensive case-management approaches for resettlement meaning
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			<p>that families now have dedicated support to make alternative housing arrangements which are within the financial means of the parents. This involves support for relocation to new schools and services for the children in the family.</p> <ul style="list-style-type: none"> ○ We have put in place closer relationships with our own employment support provision to enable adults within families with NRPf to access employment support and advice from their caseworker which would not usually be available.
		<p>Gender</p> <p>Negative for assessment/ Positive for case management</p>	<p><u>Assessment</u></p> <ul style="list-style-type: none"> ○ The majority of NRPf applicants are women. Women are more likely to form single parent households of which there are a higher proportion in Lewisham than the rest of the UK. There is very little publicly available data on the gender of people with NRPf according to Home Office, 68% of applicants seeking family visas are women.⁴ ○ Although figures are not available, given that women make up a larger proportion of people entering the UK on visitor or family visas, it is likely that women make up a significant proportion of the population who overstay their visa. ○ Women are also therefore more likely to be reliant on partners or family networks for their right to remain in the UK. Women are more likely to present to the authority when these relationships break down as a result of domestic violence, although the current rate of presentation (which in some weeks has been as high as nine out of every ten women who apply) far exceeds the expected rates cited by Women's Aid and Southall Black Sisters, that equates to one in four.⁵ The new assessment process enables these presenting needs to be more thoroughly and appropriately addressed. ○ As a consequence, more women with children are both supported by the authority on the grounds of destitution and are refused as not meeting the eligibility requirements. <p><u>Case management</u></p> <ul style="list-style-type: none"> ○ As a result of the more intensive case management process the council has put in place and closer partnership working with the Home Office, 94 families to date have been given access to benefits who may not otherwise have been issued this code change. This has a positive impact on ensuring that fewer families are subject to the NRPf restriction. ○ We have put in place more intensive case-management approaches for resettlement meaning that families now have dedicated support to make alternative housing arrangements which are within the financial means of the parents. This involves

⁴ Home Office Policy Equality Statement 'Family Migration'

⁵ Council of Europe 2002, ONS 'Focus on Violent Crime & Sexual Offences 2012'

		<p>support for relocation to new schools and services for the children in the family.</p> <ul style="list-style-type: none"> ○ We have put in place closer relationships with our own employment support provision to enable adults within families with NRPF to access employment support and advice from their caseworker which would not usually be available.
Sexual Orientation	Neutral for assessment/ neutral for case-management	<p><u>Assessment and case management</u></p> <ul style="list-style-type: none"> ○ There is no evidence to suggest that sexual orientation has any impact on NRPF presentations. There are therefore no particular equalities implication arising from the approach for this group for either assessment or case management.
Religion Or Belief	Neutral for assessment/ neutral for case-management	<p><u>Assessment and case management</u></p> <ul style="list-style-type: none"> ○ We do not have any information to suggest that certain religions are more or less likely to be affected by this review. Existing processes consider the individual circumstances of each applicant, regardless of their religion or beliefs or lack of beliefs. Any representations made by the applicant in relation to religion of belief in terms of their eligibility for services would be considered as part of the assessment process (particularly in relation to completion of Human Rights Assessments) and would also be considered in terms of appropriate support packages for the families to whom we owe a duty.

Minimising Negative Impact and Improving Positive Impact

In line with all local authorities, Lewisham is responsible for implementing the legal provisions as they apply to people with no recourse to public funds. Prior to the pilot no real consideration was given to the limit of the authority's powers in relation to adult applicants caught by schedule 3 of the Nationality, Immigration & Asylum Act 2002 who were freely able to return to their country of origin nor were any detailed enquiries made as to whether the parent with care had the capacity to respond to the needs of their children. This has led to the mistaken belief that matters such as immigration status of the parent and their financial circumstances were not relevant matters to be considered (even in cases where the primary need is destitution). It is not the case that the lack of a particular resource will always render a child a 'child in need', as considerable case law has established. It is relevant to conduct these enquiries and where there are no safeguarding risks sufficient to trigger support (for example where it cannot be shown that the health or development is likely to be significantly impaired without the provision of services) it is matters relating to destitution that will be key. It is relevant whether the applicant either has the means themselves or can be supported by family, friends or other agencies.

The scope of the pilot does not extend to those fleeing persecution and seeking to remain in the UK through the asylum procedures nor does it include unaccompanied minors.

The revised procedures have included the following positive developments:

- Eligible applicants are moved from temporary accommodation into 'more settled' accommodation within much shorter timescales than previously
- Active management of cases allows for the swift resolution of immigration applications and appeals. Lewisham has developed a resettlement process that has seen 94 applicants become eligible for transition from local authority support to mainstream employment, benefit entitlement and private sector housing

Step six: Decision/Result

Having analysed the data, feedback and research on NRPF and reviewed the impacts outlined above, our decision is that the approach that the council has adopted complies with our Public Sector Equalities Duties. The details of why this decision has been reached are outlined below. A number of more specific actions to ensure that the council continues to meet these duties have been identified and are outlined in the Equalities Action Plan as follows:

Complying with our duty to **eliminate unlawful discrimination**, harassment, victimisation and any conduct prohibited by the Act

In line with all local authorities, Lewisham is responsible for implementing the legal provisions as they apply to people with NRPF. The NRPF review and subsequent pilot have been designed to ensure that the local authority can satisfy itself that it is appropriately complying with these duties by ensuring that assessment processes are suitably evidence led, consistent and transparent. This means that some families who may have received services under previous arrangements may no longer be accepted for support. However, the position of the authority is that these individuals are not entitled to receive this support.

Whilst the impact assessment above recognises that there may be a negative impact of the approach on ethnic minorities and women, this is caused by two factors which are outside the local authority's control:

- That the nature of a service for NRPF families means that applications for support come, in the main, from ethnic minority women.
- That Schedule 3 Section 54 of the Nationality, Immigration and Asylum Act 2002 excludes some ethnic minority women from support.

advance equality of opportunity between people who share a protected characteristic and people who do not share it

Whilst the assessment criteria the authority is required to use are set out in law, the approach the council chooses to adopt in terms of supporting families who are eligible and owed a support duty is within our control. In this regard, we have invested additional resource in ensuring that families' cases are actively managed to seek to regularise their stay, access mainstream services and benefits more swiftly. The positive impact of these actions has been outlined above: 94 families have had their NRPF restriction lifted (nearly a third of our caseload), families are receiving more holistic support on finding affordable accommodation, getting benefits in payment and seeking work than they otherwise would have done.

foster good relations between people who share a protected characteristic and people who do not share it

Critically, when the review was first undertaken the council identified that the approaches we were taken to assessment and case management were fragmented and inconsistent. This meant the experiences of people with NRPF and between NRPF families and non-NRPF families who are not subject to this restriction were not comparable. Families with NRPF who presented to the council as homeless were receiving less evidentially led and detailed assessments than is generally the case for homeless families in the borough.

Our ambition, as stated earlier in this EAA, has not only been to ensure that individual cases are assessed fairly but that the whole system is designed in a way which is fair and transparent and that families with NRPF receive assessments which are more in line with non-NRPF families seeking similar services from the council. The new approach better achieves these objectives whilst also ensuring that the council is compliant with its legal responsibilities. In this regard, the

standardisation of the process fosters good relations by ensuring this group is not subject to less evidentially led assessment processes than other families seeking assistance from the council.

Step 7: Equality Analysis Action Plan

See Appendix page 16.

Step 8: Sign Off

As part of the report process for Mayor & Cabinet, this EAA will be reviewed and signed-off by a representative from the Corporate Equalities Board (CEB), the relevant Heads of Service within the directorate and the Executive Director for Children and Young People.

Equalities Analysis Action Plan

Issue	Actions To Be Taken	Lead Officer	Timescale For Implementation	Timescale For Completion
Historic issues with data on NRPF families, particularly in relation to equalities.	<ul style="list-style-type: none"> ▪ Ensure that more robust data on applicants (particularly in terms of gender, age and ethnicity and nationality) are routinely collected for new and existing NRPF cases receiving local authority support. 	Shirley Spong	To commence May 2015 (subject to Mayor and Cabinet decision)	Ongoing
Early stage of operation of new model and constantly evolving legal environment means service needs to be reviewed frequently to ensure compliance with the PSED.	<ul style="list-style-type: none"> ▪ A further review after 1 year to be conducted on the general and equalities impact of the council's approach to NRPF with particular regard to ongoing compliance with the PSED. 	Justine Roberts	May 2016	By May 2016
Inconsistencies between local authorities dealing with NRPF applications.	<ul style="list-style-type: none"> ▪ Share Lewisham's approach to NRPF and learning from this widely with other authorities. Seek to build consistency of approach through our joint work in the South London region to ensure that families receive a more transparent and fair service in a wider geographical area. 	Justine Roberts	January 2014	January 2016

<p>Inconsistent approach to dealing with homeless NRPF families and other homeless families.</p>	<ul style="list-style-type: none"> ▪ Continue to raise the profile nationally of the local authority duties for assessment and support for families with NRPF who present as homeless and how this differs from families with recourse to public funds who present as homeless under the Housing Act 1996 and Homelessness Act 2002. ▪ Ensure that families with NRPF are assessed in line with our duties under the Children Act 1989 and in a way which is more consistent with other homeless families. 	<p>Shirley Spong</p>	<p>To commence May 2015 (subject to Mayor and Cabinet decision)</p>	<p>Ongoing</p>
<p>The need to actively support families to resettle and conclude their immigration applications more swiftly.</p>	<ul style="list-style-type: none"> ▪ To continue to work with the Home Office to secure the services of a dedicated decision maker at the Home Office for Lewisham cases to ensure that applications are resolved as quickly as possible. ▪ Continue to identify local authority provided support (such as employment services) which NRPF families might not be eligible for at a national level but which might support them to build their own capacity to financially support their families.. 	<p>Justine Roberts</p>	<p>To commence May 2015 (subject to Mayor and Cabinet decision)</p>	<p>Ongoing</p>
<p>The need to examine specific issues disproportionately affecting black & minority ethnic women</p>	<ul style="list-style-type: none"> ▪ Undertake a targeted piece of work in relation to domestic violence in partnership with key partners and with other boroughs 	<p>Shirley Spong</p>	<p>To commence May 2015 (subject to Mayor and Cabinet decision)</p>	<p>September 2015</p>

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Appendix 2 – solicitors invited to participate in online survey prior to the start of the NRPF pilot

Solicitor Name	Contact
Grant Saw Greenwich	info@grantsaw.co.uk
TV Edwards	enquiries@tvedwards.com
Cunningham Blake Lewisham	mb@cbsolicitors.com
Duncan Lewis New Cross	maryema@duncanlewis.com
BH Solicitors Lewisham	info@bhsolicitors.com
Mandy Peters -Lee	enquiries@mandypeterssolicitors.co.uk
Shelter	info@shelter.org.uk
Fisher Meredith	robert.sparks@fishermeredith.co.uk
Scott Moncrieff	scomo@scomo.org.uk
John Ford	john@johnfordsolicitors.co.uk
Morrison Spowart	Jenny.morrison@morrisonspowart.com
Philcox Gray	postroom@philcoxgray.co.uk
GT Solicitors	info@gtstewart.co.uk
Deighton Pierce Glynn	mail@dpglaw.co.uk
Steel and Shamash	janice.kaufman@steelandshamash.co.uk
Hansen Palomares	info@hansenpalomares.co.uk
Howard League Penal Reform	info@howardleague.org
Kaim Todner	Solicitors@kaimtodner.com
Cale Solicitors	vani@calesolicitors.com
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Project 17

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Public Accounts Select Committee
Lewisham Town Hall
Catford
SE6 4RY

Also by email to all Public Accounts Select Committee members

2 February 2015

Response to Lewisham's No Recourse to Public Funds Review

We understand that a review is currently being undertaken in respect of the provision of support to families with No Recourse to Public Funds (NRPF) in Lewisham. We are a specialist charity, based in Lewisham, providing assistance and support to NRPF families. We write to provide further information that we consider relevant to your decision and which we hope will be of assistance to you.

1. About Project 17

- 1.1 Project 17 is a charity working to end destitution among migrant families with no recourse to public funds. We work with families experiencing homelessness and poverty to help them access the support they need. We believe that all children have the right to a home and enough to eat, irrespective of their parents' immigration status. To achieve our aim, we provide advice, advocacy and support for individuals, we build capacity in other organisations and we call for the effective implementation of statutory support.
- 1.2 All our services work towards improving the implementation support under of section 17 of the Children Act 1989 (s.17), and ensuring that those people entitled to assistance under s.17 are able to access it effectively.
- 1.3 Project 17 was established in 2013 by a small team of specialist practitioners who were deeply concerned that children and families were facing destitution because they could not access the support they needed.
- 1.4 We see clients from across London, but our office is in Lewisham. As such, we have significant experience of the work of the NRPF pilot team.

1.5 Since the start of Lewisham's pilot NRPF service in July 2014 we have advised 130 families.

- Of these, 32 have been from Lewisham borough
- We have referred 10 families to Lewisham for an assessment for support under s.17 because we believed that they were eligible for support.

2. Summary of our findings:

2.1 We have serious concerns about the safety, legality and efficacy of Lewisham's model for assessing and allocating support for people with no recourse to public funds. These concerns are summarised below and then outlined in more detail in the sections that follow, with specific reference to the Scoping Paper of 22 September 2014, the First Evidence Paper of 5 November 2014 and the Draft No Recourse to Public Funds Review of February 2015. In summary, our concerns are as follows:

2.2 Lewisham's model appears to introduce a significantly higher threshold for triggering a Child in Need assessment for support under s.17 than that imposed by the Children Act 1989. Under the Children Act 1989 a local authority must complete a Child in Need assessment if it believes that a child *may* be in need. Lewisham's NRPF 'triage' system imposes additional barriers to triggering an assessment.

2.3 Before a Child in Need assessment is completed, the NRPF pilot team requires the applicant to prove that they are destitute. 'Destitution' is not part of the definition of a child in need. As such, this initial test may prevent children in need from accessing the support that they desperately require. We are worried that imposing additional restrictions of the definition of a child in need will have serious implications. We have experience of families living in very poor conditions, such as extreme overcrowding or properties without gas and electricity, being turned away as 'ineligible' for support even though the children in such families meet the legal definition of a child in need. Similarly, we are concerned that families leaving violent partners would not meet this destitution test as they still have somewhere to live.

2.4 If a child is deemed 'ineligible' by the NRPF pilot team as a result of their parents' immigration status, they are refused support without a Child in Need assessment. This approach has led to some of our homeless clients being turned away by the pilot team. Their children's needs were not assessed by trained social workers. The fact that these children were homeless did not appear to raise safeguarding concerns for the local authority.

2.5 The NRPF pilot team's statistics state that 88% of people are turned away without an assessment. We are extremely concerned about what happens to these children. We are worried that homeless families are slipping through the net without an assessment of need and without being referred to Children's Social Care.

2.6 We note with concern that homelessness does not seem to be viewed as a safeguarding issue by the NRPF Pilot Team. We believe that destitution must be treated as a safeguarding issue, as would be the case for children whose parents had access to mainstream benefits and social housing.

2.7 The review focuses primarily on cost-saving measures and protecting the local authority's budget in a climate of austerity. We recognise the cost pressures experienced by the local

authority and that supporting people with no recourse to public funds has significant financial implications. However, we are concerned that this costs-driven analysis has prevented proper consideration of the local authority's commitments and obligations to safeguard and promote the wellbeing of children in Lewisham. We believe that consideration must be given to how the needs of vulnerable children presenting to the local authority will be met.

3. Eligibility assessment and the 'robust front door'

3.1 The Scoping Paper and other documents produced by the local authority set out Lewisham's 'robust triage'¹ service and the pilot scheme's practice of separating eligibility assessments from needs assessment. This eligibility assessment is variously described in paragraph 4.3 of the Scoping Paper, paragraph 3.4 of the First Evidence Paper, and paragraph 8 of the Draft Report. The report states that 88% of cases do not proceed to a Child in Need assessment because they do not pass the eligibility assessment².

3.2 We are concerned that these figures indicate that Lewisham is failing to comply with the duty imposed by s.17 of the Children Act to undertake an assessment of any child whom it appears to the local authority *may* be in need. Moreover, we are concerned that the eligibility criteria are seriously flawed. In particular, the following aspects of this initial eligibility assessment are problematic.

- (a) requirement to prove the need arose in Lewisham;
- (b) requirement to prove destitution; and
- (c) requirement to prove that immigration status does not exclude a person from support.

- *Individuals are under a duty to prove that their need arose in Lewisham.*

This is legally inaccurate. The relevant test for determining responsibility is whether a child is within Lewisham's area. This test will be met if a child is physically present in Lewisham. Physical presence will trigger a duty to undertake an assessment and to provide support in urgent cases³. We are worried that Lewisham could turn away children in need for whom it is responsible because caseworkers are applying the wrong test.

- *Individuals must prove they are destitute with no other form of support.*

Whilst we would agree that a destitute child will be a child in need, 'destitution' is not part of definition of a Child in Need. A child is 'in need' if:

- he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority;

¹ Paragraph 6.2 of the Scoping Paper

² Paragraph 10.1, 'No Recourse to Public Funds Review: First Evidence Paper' 5 November 2014

³ *R (S) v Lewisham LBC, Hackney LBC and Lambeth LBC* [2008] EWHC 1290 Admin

- his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or
- he is disabled⁴

The local authority has a duty to promote the welfare of children in need within its area⁵. It is empowered to provide support (including accommodation and financial subsistence) to meet the needs of a child in need.

By requiring a family to prove destitution, Lewisham is imposing a higher threshold for triggering a child in need assessment. We are concerned that this will result in assessments not being undertaken. In turn, this will result in Lewisham failing to support children who would have been found to be in need if properly assessed.

- *Individuals must prove that immigration status does not exclude them from support.*

Schedule 3 of the National Immigration and Asylum Act 2002 excludes certain categories of adult migrants from accessing s.17 support. However, we are concerned that Lewisham's proposed model may misapply this by refusing to undertake an assessment of any migrant who cannot provide evidence of an outstanding application for leave to remain.

First, Schedule 3 does not exclude children from s.17 support.

Second, there will be some categories of migrants who are not caught by the Schedule 3 exclusion. We are concerned that the proposed model fails to recognise this, particularly in relation to 'Zambrano carers' (in this context, the primary carer of a British child). A person with a Zambrano right to reside has a directly effective right under EU law to reside in the UK regardless of whether or not they have applied to the Home Office for recognition of such right or have documentation to prove it⁶. Accordingly, a Zambrano carer would be in the UK lawfully and therefore not caught by the Schedule 3 exclusion. Lewisham officers would need to assess whether a person could be a Zambrano carer.

Third, even if an adult is excluded from support under s.17 by schedule 3 of the Nationality, Immigration and Asylum Act 2002 (NIAA), this exclusion does not apply if a failure to provide support would breach the European Convention on Human Rights (ECHR). Unfortunately this does not appear to have been properly understood. Where an adult migrant would otherwise be excluded by Schedule 3, it is necessary for a local authority to assess whether refusing support would result in a breach of the ECHR or EU law. It has been established that leaving a person destitute will amount to a breach of Article 3 ECHR⁷. Accordingly, a local authority will need to consider whether that breach of human rights can be avoided by assisting a person to return to their country of origin. If a person has an outstanding application for leave to remain,

⁴ S.17(10) Children Act 1989

⁵ S.17(1)(a) Children Act 1989

⁶ *Pryce v Southwark LBC* [2012] EWCA Civ 1572

⁷ *R (on the application of Limbuela) v SSHD* (2005) UKHL 66, (2006) 1 AC 396

or would in due course have an appeal right against an immigration decision, case law has established that this is an impediment to their return home and s. 17 support must be provided to avoid a breach of human rights⁸. In the case of a person who does not have an outstanding application for leave to remain, the local authority must assess for itself whether requiring a person to return to their country of origin could result in a breach of their human rights.

It appears from documents produced by the local authority that the Schedule 3 exclusion and relevant case law has not been properly understood. For example, paragraph 3.4 of the First Evidence Paper states that if an overstayer is taking steps to regularise their immigration status, they are not excluded by schedule 3 NIAA. This is incorrect. Adults who require leave to remain but do not have it are excluded by schedule 3 regardless of whether they are taking steps to regularise their immigration status. However, as with all categories of excluded adults, if a failure to provide support would breach rights under the ECHR the exclusion does not apply. As a person in this situation cannot return to their country of origin, s. 17 support must be given.

4. Inaccurate data and insufficient enquiries

- 4.1 We question the reliability of the data referred to in the reports. Sufficient enquiries have not been undertaken to assess the impact of the pilot scheme on families refused support. We particularise our concerns below.
- 4.2 Paragraph 6.3 of the Scoping Paper states that in the first 2.5 months of the pilot, the local authority accepted a duty towards one family and provided temporary support for 8 families. During the period of the Pilot, Lewisham provided support to five of our clients under s.17. Four of these five families had already approached the NRPF pilot team and asked for help before they came to us, but had been turned away. The data referred to in the report fails to indicate how many of the families that were eventually supported were initially turned away.
- 4.3 Paragraph 9.2 of the Scoping Paper states that examining the impact of the interventions on those presenting as NRPF is a key line of inquiry for the review. However, this analysis does not appear in the Draft Report and we have not found evidence to suggest that this important subject has been addressed. We have serious concerns that those turned away by the NRPF team are being driven underground and that children are being left at risk. As outlined by the case study at 7.2 below, families in this situation are not being assessed by the NRPF pilot team, and referrals are not being picked up by Children's Social Care, creating a gap in service provision through which a large number of vulnerable children are disappearing. In our view, it is critical that an attempt is made to evaluate what happens to families who are refused support.
- 4.4 Paragraph 10.1 of the Scoping Paper states that organisations supporting people with no recourse to public funds would be invited to give evidence as part of the review. However, it is

⁸ *Birmingham City Council v Clue* [2010] EWCA Civ 460; *R (on the application of KA) v Essex County Council* [2013] EWHC 43 (Fam)

unclear whether any voluntary agencies have been approached. The Draft Report does not refer to evidence from voluntary sector agencies. As the only voluntary organisation specialising in support options for people with no recourse to public funds, we believe that we should have been invited to give evidence. However, we were not consulted and even when we contacted Lewisham asking to contribute to the review, we received no response. We have also spoken to other local organisations such as Lewisham Refugee and Migrant Network, Action for Refugees in Lewisham, the Children's Society and a number of Children's Centres and were unable to find any organisation that had been asked to contribute to the review. We are therefore concerned about the balance of the evidence submitted and the efforts made by the local authority to hear the views of the voluntary sector.

5. Fraud/Lewisham's susceptibility to requests

- 5.1 Paragraph 38 of the Draft Report and paragraph 8.6 of the First Evidence Paper suggest that there are high levels of fraud perpetrated by people with NRPF requesting support. However, neither document sets out the basis for these assertions. We have extensive experience of working with families in this situation and have seen no evidence that fraud is a particular problem in this area.
- 5.2 We are concerned that an inability to produce evidence is often wrongly interpreted as fraud or a reason to mistrust a request for help. In our experience, families with NRPF frequently lead chaotic lives, making it difficult to provide the evidence sought. In particular, proving addresses can be difficult for families who, for example, have been illegally subletting. We are also aware that misunderstanding and miscommunication is too frequently interpreted as evidence of fraud. We are worried that the approach proposed by Lewisham will exacerbate the problems that already exist.
- 5.3 It remains our view that all assessments should be child focussed and treat assessing needs as the primary objective. However, if assessments are to be approached from a fraud perspective (which we do not accept is the correct approach in these cases), then we believe that Lewisham needs to enact appropriate safeguards to ensure that the process is fair. At present there are no such safeguards.

6. Failure to approach the issue from a safeguarding perspective/wider context of the review

- 6.1 It is our view that the provision of support for families with NRPF must be approached from a safeguarding perspective, with the needs and best interests of the child treated as the primary concern. Unfortunately, the documents produced as part of the review and the operation of the Pilot scheme indicate that safeguarding the needs of vulnerable children has not been the priority for the scheme, nor a criterion against which its success has been judged. We set out below our concerns in relation to some of the comments made in the various reports and address what we consider to be a number of general inaccuracies and/or omissions.
- 6.2 Paragraph 2.2 of the First Evidence Paper briefly outlines the policy context set out in Lewisham's Children and Young People Plan 2012-15, in which the local authority aims to *'improve the lives and life chances of the children and young people in Lewisham'*. Unfortunately we view Lewisham's *'robust front door'* approach as undermining these

objectives. By putting cost-saving measures ahead of the needs of children, the tone of review and the practice of the NRPF pilot team appear to be in opposition to the CYP goals, geared towards turning people away and refusing support, even if that means allowing children to become street homeless.

- 6.3 Paragraph 9.2 of the First Evidence Paper lists a number of recommendations from a review concluded by Lewisham in January 2014. Unfortunately we were not able to find the January 2014 review on the local authority's website and requests for relevant documents to be sent to us went unanswered. However, we are concerned that none of the recommendations listed in paragraph 9.2 are concerned with the best interests of the child. These recommendations and the other documents produced for the current review do not appear to prioritise the needs of children and vulnerable adults. The overall tone of the review implies that ensuring that those who need support can access it effectively is not a priority for the local authority.
- 6.4 The Draft Report analyses the legal, social and economic reasons for the increasing numbers of requests for support in some detail. We would include the July 2012 amendments to the Immigration Rules as a significant driver for demand. These changes created the 10 year route to settlement for individuals with leave to remain under Art 8 ECHR. This gave people leave to remain with no recourse to public funds in cases where individuals would have previously had access to mainstream welfare and social housing. This accounts for the increasing number of people approaching the local authority with leave to remain.
- 6.5 Paragraph 10.4 of the First Evidence Paper describes how the NRPF pilot team has worked effectively with other agencies and with the Home Office to help people regularise their immigration status and access public funds by applying for a change of conditions of leave. Unfortunately our own experience and the experiences of our partner organisations suggest that the pilot team is often ineffective and unwilling to co-operate with requests for co-operative working from the voluntary sector. The case study in 7.3 exemplifies our concerns.
- 6.6 Paragraph 45 of the Draft Report and 11.2 of the First Evidence Paper strongly imply that no judicial reviews have been issued against the local authority because they lacked merit and Lewisham was able to defend against them at the pre-action stage. Indeed, the minutes of the evidence session of 5 November 2014 state this explicitly. However, we believe this statement to be purposefully misleading. We are aware that the local authority has conceded a number of cases following pre-action letters from solicitors. For example, Lewisham began supporting 3 of our clients during the Pilot following threats of judicial review⁹. These cases did not go to court because the local authority accepted that it owed a duty to the claimants. The assertion that all the cases brought against Lewisham are without merit is therefore incorrect. If Lewisham proceeds with the current approach, we would expect to see increasing numbers of claims for judicial review being brought.

7. Case studies

⁹ We are also aware of other cases that pre-date the pilot scheme in which Lewisham provided support following receipt of a judicial review pre-action protocol letter and one case in which a claim was issued and Lewisham conceded the claim following interim relief having been awarded.

7.1 In order to illustrate some of our experiences working with families who approached Lewisham for support, we set out a number of case studies below:

7.2 Ms A is from Nigeria. She has two children, aged 8 and 5. Ms A came to UK in 2006 as a student and then returned to Nigeria when her visa expired in 2010. The family came back to the UK in 2011 because Ms A was being abused by family members in Nigeria. She felt she was unable to return and overstayed her visa.

The family was supported by friends, moving frequently and relying on handouts to stave off destitution. Eventually, in November 2014, the generosity of her friends was exhausted and she was made homeless with her children.

Ms A presented to the NRPF pilot team at Lewisham in December 2014, but was told that she and her children were not eligible for support because of their immigration status. No Child in Need assessment was conducted, even though the family would be street homeless that night.

The NRPF Team did not refer the family to Children's Social Care.

Worried about the safety and wellbeing of the children, we completed a Common Assessment Framework referral and sent this to Lewisham Children Social Care. Despite guidelines of a response within 2 working days, neither we, nor Ms A had been contacted after a week.

We chased Children's Social Care and were eventually informed that no action would be taken by CSC because the family had no recourse to public funds and should therefore present to the NRPF pilot team. We explained that this had already happened, but the NRPF team refused to support the family because of their immigration status. No further action was taken by the NRPF Team or Children's Social Care despite the obvious risks to the children. The family was allowed to slip through the gap between the NRPF pilot team and Children's Social Care and Ms A's children are still destitute.

7.3 In May 2014 we were approached by Ms B. She had limited leave to remain and was supported by Lewisham under s.17. She believed she had no recourse to public funds. However, when she showed us her biometric residence permit it was clear that there was no NRPF restriction on her leave to remain. Ms B was therefore entitled to mainstream benefits and social housing and should not have been supported under s.17.

We wrote to her caseworker and casework manager and explained the error, advising the local authority to terminate support under s.17 so Ms B and her children could apply for mainstream benefits and social housing. An immigration solicitor also wrote to Lewisham confirming her immigration status.

No action was taken to discharge the duty. The local authority continued to pay for Ms B's family's housing and subsistence.

Although we initially contact Lewisham before the start of the NRPF pilot, this issue was not resolved until September, well after the pilot team had started work. In August we contacted

the NRPF team directly using the nrpfenquiries@lewisham.gov.uk email. We did not receive a response.

7.4 Ms C and her two children (aged 7 and 5) are being supported by Lewisham under s.17 because the children have been assessed as in need. The family were given one room in a house shared by seven families. We were deeply concerned about the condition of the property and did not believe that it met the needs of the children. In particular, we were concerned that:

- There was only one bathroom and no separate toilet in the property. It was shared by all seven families and Ms C had to get her children up at 4am to wash and dress them without disturbing the other residents.
- The younger child had bladder problems and because the toilet was often occupied, he wet himself frequently.
- The family was only given two beds so the children were forced to share a bed. The younger child's enuresis meant that the older child was woken up almost every night when he wet himself.
- The older child's asthma was exacerbated by damp and poor ventilation in the property.
- There was no space in the property for the children to play or do homework
- There was no washing machine, and because of the younger child's bladder problem it would have been unhygienic to wash clothes by hand. As such, the family was forced to spend subsistence payments on going to the launderette.

We wrote to the NRPF pilot team about our concerns four times between October and December 2014. All our representations were ignored. Ms C was not contacted by the team for a new child in need assessment or a review of the accommodation.

We are still deeply concerned about the children's welfare and unfortunately feel compelled to refer Ms C to a solicitor for legal advice because our attempts to engage with the NRPF team have been ignored.

7.5 We received a call to our telephone advice line in January 2015 from Baring Primary School about a case they had attempted to refer to the Lewisham NRPF pilot team. They described Ms D, a woman with limited leave to remain with no recourse to public funds. She and her two children had been evicted and had nowhere else to go. They approached the NRPF team. A caseworker raised her voice to Ms D and told her variously that:

- There were no properties available
- If she persisted in asking for support her children would be taken into care

- She should go and get her husband to support her (her ex-husband is no longer in the UK and they have no contact)

Unfortunately our clients inform us that this type of aggressive ‘gatekeeping’ behaviour is very common among the NRPF team. It is deeply concerning that caseworkers routinely make unlawful and antagonistic statements that appear designed to encourage vulnerable homeless families to ‘disappear’.

7.6 We were contacted by Ms E, a 17 year old child appeared to be the victim of trafficking and domestic servitude. Ms E was pregnant and had been living in Lewisham for about a month with a kind stranger who had taken her in, having found her crying at a train station.

Ms E had approached Lewisham for support but was told that she was not eligible because she did not have an outstanding immigration application. Eventually, following receipt of a judicial review pre-action protocol letter, Ms E was accommodated under s.20 of the Children Act 1989. Whilst this is a s.20 (and not s.17) case, it demonstrates how the requirement to prove immigration status is working in practice. Vulnerable children are being refused the support they desperately require.

8. Our recommendations

8.1 The assessment for determining whether a family is entitled to support under s.17 should be a child-centred process and the local authority should treat the best interests of the child as a primary consideration¹⁰. We are concerned that the approach proposed creates a dangerous gap in service provision in which children can be left homeless and destitute with no means of support.

8.2 The local authority should recognise its duty to conduct a Child in Need assessment if it believes that a child *may* be in need. The Child in Need assessment should be the lead assessment. Only after this has been completed should the local authority consider a Human Rights assessment to determine whether there are any legal or practical barriers to the family’s return to their country of origin.

8.3 The local authority should work with voluntary sector partners to ensure that individuals with limited leave are able request recourse to public funds from the Home Office in a timely manner.

8.4 Caseworkers should be properly trained to avoid aggressive ‘gatekeeping’ tactics. For instance, threatening to take a child into care instead of supporting under s.17 (as in the case study above) is likely to be unlawful if there are no child protection concerns.

¹⁰ *ZH (Tanzania) v SSHD* 2011 UKSC 4

8.5 Where a child is in need but there is no legal barrier to prevent the family's return to their country of origin, the local authority should conduct its own Human Rights assessment to establish for itself whether a refusal to support the family would breach rights under the European Convention on Human Rights or EU law. Under the Pilot, the local authority appears to refuse to conduct an assessment at the 'triage' stage if there is no outstanding immigration application. Moreover, if it is concluded that there are no reasons that a family cannot return to their country of origin, the family should be supported whilst active assistance is given to help the family make all necessary arrangements.

Concluding comments

8.6 We hope that the points made in this response will be taken into account as part of the review process. We would be more than happy to discuss further with you any of the issues we raise.

8.7 Moreover, we consider that Project 17 and other voluntary organisations should be invited to actively participate in the review process going forward. We believe that the voluntary sector has considerable knowledge and expertise in this area and could make a valuable contribution to the review. We would welcome the opportunity to work in partnership with Lewisham to help ensure that the needs of vulnerable migrant children are met.

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Mayor and Cabinet
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Sent by email to Lewisham's Mayor and members of the Cabinet

6 May 2015

Submissions to the Mayor and Cabinet: Lewisham's NRPF proposals

1. We understand that the Mayor is due to take a decision on the future of how families and vulnerable adults with no recourse to public funds are supported by Lewisham Council. We welcome this opportunity to make submissions ahead of this key decision, particularly as we were informed at the meeting we attended on 5 March 2015 that there would be no opportunity for us to do so.
2. **About Project 17**
 - 2.1 Project 17 is a Lewisham-based charity. We aim to end destitution among migrant families with no recourse to public funds. We work with families experiencing homelessness and poverty to help them access the support they need. We believe that all children have the right to a safe home and enough to eat, irrespective of their parents' immigration status. To achieve our aim, we provide advice, advocacy and support for individuals, we build capacity in other organisations and we call for the effective implementation of statutory support.
 - 2.2 In particular, our services work towards improving the implementation support under of section 17 of the Children Act 1989 (s.17), and ensuring that those people entitled to assistance under s.17 are able to access it effectively.
 - 2.3 We see clients from across London, but our office is in Lewisham. As such, we have significant experience of the work of the NRPF pilot team.
 - 2.4 Since the start of Lewisham's pilot NRPF service in July 2014 we have advised 211 families. Of these, 55 of our clients have been from Lewisham borough.

3. Summary:

3.1 We remain extremely concerned that the introduction of additional eligibility criteria ahead of a full Child in Need assessment is unsafe and also unlawful. In summary our concerns are:

3.1.1 That the eligibility criteria are flawed and wrong in law.

3.1.2 That the threshold for accessing a Child in Need assessment and support under s.17 and has been raised. This has resulted in children facing desperate situations wrongly being turned away.

3.1.3 It is concerning that 87% of all applicants for support are being turned away without an assessment of need.

3.1.4 Of those who are deemed to be eligible for support, we are concerned that the failure to conduct an assessment of needs means that additional needs are being overlooked and/or the support provided does not in fact meet the full range of a child's needs.

3.1.5 That no attempt has been made to analyse what happens to those who are turned away. We are now aware of families refused support by Lewisham who ended up street homeless or living in unsafe and unsuitable accommodation.

3.1.6 That a fraud approach has been adopted but without any safeguards to protect the applicants.

3.2 We have already detailed many of our concerns in our letter to the Public Accounts Select Committee dated 2 February 2015. We will not repeat the points raised here, and instead refer you to our original letter, which is attached. We also do not intend to address in any detail the legal arguments as to the lawfulness of the approach as this is now the subject of our proposed claim for judicial review and it is more appropriate for our legal representatives to deal with those matters.

3.3 However, we would like to respond to a number of points in the report to the Mayor and Cabinet dated 13 May 2015 ('the Report') and to provide you with case examples that illustrate our concerns about the criteria and approach adopted. We hope that you will take this into account when you reach your decision.

4. Eligibility criteria

4.1 Taking the eligibility criteria in turn, we have outlined our concerns below.

Which is the appropriate authority to undertake the assessment

4.2 We note that this Report does not refer to a test of 'ordinary residence' (as in earlier documents). However, in practice, that same test continues to apply and is alluded to in the

report. We remained concerned that the test applied is wrong in law, and is being used to refuse support to families at the eligibility assessment stage.

- 4.3 It is our view that where a family seeks support from Lewisham and demonstrates that the child is physically present in Lewisham (whether that be because they are living in Lewisham or the child is at school there), then Lewisham needs to conduct an assessment of need and provide support where appropriate. A failure to do so results in destitute families being shuttled between different local authorities without their needs having been assessed, and is likely to cause safeguarding concerns in which children with no means of support are left homeless. Case-law has clearly established that physical presence is all that is required, and that a child's needs should not go unmet whilst local authorities debate who the responsible authority is.
- 4.4 Notwithstanding our concerns with the legality of the test, we are additionally aware that the process set out in paragraph 7.5 of the Report is not, in practice, being followed. Paragraph 7.5 states that the eligibility assessment establishes where the family lives now and lived previously, where the children go to school and which GP they are registered with. We have no examples of the NRPF Team making a referral to another local authority. Instead, in our experience caseworkers appear to routinely tell the applicant to present at another local authority, without making any arrangements to ensure that the other local authority conducts an assessment. This is illustrated by Case Study 1 (below).

Whether exclusions apply in line with sch 3 of the Nationality, Immigration and Asylum Act 2002

- 4.5 We are concerned about the approach for the following reasons:
- 4.6 First, we consider that the first step ought to be establishing whether the child is in need and what those needs are, and not the immigration status of their parents. That is because a child is not excluded by Schedule 3 and so their needs should always be considered, regardless of their parents' immigration status. It is our view that a child should never be left street homeless because of their parents' immigration status and regrettably since the introduction of the pilot approach we have encountered this in Lewisham.
- 4.7 Second, we are aware that in practice families approaching Lewisham are being turned away without an assessment of need or support on the basis that they have no outstanding application for leave to remain. That in our view is not the correct approach. If an adult is excluded by Schedule 3, but falls within the human rights exception to that exclusion (which a person who meets your destitution criteria would), then Lewisham can consider whether the human rights breach can be avoided by a person returning to their country of origin. It is established law that an outstanding application for leave to remain that is not hopeless or abusive would be an impediment to a person's return. However, this is not necessarily the only barrier and there may be other reasons why a family cannot be expected to return.

Indeed, following legal aid reform, there is likely to be an increasing number of families with grounds to submit an immigration application, but unable to afford a legal representative to do so. We are concerned that this is not being properly considered.

- 4.8 Third, the Report states that if a Human Rights assessment concludes that there are no legal or practical barriers to the family's return to their country of origin, they are referred to a voluntary returns programme. However, the Report does not acknowledge that where a family agrees to return to its country of origin the local authority cannot discharge its duty simply by advising return. Instead Lewisham may have to provide support while the family leaves the UK.
- 4.9 Fourth, as our second case study demonstrates, in our experience those with no barriers to return are not referred to a voluntary returns programme or offered support whilst they take steps to leave the UK. They are simply turned away or threatened with having their children taken into care.
- 4.10 Fifth, whilst the report notes that a person's Zambrano rights will be investigated, no detail is actually given as to who investigates this and how. In our experience Zambrano carers are being treated as person's unlawfully present in the UK with no outstanding application for leave to remain.

Whether the family is destitute or homeless and therefore there is a child in need

- 4.11 We believe that destitution is not the correct test for determining whether a child is in need. The Child in Need assessment process is intended to assess whether or not a child meets the definition of a child in need, as per s.17(10) of the Children Act 1989. The test of 'destitution', which comes from s.95 of the Immigration and Asylum Act, is intended for assessing asylum support applications. It is not included in the definition of a child in need and is a much higher threshold than "in need".
- 4.12 We are concerned that there will be children who are "in need" but who are not "destitute". For example, a child may be living in entirely unsuitable and unsafe accommodation but would not meet the destitution criteria (see Case Study 3 below). Similarly, a parent may be working but not earning enough to meet their children's needs. They are not destitute but the children may still require support to ensure that their well-being is safeguarded and promoted.
- 4.13 As with the other eligibility criteria, we believe that the proper time to assess whether a child is in need is during the Child in Need assessment. It is not for the local authority to pre-empt these findings by looking at destitution at the 'triage' stage.
- 4.14 *Whether there are any further safeguarding or children in need concerns*

- 4.15 We are particularly concerned that the local authority does not appear to view homelessness and poverty as a safeguarding issue. We believe that the local authority is creating a false distinction between neglect as a result of parental actions, and neglect as a result of destitution. Where a child does not have enough to eat or a stable place to live, this should be treated as safeguarding concern.
- 4.16 We are also concerned that the introduction of an eligibility assessment means that a child or their parents' needs, over and above a need for accommodation or a need for a particular type of accommodation is not being identified. The Report states that safeguarding concerns are identified through the MASH. We do not believe that this is an adequate method of identifying additional safeguarding or protection concerns. It is possible that this will be the family's first approach to the local authority. Needs may not yet have been identified by other agencies. Indeed, families in need of support under s.17 may have often avoided state involvement in family life as a result of immigration concerns. The Child in Need assessment should be capable of making its own findings as to whether a child has additional needs, rather than relying on information from other agencies.
- 4.17 We are also aware that caseworkers are not social workers and therefore lack the necessary training and experience to identify other support needs. We are particularly concerned that mental health concerns are not being properly understood (see Case Study 3 below for example).

5. Reasons for refusals

- 5.1 The Report notes at paragraph 8.2 the reasons for concluding that a family is not owed support and we are concerned that a number of these reasons only serve as examples of the issues we are concerned about.
- 5.2 **Not destitute:** We note that the largest proportion of applicants are refused support because they are 'not destitute'. For the reasons explained above, we do not believe that 'destitution' is the appropriate test because a child may be in need, but not destitute. It is concerning to note that the Report states that the average family income of those found to be ineligible because they were "*not destitute*" is £970 per month. If one takes into account the fact that the average family size for those seeking support from Lewisham is one adult and two children (see paragraph 7 of Lewisham's NRPF report dated 5 November 2014) and that according to your own commissioned study, the average rent for a one-bedroom property in the cheapest part of Lewisham is around £800 per month¹, then it is very obvious that this income is not sufficient to meet a child's needs. Even with careful budgeting it is simply not possible for a child's needs to be met on just £13 per person per week. In fact, this is significantly less than the rate of section 4 asylum support (£35.36 per person per week). In

¹ <http://www.lewisham.gov.uk/myservices/planning/policy/LDF/development-policies/Documents/LewishamCouncilPODAffordabilityStudyFinal.pdf>

the case of *R (VC) v Newcastle City Council [2011] EWHC 2673 (Admin)* it was held that it was highly unlikely that s.4 asylum support rates could ever be sufficient to meet a child's assessed needs.. It is therefore highly likely that the average family turned away by the NRPF Team on the basis that they are 'not destitute', are in fact "in need" and are wrongly being refused support.

- 5.3 **Not homeless:** 'Not homeless' is cited as a reason for refusing 8% of applicants of support. However, a child may have a roof over his or her head, but may still be in need and requiring assistance. First, there may be families who can afford the rent, but this leaves them without enough money to meet other needs. Second, a family can be living in unsuitable and unsafe property. For example, we are aware of one case in which Lewisham forced an applicant to await the bailiff's notice before providing support, despite the Lewisham Environmental Health team having found numerous Category 1 health hazards and serving a notice on the landlord prohibiting the use of this property for residential purposes. By failing to accommodate the family until they became street homeless, our client and her child were forced to remain in a property that had been deemed unfit and unsafe for human habitation. Third, once eviction proceedings are commenced it is inevitable that the family will have to leave the property at some point. However, by waiting until the last possible moment to commence an assessment, the family usually end up in short-term B&B accommodation before being moved elsewhere a short while later. This is both more costly for Lewisham, but also creates considerably more anxiety and distress for the family. It is particular concerning in cases where the children have disabilities which makes moving in this fashion even more difficult.
- 5.4 **No home office application or appeal:** this accounts for 10% of those refused support. As we have said above, the fact that a person does not have an outstanding application for leave to remain does not necessarily mean that they should not be supported.
- 5.5 **Stronger history with another borough:** We are concerned that up to 6% of families approaching support from Lewisham were refused an assessment and support on the basis of what we believe to be a flawed eligibility criteria requiring a person to show that their need arose within Lewisham rather than physical presence.
- 5.6 **Already supported by NASS (1.5%):** it is not clear to us from what is stated in the report whether these were families on s.4 or s.95 asylum support or the circumstances of the case. If it was the former then it may be that these families could have had needs over and above what s.4 could provide. If this is the case it is relevant that in *R (VC) v Newcastle* the court recognised the very different statutory purposes of s.4 and s.17, and found that it was highly unlikely that s.4 would ever suffice to meet a child's assessed needs. We would be concerned if a family was turned away on the basis that they were in receipt of s.4 asylum support, without any assessment of whether the child was in need.
- 5.7 **No evidence to support claim:** The Report states that 8% of applicants are turned away because they provide no evidence of their circumstances. Whilst fully accept that the

applicant is under a duty to co-operate with the local authority and provide as much information as possible. However, we are concerned that there needs to be some flexibility in the approach as it is not unusual for an individual who has lived in the UK unlawfully for a long period of time to have no relevant supporting documents or at least none that can be produced instantly. For example, many will not have a passport and will not have a biometric residents permit. They may well not have access to a bank account, or if they do, may not have 6 months statements readily available (particularly if they have moved regularly). It may not even be easy for them to obtain copy statements as we are aware of banks refusing to provide statements if a person cannot produce a passport or applying a charge which a person cannot afford. Producing evidence as to where they have been staying can also be problematic. A family may have been staying with friends who are themselves here illegally or whose tenancy agreements do not permit them to have guests stay, or unscrupulous private landlords who are illegally subletting or not declaring for tax purposes their rental income. Such people are frequently unwilling to be contacted by the NRPF team and therefore do not want to provide supporting letters or telephone numbers and families seeking support can be scared that if they provide their details anyway, this will result in their immediate eviction with nowhere else to go. This does not mean that the child is not in need.

- 5.8 **Fraud:** the Report states that the second highest reason for refusing support is 'fraud' (11%). This is concerning given that the NRPF Network in their evidence to PASC cautioned against adopting a fraud approach as their datasets did not evidence fraud being especially prevalent. Despite our requests, we have not been provided with any examples of what is considered to constitute fraud, how fraud is assessed or how many referrals have been made to the police or resulted in criminal convictions. We are concerned that from our own experience (in Lewisham and more widely) it would appear that the inability to provide all documents requested, or a misunderstanding or inaccurate recording of what was said in an assessment meeting, is later conflated with 'fraud'.

6. Case studies

- 6.1 In our previous submission to PASC we provided you with 4 case studies in relation to families we had supported. We now provide further examples of the problems with your current approach. These are just a handful of cases and we are now encountering increasing number of families adversely affected by the robust front door approach.

Case study 1:

- 6.2 *Ms X has four children, two of whom are autistic. Her partner had been working and supporting the family. In early March 2015 the family moved from Lewisham to Croydon. The children were still at school in Lewisham, registered with a GP in the borough, receiving support from Kaleidoscope and two of the children had Education Health Care Plans with Lewisham.*

- 6.3 *Three weeks after the move to Croydon, Ms X's partner was arrested. Bail was refused and he was remanded in jail. Ms X had no income and was unable to buy food and other essentials to support her children. She was also unable to pay her rent. She told her landlord about the situation and the landlord immediately gave her a notice to quit the property.*
- 6.4 *Ms X approached Lewisham's NRPF team for support. The caseworker looked briefly at the Notice to Quit and told her nothing would be done until she received a warrant of possession. No enquiries were made regarding the children's welfare or the family's financial situation.*
- 6.5 *Ms X explained what had happened to her support worker at Kaleidoscope, including the fact that she had now moved to Croydon. The support worker called the NRPF Team for further advice. The caseworker then told the support worker that Lewisham did not have any responsibility for the family as they are no longer resident in the borough. The caseworker told them over the phone to approach Lambeth instead. Ms X had no connection to Lambeth whatsoever. They were currently resident in Croydon. When Ms X approached Lambeth, she was told to go to Croydon. When she approached Croydon, she was told to go back to Lewisham.*
- 6.6 We believe this case study highlights a number of flaws in Lewisham's model:
- 6.7 First, no regard was given to the fact that they family had no money for food, nappies or travel. They were immediately deemed 'not destitute' and refused an assessment because they had not yet been evicted. This is notwithstanding the fact that the family included two children with disabilities.
- 6.8 Second, even if the caseworker mistakenly believed the client to be resident in Lambeth, the policy outlined in the report dictates that consideration should be had to all circumstances surrounding the children's welfare (school, GP, health services etc.). This clearly did not happen as the caseworker concluded in a phone call that the family was another local authority's responsibility.
- 6.9 Third, according to the Report, a referral to the other local authority should have been made. No referral took place. Indeed, the wrong local authority was identified.
- 6.10 Fourth, the children were also in need by virtue of their disabilities but this was not recognised by the caseworker.
- 6.11 Fifth, routine is very important to a child with autism and a disruption to it can cause them very considerable distress. It is also the case that temporary accommodation may be particularly unsuitable for an autistic child depending on their needs. It is our view that an assessment ought to have been commenced straight away, notwithstanding the fact that they were not being evicted quite yet, so that the assessment could be completed in good time and a move managed in a way that minimised to the extent possible the negative impact on the children in light of their disabilities. The destitution criteria does not allow for this.

6.12 Case study 2

6.13 *Ms Y approached the NRPF Team for support in April 2015 because she had been asked to leave her accommodation with her 6 month old baby and had nowhere else to go. Ms Y has no outstanding immigration claim and no leave to remain.*

6.14 *She was told by the caseworker that no support would be provided, and if she continued to request support the baby would either be taken into care, or the Home Office would be informed of her whereabouts and she would be removed. She was not given information about Refugee Action's Choices programme, as stated in the Report.*

6.15 This case study demonstrates that, in our experience, the NRPF Team does not offer support on a temporary basis while arranging voluntary return following the outcome of a Human Rights assessment.

6.16 Further, the case study demonstrates that discharging the local authority's duty before a full Child in Need assessment means that little (if any) emphasis is placed safeguarding and promoting the welfare of the child. No safeguarding referral was made in this case, even though it appeared that the caseworker accepted Ms Y had no form of support and was facing homelessness. Once again, destitution does not appear to be a safeguarding concern for the local authority in NRPF cases.

6.17 Case study 3:

6.18 *Ms Z was living in substandard accommodation with her daughter. Both had their separate health issues, including Ms Z suffering from a history of severe depression.*

6.19 *In January of this year Ms Z requested accommodation from Lewisham (this was not the first request) and provided a copy of the prohibition order and Environmental Health inspection report that set out in detail the serious health and safety hazards at their home. Notwithstanding the fact it was clear from these documents that our clients should not continue to live where they were as it was not fit for habitation, they were told that no support could be provided until they received the bailiff's notice. As a result, they remained in property where they were at risk of electrocution and other health problems for a further two months. This was because they could not be provided with support until they were 'destitute'.*

6.20 Our clients have since been accommodated outside of Lewisham with no consideration having been given to whether or not this is suitable. This has not only resulted in Ms Z being unable to continue to work but has caused her mental health to deteriorate to the extent that the mental health crisis team have needed to conduct daily visits to prevent her admission to a psychiatric unit and possible suicide. This in turn has hugely affected her daughter who is forced to care for her mother and has missed a considerable amount of school.

6.21 It is clear that the caseworker had failed to appreciate that Ms Z had needs over and above a need for somewhere to live and so these were not assessed. Similarly, the needs of the child as a carer to her mother were not assessed.

Adults with NRPF

6.22 Whilst Project 17 is primarily concerned with the support provided to families, we are also concerned more generally about the support given to those with NRPF including adults with care needs. This includes in particular pregnant and nursing mothers and those with mental health problems.

6.23 The Report prepared covers at length the position in relation to families but is virtually silent in respect of the assessment and provision of support to adults with eligible care needs. As you will appreciate the statutory framework for the support of adults (which has recently undergone a complete overhaul) is distinct from that which applies to children.

6.24 We consider that the assessment process in respect of assessing adults with care needs is also flawed and may not be compatible with your legal duties, particularly those imposed by the Care Act 2014.

7. Concluding comments

7.1 We remain concerned that families with children facing poverty and homelessness in Lewisham are requesting support from the NRPF Team and being turned away without a full assessment of their children's needs.

7.2 We believe that the eligibility criteria fail to take into account the numerous situations in which a legal duty may be owed to a family, despite the fact that they do not meet one or more of the eligibility criteria.

7.3 We note that contrary to their previous recommendations and those of PASC, the officers now recommend that the NRPF teams work is extended for 12 months. We hope that the Mayor will take our submissions into account when making his decision and that he rejects the continuation of the robust front door approach. We request the following:

7.3.1 that the current model is revised;

7.3.2 that the initial 'triage' assessment and eligibility criteria is withdrawn;

7.3.3 that full Child in Need assessments are conducted, by social workers, for all families approaching the local authority with children who may be in need;

7.3.4 that there be active engagement with Project 17 and other NGOs working with this client group on how the process could be improved;

Mayor of Lewisham
Sir Steve Bullock
Town Hall
Catford
London, SE6 4RU

By first class post & email: steve.bullock@lewisham.gov.uk

Our ref: JG
Your ref:

Date: 13 February 2015

Dear Sir

Re: London Borough of Lewisham – No Recourse to Public Funds Review

I write to express Shelter's concerns regarding the review that your authority is currently undertaking of the support provided to homeless families with no recourse to public funds (NRPF). Shelter has seen the review, draft report and the recommendations made by the Public Accounts Committee and approved on 5 February 2015. I understand that the draft report is due to be finalised by 18 February.

I appreciate that the evidence-taking stage of this review has now concluded, but regrettably we were not made aware of this review until very recently. Shelter was not invited to give evidence, nor were many of the other charities and advice agencies in the Lewisham area providing support and assistance to homeless families with NRPF. However, we feel very strongly that we should raise our concerns regarding the draft report, as the proposals raise some serious safeguarding and legal issues.

Shelter is a national charity that helps millions of people every year struggling with bad housing or homelessness. We are a major provider of legal and practical advice in housing matters, both to the general public and to Citizens' Advice Bureaux and local authorities under the National Homelessness Advice Service. We assist more than one million people a year via our website, Helpline and network of advice services, including 25,000 people whom we see each year under legal aid contracts. We employ over 200 advisers and 40 solicitors to give advice and offer legal representation to the public.

We regularly deal with the cases of families with NRPF who have become homeless and whose only realistic hope of remedying that state is to obtain the benefit of temporary accommodation and subsistence support from social services under the provisions of section 17 Children Act 1989 (CA 1989), whilst they resolve their immigration status and/or apply for the NRPF condition to be removed from their conditions of leave to remain in the UK.

The legal threshold for obtaining an initial assessment under s17 CA 1989 is relatively low. When approached for support from a homeless family, a local authority is required to assess whether the children are 'in need' and whether the child is in that local authority's area. Section 17(1) states that the local authority's duty is 'to safeguard and promote the welfare of children within their area who are in need.' If a child is homeless and physically present in your authority's area, then that child is 'in need' and this is enough to trigger an in depth assessment by a social worker.

We are gravely concerned that during the course of your review, your authority has formulated its own test as part of the approach you refer to as the 'robust front door.' This test is threefold and requires families to meet the following criteria:

1. They must prove they are the 'territorial responsibility' of your authority,
2. They must show that they are 'genuinely destitute,' and
3. They are not excluded from support by Schedule 3 of the Nationality, Immigration and Asylum Act 2002.

This approach is not consistent with existing legislation, guidance or caselaw. First and foremost, your authority is required to conduct a safeguarding assessment of whether the children concerned are 'children in need' within the meaning of s.17(10), CA 1989. The criteria outlined above do not constitute a lawful approach to the conduct of this assessment. Specifically, the tests of 'territorial responsibility' and 'genuine destitution' are not the correct criteria for assessment. Further, requiring evidence that immigration status does not exclude a family from support is to create too high a threshold, since the lack of current leave, even without an outstanding application to the Home Office, is sufficient to engage human rights issues which should necessitate an in depth assessment by a social worker.

We are extremely concerned that this approach does not put the best interests of the child first and it will leave many vulnerable and destitute children without the help and support to which they are entitled. Whilst we would not dispute that some local authorities are under financial strain, we have real concerns that your authority's proposed approach is effectively a form of gate keeping of resources which puts vulnerable homeless children at risk.

We would be happy to enter into further dialogue with your authority on this matter, if it would be of assistance. We would strongly urge you to reconsider the proposals made in the draft report.

Yours faithfully



John Gallagher, Principal Solicitor
Shelter Legal Services

cc Jamie Milne, Chair, Public Accounts Committee (by email:
cllr_jamie.milne@lewisham.gov.uk)

Migrant Children's Project

Date: 3 February 2015

Councillor Jamie Milne
Chair of Public Accounts Select Committee
Town Hall
Catford
London
SE6 4RU

By post and email to: cllr_jamie.milne@lewisham.gov.uk

Dear Mr Milne,

I am writing to you from Coram Children's Legal Centre. Part of the Coram group of children's charities, we seek to promote children's rights in the UK and around the world through the provision of free legal information, advice and representation to children, young people, their families, carers and professionals, as well as training and consultancy on child law and children's rights.

We have particular expertise in the rights of children affected by immigration control in the UK and I am writing to you on the issue of support for children in families with no recourse to public funds. I am aware that on Thursday, 5th February, your Select Committee will be considering a draft report and recommendations on Lewisham's approach to children in families with no recourse to public funds.

Conscious that the evidence-taking stage of the review has concluded, I hope you do not mind my writing to you at this stage. We wish to raise with your Committee some concerns we have about safeguarding and support for children in need. Above all, we are concerned that Lewisham appears to have explicitly moved from a process that prioritises safeguarding to one that prioritises what are held, arguably wrongly in law, to be NRPF eligibility criteria relating to territorial responsibility, destitution and immigration.

Our concern, as you can imagine, is that under Lewisham's new approach, children in need, including disabled children and children living in unsafe situations, are not having their needs assessed at all by trained social workers in line with Lewisham's duties under section 17 of the Children Act 1989. As you are no doubt aware, children in families with no recourse to public funds can be amongst the poorest and most vulnerable children in the UK, cut off from mainstream systems of support and at risk of exploitation and abuse. If safeguarding is not the priority, then families living in extremely poor conditions, such as overcrowding or situations of domestic violence, will be turned away by the local authority as 'ineligible'

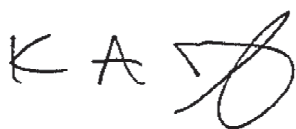
because they are not considered or believed to be destitute, even though there may be child protection issues or the children would meet the legal definition of a child in need. Under this approach, a child who is street homeless could be turned away because she is 'ineligible' on the basis of her parent's immigration status, even though she is a child in need and has nowhere else to go.

We are aware of the enormous pressures on local authority budgets and the fact that support for children in NRPF families is not funded by central government. We appreciate, and have ourselves long argued, that there are significant problems with local authorities increasingly having to act as a safety net for children due to children and families, even long-term residents and those with strong legal claims, not being able to regularise their immigration status following cuts to legal aid and in view of high application fees, overly restrictive immigration rules, and poor and slow Home Office decision-making. We also share the concern that the Home Office, even once families are granted leave, is increasingly imposing an NRPF condition which leaves families reliant on social services for extended periods.

However, we hope that your Committee sees that this is an issue about protecting the poorest and most vulnerable children in our communities. These are not children who should be considered different, or who can be disregarded when we think about keeping children safe or preventing homelessness and child poverty. Many were born in the UK and some are British citizens; they go to school with all other children; they grow up and belong in their local communities; and they are entitled to the protections the law provides them. Lewisham's Children and Young People's Plan 2012-2015 states that Lewisham is 'committed to ensuring that every single one of Lewisham's children and young people is able to access those services that will improve their life chances and choices' and prioritises supporting families at risk of being in crisis. Children in NRPF families should not be excluded from this aspiration.

I would of course be very happy to talk or meet with you at any stage about these issues. I am enclosing a copy of a report that may be of interest.

Yours sincerely,

A handwritten signature in black ink, consisting of the letters 'K A' followed by a stylized, cursive flourish.

Kamena Dorling

Policy and Programmes Manager

CORAM CHILDREN'S LEGAL CENTRE

Response to Project 17 submission to the Public accounts Select Committee

February 2015

The following paper has been prepared by officers in response to the submission received by Project 17 to the Lewisham Public Accounts Select Committee on 2nd February 2015. The paper responds to some of the key concerns raised by Project 17 in order to contribute to the conclusion and subsequent recommendations arising from this review.

The council's overall approach to this client group

The general focus of the submission from Project 17 relates to concerns that the focus and tone of the review and model put in place by Lewisham does not prioritise ensuring that those who need support can access it effectively. On the contrary, the approach which Lewisham has taken to date and continues to pursue with neighbouring boroughs has been designed with exactly this purpose. As the evidence papers which have informed the review to date have explained, the new processes and structures now in place ensure that eligibility is robustly assessed and that those who are eligible receive ongoing support, not only to manage their immediate needs but also support to conclude their unresolved immigration status more quickly. This includes the services of an embedded Home Office worker to check and prioritise for action cases which are being supported by Lewisham.

The new service model introduces a more appropriate balance between assessment of need and assessment of eligibility which more closely matches assessments for council services provided to other vulnerable groups in the borough.

The approach being adopted at Lewisham is now recognised as a model of good practice by a number of local authorities and we are now working across five neighbouring boroughs to explore options for a single shared service model.

Concerns raised relating to our assessment process

The submission from Project 17 raises a number of concerns about the approach the council takes to establishing eligibility for services for people with No Recourse to Public Funds. In particular, the submission questions the validity of the council's assessment of territorial responsibility, destitution and immigration status. It also questions whether this approach is in line with the requirements of s17 Children Act.

The committee are advised that this three stage eligibility assessment process is in line with the good practice guidance published by the NRPF Network. The framework implements the effect of judgements such as Birmingham v Clue and MN & KN v London Borough of Hackney [2013]. This approach is widely adopted by other local authorities, including our neighbouring boroughs with whom we are now working to develop a single assessment service.

The guidance is available here: <http://www.nrpfnetwork.org.uk/guidance/Pages/default.aspx>

The submission also raises concerns about what evidence is required linked to this process. As is described, it is the case that applicants are asked to substantiate their financial and housing circumstances. This will often include providing documentary evidence. There are clearly some circumstances which will make this more difficult. At assessment, each applicant is allocated a named caseworker who will discuss evidence requirements and acceptable alternatives if this is not possible.

It should be clearly understood that we do require evidence of claims made to us, in order to substantiate, or not, eligibility for services. Although Project 17 say that they are unaware of widespread fraud amongst applicants for services, sadly, this is not the experience of this team, nor of other London boroughs. In addition, it is a reasonable requirement of the Council for any applicant for financial benefits, from any of the Councils services, to be able to support, with evidence, key aspects of their situation, for example, immigration status, financial position, former addresses and details of sources of support. These are all legitimate enquiries that need to be made. We always discuss the possibility of accessing the necessary information from third parties, eg landlords, solicitors etc and the applicants are asked to sign consent forms to enable this to be done, to assist the processing of their claims and to provide corroboration if they are unable to. This approach is squarely in line with usual practise in other Councils and other services.

All cases presenting to the authority are provided with an assessment as to eligibility, and a MASH check to ascertain whether there are any concerns about the child/ren in the family. If the adult applicant cannot satisfy us as to their eligibility for service, and there is no concern raised about the children, either from MASH or the adult's account of themselves, they do not proceed to a s17 assessment as there appears to be no need to do so.

The nature of the assessment and support for which s17 Children Act 1989 makes provision is one characterised as family support. In the vast majority of cases there are no concerns about the care or parenting of the children in families presenting for assessment. If at any stage health, development, disability, child protection, safeguarding or other concerns emerge concerning the children in a family, the case is referred to the social work team.

Concerns raised regarding the figures presented in the report

The report questions some of the figures which were presented in the report. In particular it references families who may have presented and been assessed as ineligible for support and later provided with services. It is not uncommon for families to present to the local authority on more than one occasion. If this is because of a genuine change of circumstances, the family will be reassessed and a new support decision may be made. In total since the start of the pilot, we have had 140 representations to the team from those already assessed.

Updated figures on those being supported are outlined below:

- 218 cases have received an assessment since 16th June 2014 (not including representations)
- 14 cases are currently being supported on a temporary basis
- 7 new cases accepted for ongoing support since the start of the pilot
- 280 cases transferred from children's social care

Concerns raised about families who do not receive our support

The report raises concerns about the circumstances of families who are not assessed as eligible for support. The committee should note that there are two circumstances under which a family would not be provided with support:

- The first is that they have not sufficiently proven that they are destitute. This means that the local authority believes, following its assessment, that the family has sufficient resources to meet their basic living needs.
- The second is that the family does not meet the criteria for being supported by Lewisham either because they have sources of support which they could reasonably be expected to access (or recently have been reliant upon) which may be in a different area, or the applicant is not in a process of seeking to regularise their stay with the Home Office. In any of these cases, the caseworker explains the next steps the client needs to take.
- We will, as appropriate, offer to make contact with other agencies, including the Home Office if a return to the applicant's country of origin if this is appropriate.

Working with the voluntary sector and other partners

The report raises concerns about the extent of engagement between the council and the voluntary sector as part of this review. As this was a member led review, officers were not involved in inviting organisations to participate. However, it should be noted that in setting up and managing this service, we engage regularly with the voluntary and community sector. This included an event, which project 17 attended, in the summer of last year to explain the processes the new team was adopting. More recently, the Lewisham and Refugee Migrant Network, who work closely with Project 17, were invited to discuss their experiences of working with this client group at a two day event hosted by Lewisham Council to review how councils are dealing with this difficult issue. Representatives from Central Government agencies, and the NRPF network also participated. On a regular basis the service manager is in communication with officers from Project 17 regarding specific cases.

The submission also raises concerns about the effectiveness of the current embedded Home Office model in supporting people to resolve their immigration status. The team is continuing to work with the Home Office proactively to identify ways to improve the speed and accuracy of their decision making. We are currently pursuing options to embed Home Office decision makers locally which, if implemented, we believe would contribute positively to our shared objective to ensure that decisions are reached more quickly for the clients we support.

Legal challenges and specific case studies

The paper includes a number of detailed case studies, all of which relate to active cases which the No Recourse to Public Funds team are currently, or have recently been involved with. It would not be appropriate to comment on these cases here. However, we would draw out the following general points:

- Families seeking support from the local authority in the form of housing or subsistence must, in all circumstances, have their eligibility assessed in the first instance by the No Recourse to Public Funds team. Only if other needs are identified will onward referrals to children's social care be appropriate. However, it should be noted that in the vast majority of cases there are no concerns about the care or parenting of the children in families presenting for assessment. In all cases the s17 assessments are undertaken by qualified Social Workers. Other areas of assessment necessary for the application, for example financial issues or immigration status, are not matters with which Social Workers are trained to deal and are therefore assigned to other officers.
- The service has been working to transition and reassess all cases which were transferred to the team in June 2014. The current status of all historic cases has now been established and plans have been put in place to manage the transition from local authority support for those who are no longer eligible, or who have access to other means of support. This process requires the completion of the appropriate assessments by both social workers and the No Recourse to Public Funds team to ensure that this transition is managed within legislative requirements. We are also seeking to do so in a manner which ensures that effective transitional support is put in place for families who are entitled to stay in the UK, for example by supporting them to make claims for benefits and access private rented accommodation.
- We have put in place new procurement arrangements for properties in the private rented sector using our housing needs procurement team. This has significantly improved the quality and affordability of properties we are able to identify for families. However, sourcing appropriate accommodation in London continues to be challenging and we will continue to work with all families to put in place arrangements which meet the standards set by our housing needs service.

The recommendations made by Project 17

In response to the specific recommendations made by Project 17:

We agree that assessments of need must be child centred and the processes we have put in place are in line with good practice in this regard. However, alongside assessing need in a child centred way, the local authority also has a duty to assess eligibility for services as set out in the good practice guidelines referenced above. These two elements of assessment must continue to be considered together.

We are committed to continuing to work proactively with the Home Office to obtain access to mainstream benefits for those clients who we support who may be eligible for this. Alongside this, we will continue to engage with the Home Office to identify ways to improve the speed of their decision making and to ensure that transitional arrangements are put in place for those families who are not granted leave to remain. We welcome the support of the voluntary sector in pursuing these objectives.

Caseworkers on the front line are all trained to follow Lewisham's processes and in managing relationships with clients and often have to deliver very difficult messages in what can be highly stressful and emotional situations. The No Recourse to Public Funds team does not pursue

placements for children unless all other options have been considered and social care managers have been involved with the case.

The local authority has put in place referral mechanisms to the Home Office for families for whom we believe a return to their country of origin is their best course of action. We will continue to ensure that this offer is available to families where local authority eligibility criteria are not met.

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Appendix 7

Zambrano Rights

Mr Zambrano was a Columbian national living in Belgium with his wife and their three children, two of whom were born there. Mr Zambrano and his wife were both failed asylum-seekers, and therefore had no entitlement in their own right to remain in Belgium and/or to work there without a permit. However, the children born there had acquired Belgian nationality under domestic law which conferred such status on children born in its territory and who would otherwise be stateless.

Consequently, both children were citizens of the European Union and beneficiaries of the rights conferred, amongst other provisions, by Art. 20 Treaty on the Functioning of the European Union (TFEU).

The European Court of Justice held that Art. 20 TFEU precludes national measures which have the effect of depriving citizens of the Union of the genuine enjoyment of the substance of the rights conferred on them by virtue of Union citizenship and that the refusal of a right of residence and work permit to the father had such an effect because it would lead to the children having to leave the EU State.

Further legal challenges (such as in the case of Dereci) laid down two principles to be applied in Zambrano cases:

1. The first is that the principle laid down in that case only holds good where there is a risk that the national measure said to offend Art. 20 TFEU would, if implemented, force the Union citizen to leave the territory of the Union as a whole (para 66), thus in principle confining Zambrano to cases concerning third country nationals. An EU citizen who has the option to reside with her/his family member within a different Member State cannot rely upon it.
2. The second caveat is that the “genuine enjoyment” test from Zambrano is to be strictly construed and may only apply where, for example, it would amount to a breach of an individual’s human rights to deny a third country national the right to reside:

“... the mere fact that it might appear desirable to a national of a Member State, for economic reasons or in order to keep his family together in the territory of the Union, for the members of his family who do not have the nationality of a Member State to be able to reside with him in the territory of the Union, is not sufficient in itself to support the view that the Union citizen will be forced to leave Union territory if such a right is not granted” (para 68)

As a result, Zambrano holds that the primary carer of a child with the nationality of the host Member State has a derivative right potentially to remain in that State so long as it is necessary to do so to give effect to the child’s rights as an EU citizen, under Art 20 TFEU. These rights are further limited to primary carers who are third country nationals.

It is not necessary for the carer to be in work or work-seeking. It is sufficient that s/he is caring for the British citizen. This is because the carer does not have rights of their own, but rather they derive their right to reside from their dependent.

Since November 2012 Social Security regulations define Zambrano cares as 'persons from abroad' not deemed to be habitually resident in the UK. As a result they are disqualified from receiving income-related benefits, namely income support, income-based jobseekers' allowance, income-related employment and support allowance, state pension credit, housing benefit, council tax benefit, child benefit and child tax credit.

The right to benefits for Zambrano carers was considered recently in the case of *Sanneh & Ors v Secretary of State for Works & Pensions 2015*. In this case it was held that a *Zambrano* carer cannot point to any provision in the Citizenship Directive or any other directive which gives a right to social assistance as a matter of EU law.

Existing Caseload

Lewisham are currently supporting 190 cases that have claimed destitution since the implementation of the commencement regulations came into force on 8th November 2012, giving legal voice to the Zambrano judgement.

Of these, just over 5% of cases have claimed Zambrano rights. Most of those applications were made in the first 12 months following those regulations coming into force (that is to say were made in 2013). 65% of those applications come from those with Jamaican nationality, 35% from those of Nigerian nationality and the rest are those with Ghanaian nationality, with 1 case of Ecuadorian nationality.

New Applications from June-November 2014

During the first six months of the pilot there were two applications for support on the grounds of being a Zambrano carer.

Our Ref:

Your Ref:

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7 April 2014

Dear Sir or Madam

Proposed judicial review: R (on the application of Project Seventeen) v London Borough of Lewisham

1. We write on behalf of the above named client in relation to London Borough of Lewisham's pilot approach in respect of assessing families for support pursuant to its duties under s17 of the Children Act 1989 ("CA 1989").
2. Please treat this letter as a letter before claim and respond within 14 days i.e. by 21 April 2015. Please note that failure to respond as requested may result in our client taking steps to initiate judicial review proceedings without further reference to you.
3. Details pursuant to the protocol appear below.

The Proposed Defendant

4. Should legal proceedings be required, the defendant will be the London Borough of Lewisham ("the Council")

The Claimant

5. The Claimant will be Project Seventeen ("Project 17") of 39c Tressillian Rd, Lewisham, SE4 1YG. Registered charity number: 115262.

Directors

Matthew Gold *Solicitor Advocate*
Maria O'Connell *Legal Executive*

Solicitors

Kim Vernal
Clare Jennings

Registered office

1st Floor, 2D Lodge Lane,
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Contracted with the
Legal Aid Agency

6. As you are aware, Project 17 are a charity based in Lewisham who provides advice and assistance to families with no recourse to public funds (“NRPF”) in need of support from their local authority.

The details of the legal advisers dealing with this matter; reference details; address for reply and service of court documents

7. Our address details are given on the letter head above. This matter is being dealt with by Clare Jennings of Matthew Gold and Co. Ltd.
8. Please advise us whether you will be using internal or external legal advisors and of their contact details.
9. The address for reply and service of court documents is the address contained on the letterhead. Please note we do not accept service by email in the absence of prior and specific agreement to do so.

The details of the matter being challenged

10. The decision of the Public Accounts Select Committee (“PASC”) to recommend that the pilot approach in respect of s.17 CA 1989 assessments of families with NRPF be mainstreamed and made permanent and the ongoing operation of what we contend is a flawed eligibility criteria and assessment process.
11. Whilst we appreciate that the Cabinet has yet to respond to PASC’s recommendations, we consider that the Claimant is entitled to challenge the decision of 5 February for the following reasons.
 - a. The pilot project is already in force and therefore the rights of applicants for s.17 support are already being affected.
 - b. The Council is now working with other local authorities to roll-out this approach more widely, and indeed, has secured DCLG funding for this purpose.
 - c. The grounds of challenge concern the legality of the pilot scheme;
 - d. The evidence gathering process has now concluded and no further evolution of the pilot scheme is proposed. The current and only proposal is that it be adopted by the Cabinet in its current form.
 - e. There is no condition precedent to the final and permanent adoption of the pilot scheme.

12. Should you disagree that Project 17 are entitled to challenge the decision of 5 February and contend that Project 17 should await the Cabinet's decision, please state this in terms and set out the reasons for your position. Please also confirm the anticipated date for the Cabinet providing its response.
13. In the absence of a response to the above point, we shall assume it is agreed that Project 17 is entitled to challenge the decision of 5 February 2015.

Factual Background

14. In or around June/July 2014, as a result of a significant increase in spending on NRPF families pursuant to the duties and powers imposed by s.17 of the Children Act 1989 ("s.17 support"), a new pilot scheme was introduced changing the way in which the Council assessed families with NRPF.
15. On 9 July 2014 it was agreed that PASC would investigate and examine the Council's spending on NRPF issues and this matter was added as an item to its work programme, a decision noted by the Mayor and Cabinet on 16 July 2014.
16. The Financial Forecasts report of 3 September detailed the impact of the pilot scheme in its first month of operation. It was reported that of the 58 cases that presented to the Council, 50 were assessed as being ineligible at the triage stage, 8 families were provided with accommodation on a temporary basis pending the outcome of the full assessment and only 1 had been accepted for ongoing support (see paragraphs 6.2.1 and 6.2.2).

The Scoping Report

17. The scope of PASC's investigation into NRPF expenditure was set out in the Scoping Report of 22 September 2014.
18. At paragraph 4.3 the Scoping Report described who would qualify for s.17 CA 1948 and s.21 NAA 1948 in the following terms:

"In order to qualify for support under these acts, individuals must be able to prove that they are:

- The responsibility of Lewisham Council and that their need arose within this borough
- They are destitute with no means of support available
- Their immigration status does not exclude them from support

19. Further, paragraph 5.7 the Scoping Report stated that "*there are limited number of reasons why a local authority can decide not to support presenting individuals*" and described those reasons as follows:

- "The individual or family is not 'ordinarily resident' in the borough or has sought/is receiving support from another local authority.

- The individual or family is not destitute or homeless.
- In the case of adult social care, the individual does not have care needs in line with the criteria outlined in the National Assistance Act”.

20. Paragraph 5.12 of the Scoping Report recognised that the majority of individuals presenting to the Council were women from the Caribbean and Africa.

21. The Scoping Report then described the work that has been undertaken so far in establishing the pilot scheme and reported that a dedicated team consisting of 5 case workers and a Home Office secondee had been formed. At paragraph 6.2 the report stated that:

“The team have transformed the assessment process, separating eligibility assessments from need assessments undertaken by social workers. At first point of contact, robust triage assessments are undertaken with which [sic] includes detailed electronic financial checks, checks of council systems and live Home Office status checks and a short investigative interview. For those who satisfy the requirements of the triage assessment, emergency accommodation and subsistence is put in place whilst more thorough checks are completed”.

22. The “*significant impact*” of the “*robust front door approach*” is described at paragraph 6.3 of the Scoping Report. It was reported that in the first 2.5 months of the scheme’s operation, 96 cases had presented to the Council, of which only 1 case was accepted for ongoing support and a further 8 cases had been accepted for temporary support pending the outcome of a full assessment. At paragraph 6.4 it was noted that prior to the pilot scheme’s introduction, approximately half of all cases were being accepted for support so this was a significant reduction.

23. Key lines of enquiries to pursue were set out at paragraph 9 and included establishing:

- (a) the national and local context for s.17support;
- (b) who presents as NRPF in Lewisham and the types of support offered to them;
- (c) the extent of the problem in Lewisham in comparison with other areas;
- (d) the interventions that have been taken in Lewisham to address the increase and future pressures.

24. Further, paragraph 9.2 provided that once this information had been gathered the Council could consider:

- a. how effective the interventions have been in addressing the growth of NRPF;
- b. how the expenditure will be managed;
- c. what are the impacts of the interventions taken on those presenting as NRPF and what will be the impact of further interventions;
- d. what is Lewisham doing to work with groups and agencies that support people with NRPF and signpost them to the Council and to address future pressures.

25. In relation to any equalities implications, it was stated at Paragraph 11.1 that “*at this stage there are no specific financial, legal, environmental or equalities implications to consider. However, each will be addressed as part of the review*”.

PASC meeting of 22 September 2014

26. The Scoping Report was considered at the PASC meeting of 22 September with the minutes noting the discussion of the following points (paragraph 5.1):

- “While the needs of the people presenting as NRPF are important, the primary focus of the review should be on eligibility.
- Information provided for the review should include the approaches that other local authorities are taking to NRPF, as well as the financial impacts of NRPF.
- Where people are coming from when they presented as NRPF and why Lewisham’s numbers are so high.
- Someone from the housing sector should be invited to the evidence session to contribute to the review.
- A representative from civil service should be invited at the evidence session to contribute to the review.
- The need for case studies to highlight how the process works and the issues faced”.

27. The key lines of inquiry and the timetable for review as set out in the Scoping Paper were agreed by PASC.

First Evidence Report 5 November 2014

28. On 5 November 2014 the *First Evidence Report* was published.

29. Paragraph 3 of the Report set out the legislative context and provided:

“Local authorities have a duty to provide assistance to individuals under [s.17 of the CA 1989 or s.21 of the NAA 1948] if:

- (e) The individual can provide that they are the territorial responsibility of the council to which they are applying for assistance.
 - i. In the case of families, this means that the need which gave rise to the presentation to the local authority occurred within that same local authority (i.e. they became homeless there)
- (f) They are genuinely destitute with no other means of support available to them.
 - i. The thresholds for destitution are high and are defined as not having the means to provide accommodation or essential living needs.
- (g) They are not excluded from support by schedule 3 of the nationality [sic] Schedule 3 of the Nationality Immigration and Asylum Act 2002.
 - i. This includes people with refugee status from abroad, a person who has nationality of another EEA state (unless to exclude them would breach their treaty rights), a failed asylum seeker, a person unlawfully present in the UK (if an individual does not have legal status in the UK but is in the process of seeking to regularise their stay, they are not excluded from support). However, authorities can still be compelled to provide services to individuals excluded by virtue of their immigration status where refusal would be a breach of their human rights.
- (h) In the case of single adults, they meet our care thresholds for support and can show their need did not arise out of destitution alone”.

30. At Paragraph 7 the profile of the NRPF client group was noted and it was reported that almost all of the current NRPF caseload are families where the woman is the primary applicant. It further reported that the majority of applicants are Nigerian (43%) or Jamaican (39%).

31. Paragraph 9 set out the steps that had already been taken and largely repeated what was said in the earlier Scoping Report as detailed above. It reported the technical and process change which has taken place which included “*developing a scripted assessment process using our CRM system to ensure all cases were robustly and consistently assessed*”.

32. A quantitative analysis of the impact of the pilot was attempted at paragraph 10. It was noted in the Report that of the 145 new cases which had presented to the Council in the first 4.5 months, 127 applicants were refused support at the initial triage stage (88%); 18 cases (12%) were temporarily supported, of which 6 cases had resulted in support being offered on an ongoing basis. The report noted that this was 4% of the total number presenting and should result in significant cost savings for the Council.

33. At paragraph 11 a qualitative analysis of the pilot scheme was attempted and reference was made to 3 case studies (though only one related to the initial assessment process).

34. At paragraph 11.2 it was reported that there has been a great deal of challenge in the first few months. It was reported that there had been four threats of judicial review and six pre-action protocol actions (we are unclear as to the distinction between the two and trust you will clarify in your response), but that none had progressed to a full judicial review (we are unclear exactly what constitutes a “*full judicial review*” and trust you will clarify this also). The report does not detail why these cases did not progress to a full judicial review, and in particular, whether the reason was because the Council had provided the Claimants with the remedy sought at the pre-action stage.
35. At paragraph 12 the report sets out its learning to date and its conclusion that “*splitting eligibility assessments (now the responsibility of the pilot team) and needs assessment (continues to be the responsibility of social care) has been effective*”.
36. It further provided that a full evaluation of its impact will be conducted before January and a decision will be taken whether to extend or mainstream the pilot (see paragraph 13.1).
37. As regards any consideration of the equalities implications of the scheme, the Evidence Report is completely silent.

PASC meeting of 5 November

38. The First Evidence Report described above was considered by PASC at the meeting of 5 November and further oral evidence was presented to PASC by the Council’s Officers: Ian Smith, the Director of Children’s Social Care; Justine Roberts, the Change and Innovation Manager and Shirley Spong the NRPF Service Manager.
39. Paragraph 6.1 of the minutes records what is said to be the key points highlighted by Mr Smith. In particular, Mr Smith is recorded as reporting:

“There are strict criteria around eligibility for NRPF, including territorial responsibility, genuine destitution, they are not asylum seekers and that they are seeking to regularise their stay in the UK.

...

Now NRPF cases are picked up within social care, which is not equipped to deal with it. There are a number of reasons for this, partly because assessment by social workers prioritises safeguarding (especially after the huge increase in Child Protection cases in 2012/2013) and not NRPF eligibility criteria and partly because a number of NRPF claims are dubious or fraudulent.

...

The Clue vs Birmingham case changed case law so that individuals only had to be intending to make an application to the Home Office, rather than having an application registered”.

40. Justine Roberts, the Change and Innovation Manager is reported as providing the following information:

“NRPF cases usually relate to families, which explains why there are a high number of women presenting as NRPF

...

The focus of the pilot is on eligibility for NRPF, with robust and fair processes developed to establish eligibility. Social care need is then assessed outside the pilot scheme once eligibility has been determined.

...

This is a scripted assessment process that uses anti-fraud techniques including credit checking, accessing council and Home Office information”.

41. At paragraph 6.3, Shirley Spong the NRPF Service Manager notes the “*unprecedented degree of challenge*” to the process, and that “*people had re-presented numerous times*”. However, Ms Spong claimed that “*despite this, no challenge has been successful*” which is said to demonstrate that the “*eligibility criteria used is correct and evidence based*”.

42. Similar comments are expressed in response to questions asked by PASC members. The increase in judicial review challenges was explained as being a result of lawyers being able to “*make money challenging decisions*” because legal aid funding was still available for judicial review, whereas other areas of law had been taken out of scope.

43. At paragraph 6.4 Ms Spong highlighted key points including asserting that “*if someone is not territorially connected to Lewisham they are not eligible*”.

44. Ultimately PASC resolved that they “*accepted the information provided as evidence for the review*” (see paragraph 6.6).

Second evidence gathering meeting of PASC on 10 December 2014

45. On 10 December 2014 the second, and last, evidence gathering session was held where oral evidence was given by the NRPF Network Manager (a local authority organisation) and a representative from the London Council. No representatives from voluntary organisations working with the client group affected by the pilot scheme were asked to attend or to give evidence.

46. The evidence presented by both the NRPF Network and London Council representatives primarily concerned the burden placed on local authorities in supporting NRPF families. Scant consideration was given to the impact of Lewisham's approach on individual families, save as the NRPF Network Manager urging caution about taking a "*fraud*" approach as the NRPF Network's data sets reveal little evidence of extensive fraud amongst NRPF claimants (paragraph 3.2).
47. At this meeting the further *NRPF – Evidence Session* report was also considered, which for the most part set out the steps taken to date. In relation to the equalities implication of the new approach, it was again noted that "*at this stage there are no specific financial, legal, environmental or equalities implications to consider. However, each will be addressed as part of the review*".

Attempts by the voluntary sector to engage in the process

48. Following the meeting in November, Project 17 sent a number of emails to the Scrutiny Manager asking for the opportunity to provide evidence and engage in the process. No response was received.
49. Notwithstanding the lack of response to their request, on 2 February, Project 17 sent a lengthy and detailed response to all members of PASC setting out their concerns about the pilot scheme and what was proposed. In summary, Project 17 expressed the following concerns:
- a. That the pilot scheme had introduced a higher threshold for triggering a child in need assessment than that imposed by s.17 of the CA 1989;
 - b. That "*destitution*" is not part of the definition of "*in need*", and that there could be children who met the definition of being in need (such as those living in very poor accommodation conditions or who were living in households where there was domestic violence) who would not meet the Council's criteria of destitution and therefore turned away as ineligible;
 - c. That the requirement to prove that the need arose in Lewisham is legally inaccurate, as the test is whether a child is "*within the area*" which simply requires physical presence.
 - d. That the Council had not properly understood the Schedule 3 exclusion and the criteria misapplied it by failing to recognise (a) that a child is not excluded by Schedule 3; (b) that there will be categories of migrant not caught by Schedule 3 and in particular, there could be Zambrano carers who have a directly effective right to reside in the UK in accordance with EU law who have not made any application for recognition of this right; and (c) even if a person is excluded by Schedule 3, the Council should be assessing whether refusing to provide support would breach human rights

or EU law. Project 17 informed the Council that some of their homeless clients had been turned away because of their parents' immigration status, notwithstanding the fact that the child would be homeless. Project 17 noted that this did not appear to raise safeguarding concerns for the local authority.

- e. That the statistic of 88% of families being turned away at the triage stage without an assessment could mean that homeless families may be slipping through the net and that a child's needs were not being assessed when it should be.
- f. That the review focuses primarily on cost-saving measures, and that this cost-driven analysis has prevented proper consideration of the need to safeguard and promote the well-being of children in Lewisham.
- g. That some of the data relied upon appeared to be inaccurate and/or unreliable. Project 17 referred to the fact that 4 of their clients who were subsequently supported by the Council had been turned away when they first approached the Council. Project 17 expressed concerns that the data in the report failed to recognise how many of the families eventually supported were initially turned away.
- h. That there was no attempt to gather evidence as to what happened to those people turned away. Project 17 expressed concern that those refused support may be driven underground with the children left at risk.
- i. That the views of voluntary organisations working with this client group had not been sought.

50. On 3 February 2015, Coram Children's Legal Centre also wrote to the Chair of PASC setting out their concerns about the model adopted by the Council and the move away from safeguarding to assessments of eligibility.

51. On 4 February 2015 the Migrant Rights Network also wrote to the Chair of PASC setting out similar concerns.

PASC meeting on 5 February 2015

52. On 5 February PASC met to consider the draft *Overview and Scrutiny No Recourse to Public Funds Review* report ("the Report") (see further below). At this meeting PASC were asked to agree the draft review report; consider what recommendations to make and note that the final report would be presented to Mayor and Cabinet.

53. The *No Recourse to Public Funds: Draft Report and Recommendations* paper which set out what was being asked of PASC noted the following under the Equalities implications heading:

“There are no direct equalities implications arising from the implementation of the recommendations set out in this report. The Council works to eliminate unlawful discrimination and harassment, promote equality of opportunity and good relations between different groups in the community and to recognise and to take account of people’s differences”.

54. At the meeting itself, the Chair of PASC circulated suggested recommendations to the Committee and the officers reassured the Committee that the approach would lead to the savings predicted and that the process was fair. There was no mention of whether there could be equalities implications arising out of this issue nor any reference to the issues raised by Project 17 or the other charities.

55. Ultimately, the Committee commended the officers for their work and agreed the recommendations to make to Cabinet. This included recommending that the *“robust front door approach that has been taken by the NRPF pilot project”* be *“mainstreamed and made a permanent approach”*.

Overview and Scrutiny No Recourse to Public Funds Review report (“the Report”)

56. The Report largely repeats the information stated in the earlier reports described in detail above. The Report states that the pilot scheme had:

“demonstrated that a clear, consistent and firm approach could bring down the costs of dealing with NRPF clients considerably and in a way which was both equitable and unlikely to result in successful legal challenge”.

57. Paragraphs 7 to 9 of the Report sets out the legislative background and is materially the same as what is said in the report of 5 November 2014. It repeats at paragraph 8 the *“criteria”* for s.17 support set out in Paragraph 3 of the First Evidence Report of 5 November 2014 (see paragraph 29 of this letter).

58. The drivers in demand identified in earlier reports are repeated, and the increase in the number of judicial review challenges since the pilot scheme came into operation is again noted. Again this increase was attributed to lawyers’ ability to generate income from such challenges (see paragraphs 10 to 21 of the Report).

59. The report notes *“Lewisham’s demography”* with a *“large number of Jamaican and Nigerian families who are statistically more likely to present as NRPF”*.

60. The Report also repeats at paragraph 38 Mr Smith’s evidence (see paragraph 39 above) that social care were not best equipped to pick up NRPF cases because social workers prioritise safeguarding and not NRPF eligibility criteria.

61. Paragraphs 40 to 45 sets out how the Council has assessed the “*NRPF problem*” and repeats what was said in the earlier reports about the team and processes established as part of the pilot scheme. Paragraph 45 repeats Ms Spongs’ earlier oral evidence and states:

“The focus of the pilot team has been on eligibility for NRPF, with robust and fair processes developed to establish eligibility. Social care need is then assessed outside the pilot team once eligibility has been determined...Officers at the evidence sessions stressed that it had been important to develop a consistent, fair and defensible process for assessing NRPF cases. The organisation can then be confident that decisions have been correctly made and can be stuck by. This is important as support for NRPF can extend over a number of years, so it is vital to get the eligibility process right. In addition there has been an unprecedented degree of challenge to the process. People have re-presented numerous times and other public services such as health have sometimes re-introduced people. The voluntary sector has steered people towards the local authority, while law centres and private practice lawyers have also done so. Despite this, since the start of the pilot project no challenge has been successful, which shows that the eligibility criteria used is correct and evidence based”

62. Paragraphs 46 to 55 sets out the results of the pilot and repeats the statistics given in earlier reports, namely, that 88% of those presenting for support are refused at the triage stage and that only 4% of those presenting overall receiving support on an ongoing basis.

63. Paragraphs 56 to 59 sets out the lessons the Council have learned from the pilot. The Report reiterates the Council’s view that:

“splitting eligibility assessment and need assessment has been effective as the difficulty balancing both elements of the assessment tended to make need outweigh eligibility. This goes some way to explaining the higher number of acceptances prior to the start of the pilot”.

64. The Report makes no reference whatsoever to the equalities implication of the scheme having been considered or what the equalities implications may be.

Following PASC’s recommendation

65. On 13 February 2015, Shelter, the national housing charity wrote to the Mayor expressing their concerns about the review and proposals.

66. On 18 February 2015 the Cabinet met and noted PASC’s recommendation. At this meeting the Cabinet also considered the PASC report entitled ‘*Matters referred by the Public Accounts Select Committee – No Recourse to Public Funding Review*’. The report set out the context for the review and noted that it was scoped in September 2014, with evidence be gathered in sessions held in November and December 2014 and that the final report and recommendations were agreed in February 2015. Under the heading ‘*Equalities implications*’ at paragraph 6 it is stated that:

“The Council works to eliminate unlawful discrimination and harassment; promote equality of opportunity and good relations between different groups in the community and recognise and take account of people’s differences”

67. There is no evidence in this report of any attempt to analyse the equality implications.

68. On 3 March 2015 in response to the submissions of the various concerned NGOs a meeting was held with Council officers which was attended by Project 17, Migrant Rights Network, Eaves for Women, Coram and Shelter. At this meeting it was confirmed that the evidence gathering stage was over and therefore there was nothing to be gained by concerned parties contacting the Cabinet. As regards the assessment process itself, the officers presented stated that the eligibility criteria of territorial responsibility, destitution and immigration status was in accordance with the law and principles established in *Clue v Birmingham City Council*. The officers advised that there was a scripted process and that the same questions were asked of all applicants. We are instructed that whilst officers acknowledged that the NGOs participating at this meeting had concerns about the Council’s eligibility criteria and process, it was made clear to participants that the Council did not accept that their criteria and/or assessment process was in any way flawed. We are instructed that it was apparent to participants that the Council did not intend to reconsider any aspects of its assessment process to address the concerns raised and that the pilot scheme would be mainstreamed and made permanent.

69. On 20 March 2015 Project 17 received a response to their FOIA request for documentation in relation to the s.17 assessment process. For the most part the Council refused to provide the documents requested citing various exemptions. The response also wrongly states that Project 17 has been sent a copy of the interview questions asked as part of the scripted assessment process.

70. However, Project 17 did receive copy of the Council’s ‘*Response to Project 17 submission to the Public Accounts Select Committee*’ (“the Response”) dated February 2015, which appears to be a document written by officers for members of PASC rather than a response to Project 17 itself.

71. The Response asserts that

“as the evidence papers which have informed the review to date have explained, the new processes and structures now in place ensure that eligibility is robustly assessed and those who are eligible receiving ongoing support”.

72. The Response goes on to assert that the “*new service model introduces a more appropriate balance between assessment of need and assessment of eligibility*” and that this approach is “*now recognised as a model of good practice by a number of local authorities*”. Indeed, the Response notes that the Council are

“now working across five neighbouring boroughs to explore options for a single shared service model”.

73. In relation to Project 17’s specific concerns about the eligibility criteria adopted, namely, territorial responsibility, destitution and immigration status, the Response asserts that

“this three stage eligibility process is in line with the good practice guidance published by the NRPf Network. The framework implements the effect of judgements such as *Birmingham v Clue* and *MN & KN v London Borough of Hackney* [2013]. This approach is widely adopted by other local authorities, including our neighbouring boroughs with whom we are now working to develop a single assessment service”.

74. The Response also refers to Project 17’s submissions that some of the data relied upon appears to be inaccurate or incomplete. The Response purports to address this concern by noting that it is not uncommon for families to re-present to the Council and that where there has been a genuine change in circumstances, the family will be reassessed and there could be a new decision made. However, this does not in fact address the concerns raised by Project 17, which was that the families were wrongly turned away when they first approached the Council for support and were only assessed and supported because of re-presentation with assistance from Project 17.

75. The Response goes on to provide the Committee with updated figures and notes that there have been 218 cases which have been assessed since 16th June 2014 (which does not include re-presentations); with 14 cases currently supported on a temporary basis and 7 new cases accepted for ongoing support since the start of the pilot.

76. Further, the Response then notes the two circumstances in which a family would not be provided with support. First, if they have not proven they are sufficiently destitute. Second, the family does not meet the criteria for being supported by Lewisham because they have other sources of support that they could be expected to access (or recently have been reliant upon) which may be in a different area, or they are not in the process of seeking to regularise their stay with the Home Office.

77. At present the pilot scheme continues to operate whilst the Council works with other local authorities to explore options for a single-shared assessment process.

NRPf Network Guidance

78. The NRPf Network Guidance referred to above, sets out at paragraph 5 its guidance on “eligibility for assessment” and provides that a local authority must:

- a. Establish territorial responsibility, which involves determining where the child/family need arose as the local authority in the area where the need

arose will be responsible for assessing the family (except in certain circumstances).

- b. Establish destitution, which is defined as not having adequate accommodation or the inability to meet essential living needs. According to the NRPF Guidance, to establish destitution a family would need to demonstrate that they have no other means of support available.
- c. Establishing immigration status to determine whether the restrictions under Schedule 3 NIAA apply or whether UKBA may be an alternative source of support.

LEGAL FRAMEWORK

Children Act 1989

79. The primary statutory provision in this present case is section 17 of the Children Act 1989 (as amended). Insofar as is relevant, s. 17 provides:

“(1) It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part) –

- (a) To safeguard and promote the welfare of children within their area who are in need; and
- (b) so far as is consistent with that duty, to promote the upbringing of such children by their families,

by providing a range and level of services appropriate to those children’s needs.

(2) ...

(3) Any service provided by an authority in the exercise of functions conferred on them by this section may be provided for the family of a particular child in need or for any member of his family, if it is provided with a view to safeguarding or promoting the child’s welfare.

...

(6) The services provided by a local authority in the exercise of functions conferred on them by this section may include providing accommodation and giving assistance in kind or in cash.

(7) Assistance may be unconditional or subject to conditions as to the repayment of the assistance or of its value (in whole or in part).

(8) Before giving any assistance or imposing any conditions, a local authority shall have regard to the means of the child concerned and of each of his parents.

(9) ...

(10) For the purposes of this Part a child shall be taken to be in need if –

- (a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;

(b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or

(c) he is disabled,

and “family”, in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he has been living.

(11) For the purposes of this Part, a child is disabled if he is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed; and in this Part –

“development” means physical, intellectual, emotional, social or behavioural development; and

“health” means physical or mental health.”

80. Section 20 of the 1989 Act empowers local authorities to provide accommodation to children in need in their areas in certain circumstances.

81. Schedule 2, paragraph 1(1) of the 1989 Act provides that:

“Every local authority shall take reasonable steps to identify the extent to which there are children in need within their area.”

National Immigration and Asylum Act 2002

82. Schedule 3 to the Nationality, Immigration and Asylum Act 2002 (the “2002 Act”) provides, so far as is relevant that:

“1(1) A person to whom this paragraph applies shall not be eligible for support or assistance under –

...

(g) section 17 ... of the Children Act 1989 (c.41) (welfare and other powers which can be exercised in relation to adults),

...

(2) A power or duty under a provision referred to in sub-paragraph (1) may not be exercised or performed in respect of a person to whom this paragraph applies (whether or not the person has previously been in receipt of support or assistance under this provision).

...

2(1) Paragraph 1 does not prevent the provision of support or assistance –

(a) To a British citizen, or

(b) To a child, or

...

(1) A local authority which is considering whether to give support or assistance to a person under a provision listed in paragraph 1(1) shall act in accordance with any relevant guidance issued by the Secretary of State under sub-paragraph (3)(a).

3 Paragraph 1 does not prevent the exercise of a power or the performance of a duty if, and to the extent that, its exercise or performance is necessary for the purpose of avoiding a breach of

- (a) a person's Convention rights, or
- (b) a person's rights under the EU Treaties.

...

6(1) Paragraph 1 applies to a person if –

- (a) he was (but is no longer) an asylum-seeker, and
- (b) he fails to cooperate with removal directions issued in respect of him.

(2) Paragraph 1 also applies to a dependant of a person to whom that paragraph applies by virtue of sub-paragraph (1).

7 Paragraph 1 applies to a person if –

- (a) he is in the United Kingdom in breach of the immigration laws within the meaning of section 50A of the British Nationality Act 1981, and
- (b) he is not an asylum-seeker.

Children Act 2004

83. Section 11 of the 2004 Act applies to local authorities in England: subsection (1). Subsection (2) provides that:

“Each person and body to whom this section applies must make arrangements for ensuring that –

- (a) their functions are discharged having regard to the need to safeguard and promote the welfare of children;
- (b) any services provided by another person pursuant to arrangements made by the person or body in the discharge of their functions are provided having regard to that need.”

84. In *ZH (Tanzania)* [2011] UKSC 4, which concerned an equivalent provision to s.11 of the CA 2004 in the immigration context, the Supreme Court held that in order to comply with Article 3 of the UN Convention on the Rights of the Child, the “*spirit, if not the precise language*” of which has been translated into domestic law by section 11, the best interests of the child must be treated as a primary consideration. The child's best interest broadly means the well-being of the child (see paragraph 29) and must be considered first. At paragraph 46, Lord Kerr stated that “*where the best interests of the child clearly favour a certain course, that course should be followed unless countervailing reasons of considerable force displace them*”.

Equality Act 2010

85. Section 149 of the 2010 Act establishes the public sector equality duty (“PSED”). So far as is relevant, provides that:

“(1) A public authority must, in the exercise of its functions, have due regard to the need to –

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(2) ...

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to –

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons’ disabilities.

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to –

- (a) tackle prejudice, and
- (b) promote understanding.

(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(7) The relevant protected characteristics are –

- age;
- disability;
- gender reassignment;
- pregnancy and maternity;
- race;
- religion or belief;
- sex;
- sexual orientation.”

86. There has been considerable judicial scrutiny of the law on the PSED in section 149 of the 2010 Act (and similar equality duties under previous legislation) and the law is clear. In *Bracking v. Secretary of State for Work and Pensions* [2013]

EWCA Civ 1345, [26], the principles to be derived from the authorities on section 149 were summarised as follows:

- a. Equality duties are an integral and important part of the mechanisms for ensuring the fulfilment of the aims of anti-discrimination legislation (see *R (Elias) v. Secretary of State for Defence* [2006] EWCA Civ 1293 at 274).
- b. An important evidential element in the demonstration of the discharge of the duty is the recording of the steps taken by the decision maker in seeking to meet the statutory requirements (see *R (BAPIO Action Ltd) v. Secretary of State for the Home Department* [2006] EWCA Civ 1293).
- c. The relevant duty is upon the Minister or other decision maker personally. What matters is what he or she took into account and what he or she knew. Thus, the Minister or decision maker cannot be taken to know what his or her officials know or what may have been in the minds of officials in proffering their advice: *R (National Association of Health Stores) v. Department of Health* [2005] EWCA Civ 154 at [26]-[27] *per* Sedley LJ.
- d. A Minister must assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated before the adoption of a proposed policy and not merely as a “*rearguard action*”, following a concluded decision (*Kaur & Shah v. LB Ealing* [2008] EWHC 2062 (Admin) at [23]-[24]).
- e. These and other points were reviewed in *R (Brown) v. Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin), [2009] PTSR 1506, as follows:
 - i. The public authority decision maker must be aware of the duty to have “*due regard*” to the relevant matters;
 - ii. The duty must be fulfilled before and at the time when a particular policy is being considered;
 - iii. The duty must be “*exercised in substance, with rigour, and with an open mind*”. It is not a question of “*ticking boxes*”.
 - iv. The duty is non-delegable;
 - v. The duty is a continuing one; and
 - vi. It is good practice for a decision maker to keep records demonstrating consideration of the duty.

- f. “[G]eneral regard to issues of equality is not the same as having specific regard, by way of conscious approach to the statutory criteria” (*R (Meany) v. Harlow DC* [2009] EWHC 559 (Admin) at [84], approved by the Court of Appeal in *R (Bailey) v. Brent LBC* [2011] EWCA Civ 1586 [74]-[75]).
- g. Officials reporting to or advising Ministers/other public authority decision makers, on matters material to the discharge of the duty, must not merely tell the Minister/decision maker what he/she wants to hear but they have to be “rigorous in both enquiring and reporting to them”: *R (Domb) v. Hammersmith & Fulham LBC* [2009] EWCA Civ 941, at [79] per Sedley LJ.

87. McCombe LJ went on in *Bracking* to identify three further principles, which may be summarised as follows:

- a. It is for the Court to decide for itself if due regard has been had, but providing this is done it is for the decision maker to decide what weight to give to the equality implications of the decision (following *R (Hurley & Moore) v. Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 (Admin), per Elias LJ at [77]-[78]).
- b. “[T]he duty of due regard under the statute requires public authorities to be properly informed before taking a decision. If the relevant material is not available, there will be a duty to acquire it and this will frequently mean that some further consideration with appropriate groups is required”: *R (Hurley & Moore) v. Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 (Admin), per Elias LJ at [89].
- c. The duty to have due regard concerns the impact of the proposal on all persons with the protected characteristic and also, specifically, upon any particular class of persons within a protected category who might most obviously be adversely affected by the proposal: *Bracking*, per McCombe LJ at [40].

88. As to the importance of the second principle, McCombe LJ held, at [60]-[61], that

“it seems to me that the 2010 Act imposes a heavy burden upon public authorities in discharging the PSED and in ensuring that there is evidence available, if necessary, to demonstrate that discharge. It seems to have been the intention of Parliament that these considerations of equality of opportunity (where they arise) are now to be placed at the centre of formulation of policy by all public authorities, side by side with all other pressing circumstances of whatever magnitude”.

89. Further,

“In the absence of evidence of a ‘structured attempt to focus upon the details of equality issues’ (per my Lord, Elias LJ in *Hurley & Moore*) a decision maker is likely to be in difficulties if his or her subsequent decision is challenged”.

Working Together 2013 Statutory Guidance

90. Detailed guidance on the exercise of duties imposed by s. 17 has been issued under section 7 of the Local Authority Social Services Act 1970 in the form of the *Working Together to Safeguard Children* guidance (“Working Together guidance”). Given its statutory status, the Working Together guidance must be followed absent a considered decision by the local authority that there is good reason to deviate from it (see *R (TG) v Lambeth LBC* [2011] EWCA Civ 526 per Wilson LJ at [17]).

91. Paragraph 26 provides that:

“Under the Children Act 1989, local authorities are required to provide services for children in need for the purposes of safeguarding and promoting their welfare. Local authorities undertake assessments of the needs of individual children to determine what services to provide and action to take”.

92. At paragraphs 27 the Working Together Guidance sets out the purpose of an assessment and makes clear that:

“Whatever legislation the child is assessed under, the purpose of the assessment is always:

- To gather important information about a child and a family;
- To analyse their needs and/or the nature and level of any risk and harm being suffered by the child;
- To decide whether the child is in need (section 17) and/or is suffering or likely to suffer significant harm (section 47); and
- To provide support to address those needs to improve the child’s outcomes to make them safe”.

93. Paragraphs 32 to 35 sets out the principles and parameters of a good assessment and emphasise that high quality assessments are child centred and rooted in child development and informed by evidence. According to paragraph 33 a good assessment is one that investigates the following three domains: the child’s development needs; parents’ or carers capacity to respond to those needs and the impact and influence of wider family, community and environmental circumstances.

94. Paragraph 37 further provides that

“each child who has been referred into a local authority children’s social care should have an individual assessment to respond to their needs and to understand the impact of any parental behaviour on them as an individual”.

95. Paragraph 43 makes clear that a “*social worker*” should “*analyse all the information gathered from the enquiry stage of the assessment to decide the nature and level of the child’s needs and the level of risk*”.

96. Paragraph 64 and the text box that follows sets out the process for managing individual cases. It makes clear that “*once a referral has been accepted by a local authority children’s social care the lead professional role falls to a social worker*” (page 26). It further provides that within one working day of the referral having been received a local authority social worker should make a decision about the type of response that is required.

Analysis

97. We contend that your client department’s approach is unlawful for the following reasons:

- (a) Erroneous approach in law to criteria used to assess eligibility;
- (b) Failure to comply with the duty to assess;
- (c) Failure to comply with PSED in section 149 of the 2010 Act;
- (d) Discrimination;
- (e) Material error of fact;
- (f) Failure to have proper regard to the best interests of the child.

98. We set out below each of these heads of challenge in turn:

Eligibility criteria

99. It is clear that the Council is applying the following criteria to determine whether a family with NRPF is eligible for support:

- (a) A need to demonstrate that the family are the “*territorial responsibility*” of the Council, which involves a family evidencing that the need for support arose within Lewisham;

(b) That applicants are *destitute*, meaning they do not have the means to provide for accommodation or essential living needs. This is described by the Council as a “*high*” threshold to meet; and

(c) That they are not excluded from support under Schedule 3 of the Nationality, Immigration and Asylum Act 2002 (the “2002 Act”).

100. It appears from your client department’s response to the Committee in respect of Project 17’s representations that this criteria may be taken from a publication by the local authority organisation NRPF Network, called “*Practice Guidance for Local Authorities*” (the “NRPF Guidance”) and is purported to implement the findings in *R (Clue) v. Birmingham City Council* [2010] EWCA Civ 460 and *R (MN) v. Hackney LBC* [2013] EWHC 1205 (Admin).

101. It is our contention, for the reasons set out below, that the Council has erred in law in setting each of these three criteria:

Territorial responsibility

102. We submit that the Council has misapplied the terms of section 17(1) by adding a requirement which does not exist. Section 17 imposes no need to demonstrate “*ordinary residence*”, nor a requirement to show that the need for support arose within Lewisham. Had it been parliament’s intention to impose such a specific test, arguably it would have been explicitly stated in the legislation. No such test is provided for in s.17 of the CA 1989. Instead, the only relevant provision is that the individual must be “*within*” the local authority’s area. To the extent that you may suggest otherwise, we consider that this is plainly wrong.

103. Further, our position is supported by the case-law on section 17. In *R (Stewart) v. Wandsworth LBC* [2001] EWHC 709 (Admin), [2002] 1 FLR 469 it was held that “*the clear meaning of the words “within their area” in section 17 is ... that physical presence is required*”: [23]. The Court specifically rejected a submission that “*the need must co-exist with the presence*” [29].

104. The decision in *Stewart* was specifically endorsed in *R (BM) v. Barking & Dagenham LBC* [2002] EWHC 2663 (Admin) where the Court rejected a submission that the conclusion in *Stewart* needed to be revisited. Further, the Court also rejected an argument that section 17 should be read as if subject to a test of “*ordinary residence*”: [14] (see also *R (J) v. Worcestershire CC* [2014] EWCA Civ 1518, [2015] PTSR 127, at [18] where it was held that it was settled law that a local authority had a duty to assess a child physically present in their area).

105. Accordingly, it is submitted that the Council has erred in law in imposing an eligibility criteria which requires a family to prove that they are ordinarily resident in Lewisham and/or that the need arose within Lewisham. To the extent that you

rely upon the NRPF Guidance in respect of “*territorial responsibility*” at paragraph 5, we submit that this part of the NRPF Guidance is also wrong in law.

Destitution

106. We further contend that a criteria that requires a person to demonstrate destitution to be eligible for s.17 support is also wrong in law. Section 17 CA 1989 contains no test of destitution. Instead, what must be demonstrated for section 17 support to be provided is that the child must be “*in need*”, which has the specific meaning set out in s. 17(10) of the CA 1989. Section 17(10) provides that a child will be in need if that child would be unlikely to achieve or maintain a reasonable standard of health or development, or that his health or development is likely to be significantly impaired, without the provision of assistance, or that he is disabled. Accordingly, we consider that there will be circumstances in which a child meets the much lower threshold of “*in need*” in s.17(10) CA 1989 but not the “*high*” threshold of destitution. This is not reflected in the Council’s criteria which requires a family to prove destitution before they can access an assessment of need.

107. Further, contrary to what you state in your Response, we fail to see how Clue provides authority for the imposition of a “*destitution*” test for accessing a needs assessment. Indeed, we fail to see how the test of destitution accords with the principles established in *Clue*. *Clue* did not consider a general eligibility criteria for s.17 support, or alter the overall test under s.17 which is whether a child is in need. To the extent that destitution is referred to in *Clue*, this is in the context of adults excluded by Schedule 3, Paragraphs 6 and 7. As you will appreciate, a significant number of those families approaching the Council for support will be Zambrano carers and/or have leave to remain subject to an NRPF restriction, and therefore not fall within the remit of the Schedule 3 at all.

108. Accordingly, we contend that the Council has erred in law by treating destitution as the sole criterion in terms of need in all cases.

Immigration status and the Schedule 3 criteria

109. It is accepted that an adult who falls within one of the migrant classes excluded by Schedule 3 NIAA cannot receive s.17 support unless a failure to provide such support would amount to a breach of a person’s convention rights or EU law. However, we consider that the Council’s criteria and guidance on this issue contained in the various reports and the Response is incomplete and unlawful for the following reasons:

110. First, there is no reference in any of these documents to the fact that children are not excluded under Schedule 3.

111. Second, there is no reference to Zambrano carers. As you will be aware, Zambrano carers include individuals who are third country nationals with British children who have a directly effective right under EU law to reside in the UK as their removal would lead to a breach of their children's rights as citizens of the European Union. Whilst at first sight a Zambrano carer may appear to fall within one of the migrant classes excluded by Schedule 3, as they have a directly effective right to reside in the UK under EU law, they are lawfully present in the UK and therefore not excluded by Schedule 3. That is the case regardless of whether they have made an application to the Home Office for recognition of (see *Pryce v. Southwark LBC* [2012] EWCA Civ 1572). Accordingly, the Council would need to make an assessment of whether a person may have a Zambrano right of residence. There is no recognition of this requirements in the Council's reports or Response.

112. Third, it would appear that the Council requires a person to demonstrate that they have an outstanding immigration application to meet the immigration status criteria (save as to where they have leave to remain subject to an NRPF restriction). This is evident from the Council's Response where it is stated that one of the circumstances under which a family would not be provided with support is that the "*applicant is not in the process of seeking to regularise their stay with the Home Office*" and officers evidence to PASC. Whilst we accept that a family could not remain in the UK indefinitely without taking any steps to regularise their immigration status, we consider that the eligibility criterion requiring a person to have an outstanding immigration application is flawed because:

- a. It does not reflect the fact that Zambrano carers may not have made any applications for recognition of their Zambrano right to reside but may nevertheless still be lawfully present in the UK (see the above paragraph); and
- b. Ignores the fact that where a person falls within the Schedule 3 exclusion, a local authority must then consider whether a refusal to provide support would amount to a breach of a person's human rights or EU law and if it would, whether there is any impediment to a person's return to their country of origin to avoid the breach. Whilst it was established in *Clue* that if a person had an outstanding application on convention grounds (providing it was not hopeless or abusive) that would be an impediment to a family's return to their country of origin, it was also held that where there was no such application, a local authority must assess for itself whether there were any human rights reasons why a family could not return (see also the subsequent case of *R (KA) v Essex County Council* [2013] EWHC 43 (*Fam*)). It is likely that a number of families who approach the Council for s.17 support may not have made an immigration application, but could have grounds to do so. Indeed, there is likely to be an increasing number of families in this situation given that legal aid funding is no longer available for such immigration advice. In these circumstances

the Council must undertake an assessment of the human rights implications of its decision but under the current scheme it appears the applicant would be excluded.

113. For the reasons above, we consider that the approach taken by the Council in respect of the immigration status eligibility criteria as evidenced in the reports and Response, is incomplete and unlawful.

(b) Failure to comply with duty to assess

114. It is well-established that there is a duty under section 17 of the 1989 Act to assess the needs of a child who may be in need (see *R (G) v. Barnet LBC* [2003] UKHL 57, [2004] 2 AC 208, [77]; [110]). The statutory Working Together 2010 guidance also explicitly states that there is a requirement to undertake a needs assessment where it appears a child may be in need. It is also clear from the Working Together guidance that the government envisages that it is a social worker who will undertake such as assessment.

115. In adopting an eligibility criteria which we contend is unlawful for the reasons set out above, the Council is filtering out applicants at the “*triage*” stage, without conducting any assessment of need. We contend that this failure to undertake an assessment of a child’s needs, is unlawful as it is a breach of the duty to assess imposed by s.17 of the CA 1989.

(c) Section 149 of the Equality Act 2010 – Public Sector Equality Duties

116. As noted in the various reports, the vast majority of applicants for s.17 support are women primarily from Nigeria and Jamaica. It is therefore clear that the Council’s pilot scheme had equality implications surrounding issues of race and gender. Accordingly, in reaching its decision, PASC were required to have due regard to its public sector equality duties (“PSED”) under s.149 of the Equality Act 2010 (“EA 2010”) and it is submitted that it has failed in that duty.

117. We have already set out above in the factual background section of this letter the references made in the various reports to the equalities implications of this decision. What is striking is that there are almost no references to any of the PSEDs in the reports, much less any proper engagement with the duties. We have also been unable to identify any other documents publicly available evidencing the Council’s consideration of its PSED’s when considering s.17 support for NRPF families and note that no such documents were disclosed to Project 17 in response to their FOIA request.

118. Further, as noted above, when discussing this issue at the meeting of 5 February 2015, PASC made no reference at all to its PSEDs.

119. In light of the complete lack of documentary evidence that the Council, and in particular, members of PASC, had regard to its PSED when deciding to recommend that the pilot scheme be mainstreamed and made permanent, we contend that the Council has failed to comply with the requirements of PSED in section 149 of the 2010 Act. To the extent that you seek to rely upon what is said in relation to the PSED in the above reports, we do not consider that this is sufficient to demonstrate the required engagement with the PSED such that your duties are discharged.

(d) Discrimination

120. Indirect discrimination on the basis of a protected characteristic is prohibited by the EA 2010.

121. Section 19 of the EA 2010 defines indirect discrimination as covering the situation where a person (A) applies a provision, criterion or practice to another person (B), where that provision, criterion or practice is discriminatory as regards a relevant protected characteristic of B. The provision, criterion or practice will be discriminatory where A applies it to people with whom B does not share a protected characteristic; it puts persons who share the protected characteristic at a particular disadvantage compared to people who do not share that characteristic; it places B at a particular disadvantage; and it cannot be shown to be a proportionate way of achieving a justified aim.

122. We contend that the criterion of exclusion in relation to Schedule 3 of the NIAA 2002 puts NRPF applicants sharing the protected characteristics of race at a particular disadvantage. As noted above, the Schedule 3 criterion in the pilot scheme is misapplied to exclude Zambrano carers from accessing support. By definition, Zambrano carers will be third country nationals and as the reports note, the vast majority of applicants are Nigerian or Jamaican who are “*statistically more likely to present as NRPF*”. Accordingly, nationals from Nigeria and Jamaica are more likely to be applying as Zambrano carers for s.17 support, and are therefore placed at a disadvantage to those who do not share that characteristic because they will be excluded from a needs assessment and s.17 support.

(e) Material error of fact

123. In the various reports it is noted that there has been an increase in the number of challenges to the scheme with many families re-presenting to the Council. However, the reports note that no challenges had succeeded which was considered to demonstrate that the “*eligibility criteria used is correct and evidence based*” (see for example paragraph 45 of the Final Report). It appears to us that this is factually incorrect for the reasons below:

124. First, as noted in Project 17’s submissions, of the 5 families referred by Project 17 during the pilot phase considered by PASC, who are now receiving

support, 4 of these families had previously approached the Council directly themselves and had been turned away. Indeed one of these families was turned away twice. In percentage terms that is 80%. The fact that support was given the second time cannot be explained by a change in the families' circumstances because this is not borne out by the facts of the individual cases. Instead, these cases demonstrate that families requiring a s.17 assessment and support are wrongly being assessed as ineligible at the triage phase.

125. Second, of the five families referred by Project 17 now receiving support, in three of these cases an assessment was undertaken and support was given following the threat of judicial review proceedings. Indeed, in one of these cases we acted for the Claimant. Whilst these cases may not have proceeded to a full hearing, or even in the claim being issued, that is not because the claims failed, but rather because the Claimants had *succeeded* in obtaining the remedy sought without the need to do so.

126. Accordingly, we contend that any claims that no challenges have succeeded is plainly wrong, and that the decision of 5 February is flawed by a material error of fact. The criteria for establishing a material error of fact were summarised in *E v. Secretary of State for the Home Department* [2004] EWCA Civ 49, [2004] QB 1044 at 1071E, [67] as follows:

“First, there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter. Secondly, the fact or evidence must have been “established”, in the sense that it was uncontentious and objectively verifiable. Thirdly, the appellant (or his advisers) must not have been responsible for the mistake. Fourthly, the mistake must have played a material (not necessarily decisive) part in the tribunal's reasoning.”

127. We submit that in this case, there has been a mistake to an existing fact, namely whether or not any cases have succeeded after the introduction of the pilot. Clearly they have. Secondly, this is uncontentious since the Council's officers could easily have verified it. Thirdly, it is not a mistake for which the claimant in the judicial review would be responsible. Indeed, they attempted to bring to PASC's attention the fact that the data relied upon appeared to contain inaccuracies. Fourthly, it appears to have played a material part in the PASC's decision at the 5 February 2015 meeting to continue the pilot. It was presented to the PASC as a relevant factor in determining the efficacy and legality of the project that was being presented to it for further consideration.

(f) Best interests

128. By section 11(2) of the 2004 Act, the Council is required to make arrangements to ensure that its functions are discharged having regard to the need to safeguard and promote the welfare of children. This is commonly understood as an obligation to have regard to the best interests of the child in the exercise of its functions (by analogy, see *ZH (Tanzania) v. Secretary of State for the Home Department* [2011] UKSC 4).

129. We contend that in formulating its pilot project, the Council has failed to consider the best interest of the child either in general terms, or more specifically, how the proposals safeguard and promote the welfare of children within its area. Given our contention that the approach adopted is unlawful and is likely to result in children wrongly being turned away, we submit that the Council's approach is inconsistent with the obligations imposed by domestic and international law to treat the child's best interest as a primary concern and is therefore also unlawful on that basis.

Action required by you

130. If the need for judicial review proceedings are to be averted, the following action will be required:

- a. Agree to quash PASC's decision of 5 February 2015 to recommend that the pilot scheme be made permanent and mainstreamed;
- b. Agree to cease applying the eligibility criteria that we contend is unlawful;
- c. Give an assurance that should you agree to the above steps, but seek to formulate a new eligibility criteria and/or policies or guidance on s.17 assessments you will:
 - i. Conduct a lawful equality impact assessment;
 - ii. Seek input from relevant voluntary sector groups working with NRPF families in any evidence gathering exercise conducted (including inviting representatives from voluntary sector groups to give oral evidence at any Committee meetings where such evidence is received);
 - iii. Agree to consult with relevant voluntary sector groups on any new NRPF criteria, policy and/or guidance formulated.

131. Project 17 hopes that the Council will agree to the above steps which would obviate the need for proceedings to be issued. Moreover, Project 17 would welcome the opportunity in the future to engage in constructive dialogue with the Council on NRPF issues.

Interested parties

132. Please let us know if you consider that there are any other parties who have an interest in the outcome of this matter.

133. A copy of this letter will also be sent to those voluntary organisations that made submissions to PASC for their information.

Information requested

134. Please respond to the following questions and provide the following documents:

- a. All reports, memos, emails and letters and any other written material in respect of the formulation and implementation of the pilot scheme (we do not require copies of the reports and minutes that are available on your website and referred to in this letter);
- b. Please indicate which of the above documents were considered by PASC;
- c. Any documentation not included in (a) above, evidencing consideration being given to the Council's PSEDs. Please indicate whether these documents were considered by PASC;
- d. All training material, policy, internal guidance and other written material used by the NRPF team in conducting eligibility assessments, including but not limited to the scripted interview questions;
- e. Of those supported since the commencement of the operation of the pilot scheme (either on an ongoing basis or on an interim basis pending the outcome of an assessment), please state how many were initially refused a service at the triage stage and were only assessed after they had re-presented;
- f. Please confirm how many NRPF families were assessed and/or provided with support since the beginning of the pilot scheme following a threat of judicial review. Please also provide the names of the firms acting for the Claimants.
- g. Please provide copies of any other documents on which you would rely in defence of this claim.

Proposed reply date

135. Please provide a substantive response to this by 21 April 2014.

136. We look forward to hearing from you.

Yours faithfully

Matthew Gold and Co. Ltd.

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Agenda Item 4

Public Accounts Select Committee		
Report Title	Exclusion of the Press and Public	
Key Decision	No	Item No. 4
Ward		
Contributors	Chief Executive (Head of Business & Committee)	
Class	Part 1	Date: 27 May 2015

Recommendation

It is recommended that in accordance with Regulation 4(2)(b) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information)(England) Regulations 2012 and under Section 100(A)(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following item of business on the grounds that they involve the likely disclosure of exempt information as defined in paragraphs 3, 4 and 5 of Part 1 of Schedule 12(A) of the Act, and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Item

4. ICT Strategy (Part 2)

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Agenda Item 5

Public Accounts Select Committee			
Title	Select Committee work programme		
Contributor	Scrutiny Manager	Item	5
Class	Part 1 (Open)	27 May 2015	

1. Purpose

To advise Committee members of the work programme for the 2015/16 municipal year, and to decide on the agenda items for the next meeting.

2. Summary

- 2.1 At the beginning of the new administration, each select committee drew up a draft work programme for submission to the Business Panel for consideration.
- 2.2 The Business Panel considered the proposed work programmes of each of the select committees on 28 April 2015 and agreed a co-ordinated overview and scrutiny work programme. However, the work programme can be reviewed at each Select Committee meeting so that Members are able to include urgent, high priority items and remove items that are no longer a priority.

3. Recommendations

3.1 The Committee is asked to:

- note the work plan attached at **Appendix B** and discuss any issues arising from the programme;
- specify the information and analysis required in the report for each item on the agenda for the next meeting, based on desired outcomes, so that officers are clear on what they need to provide;
- review all forthcoming key decisions, attached at **Appendix C**, and consider any items for further scrutiny.

4. The work programme

4.1 The work programme for 2015/16 was agreed at the Committee's meeting on 14 April 2015.

4.2 The Committee is asked to consider if any urgent issues have arisen that require scrutiny and if any existing items are no longer a priority and can be removed from the work programme. Before adding additional items, each item should be considered against agreed criteria. The flow chart attached at **Appendix A** may help Members decide if proposed additional items should be added to the work programme. The Committee's work programme needs to be achievable in terms of the amount of meeting time available. If the committee agrees to add additional item(s) because they are urgent and high priority, Members will need to consider

which medium/low priority item(s) should be removed in order to create sufficient capacity for the new item(s).

5. The next meeting

5.1 The following reports are scheduled for the meeting on 14 July 2015:

Agenda item	Review type	Link to Corporate Priority	Priority
Financial Forecasts 2015/16	Performance monitoring	Inspiring efficiency, effectiveness and equity	Medium
Final Outturn 2014/15	Performance monitoring	Inspiring efficiency, effectiveness and equity	Medium
Shared Services	Performance monitoring	Inspiring efficiency, effectiveness and equity	High
Asset Management Update	Standard item	Inspiring efficiency, effectiveness and equity	Medium

5.2 The Committee is asked to specify the information and analysis it would like to see in the reports for these item, based on the outcomes the committee would like to achieve, so that officers are clear on what they need to provide for the next meeting.

6. Financial Implications

There are no financial implications arising from this report.

7. Legal Implications

In accordance with the Council's Constitution, all scrutiny select committees must devise and submit a work programme to the Business Panel at the start of each municipal year.

8. Equalities Implications

8.1 The Equality Act 2010 brought together all previous equality legislation in England, Scotland and Wales. The Act included a new public sector equality duty, replacing the separate duties relating to race, disability and gender equality. The duty came into force on 6 April 2011. It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

8.2 The Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act

- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

8.3 There may be equalities implications arising from items on the work programme and all activities undertaken by the Select Committee will need to give due consideration to this.

9. Date of next meeting

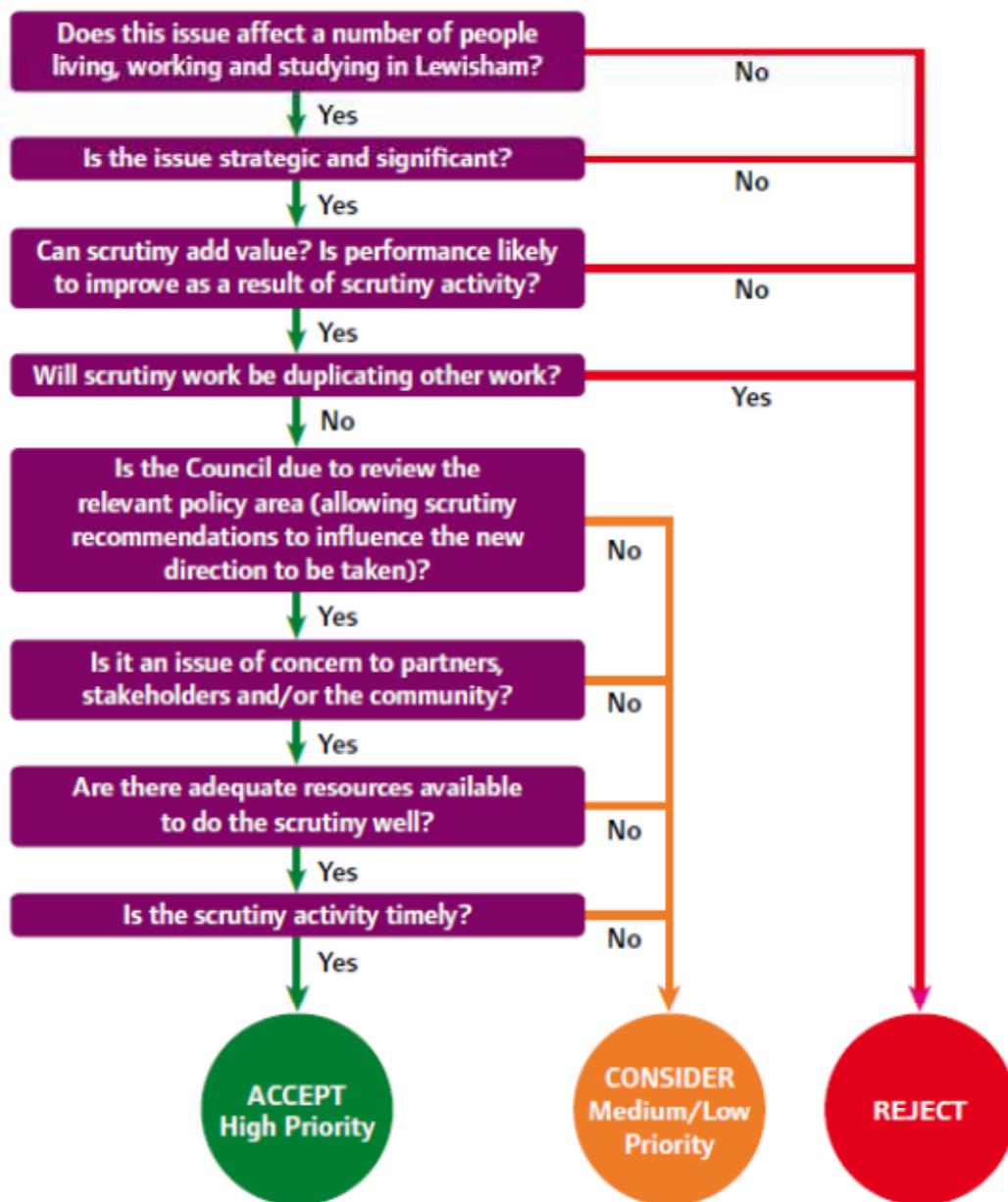
9.1 The date of the next meeting is Tuesday 14 July 2015.

Background Documents

Lewisham Council's Constitution

Centre for Public Scrutiny: the Good Scrutiny Guide

Scrutiny work programme – prioritisation process



Work Item	Type of review	Priority	Strategic Priority	Delivery deadline	14-Apr	27-May	14-Jul	29-Sep	28-Oct	02-Dec	27-Jan	16-Mar
Lewisham Future Programme	TBC	High	CP10	Mar-16				Savings				
Election of Chair and Vice-Chair	Constitutional requirement	High	CP10	Apr-15								
Select Committee Work Programme 15/16	Constitutional requirement	High	CP10	Apr-15								
Financial forecasts 2015/16	Performance monitoring	Medium	CP10	Jan-16								
Final Outturn 2014/15	Performance monitoring	Medium	CP10	Jul-15								
Management report	Performance monitoring	Low	CP10	Jan-16								
Income Generation review	In-depth review	Medium	CP10	Sep-15	Evidence session		Evidence session	Evidence session	Report and recs			
Mid-year Treasury Management Review	Performance monitoring	Medium	CP10	Oct-15								
Annual complaints report	Performance monitoring	Medium	CP10	Dec-15								
Shared Services	Performance monitoring	High	CP10	Jul-15								
Asset management update	Standard item	Medium	CP10	Jul-15								
ICT Strategy	Information item	High	CP10	May-15								
NRPF	Recommendations follow-up	Medium	CP10	Dec-15		Response				Follow-up		
Annual Budget 2015/16	Standard item	High	CP10	Jan-16								
Contract monitoring - public realm	Performance monitoring	Medium	CP10	Dec-15								
Implementation of savings proposal 03 (creating an internal enforcement agency)	Performance monitoring	Medium	CP10	Mar-16								
Audit Panel update	Constitutional Requirement	Medium	CP10	Mar-16								

	Item completed
	Item on-going
	Item outstanding
	Proposed timeframe
	Item added

Meetings		
1)	Wed	22 April
2)	Wed	27 May
3)	Tue	14 July
4)	Tue	29 September
5)	Wed	28 October
6)	Wed	2 December
7)	Wed	27 January
8)	Wed	16 March

Shaping Our Future: Lewisham's Sustainable Community Strategy 2008-2020		
	Priority	
1	Ambitious and achieving	SCS 1
2	Safer	SCS 2
3	Empowered and responsible	SCS 3
4	Clean, green and liveable	SCS 4
5	Healthy, active and enjoyable	SCS 5
6	Dynamic and prosperous	SCS 6

Corporate Priorities		
	Priority	
1	Community Leadership	CP 1
2	Young people's achievement and involvement	CP 2
3	Clean, green and liveable	CP 3
4	Safety, security and a visible presence	CP 4
5	Strengthening the local economy	CP 5
6	Decent homes for all	CP 6
7	Protection of children	CP 7
8	Caring for adults and older people	CP 8
9	Active, healthy citizens	CP 9
10	Inspiring efficiency, effectiveness and equity	CP 10

FORWARD PLAN OF KEY DECISIONS

Forward Plan May 2015 - August 2015

This Forward Plan sets out the key decisions the Council expects to take during the next four months.

Anyone wishing to make representations on a decision should submit them in writing as soon as possible to the relevant contact officer (shown as number (7) in the key overleaf). Any representations made less than 3 days before the meeting should be sent to Kevin Flaherty 0208 3149327, the Local Democracy Officer, at the Council Offices or kevin.flaherty@lewisham.gov.uk. However the deadline will be 4pm on the working day prior to the meeting.

A "key decision"* means an executive decision which is likely to:

- (a) result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates;
- (b) be significant in terms of its effects on communities living or working in an area comprising two or more wards.

FORWARD PLAN – KEY DECISIONS					
Date included in forward plan	Description of matter under consideration	Date of Decision Decision maker	Responsible Officers / Portfolios	Consultation Details	Background papers / materials
May 2015	Main Grants Programme Appeals	Monday, 11/05/15 Mayor and Cabinet (Contracts)	Aileen Buckton, Executive Director for Community Services and Councillor Joan Millbank, Cabinet Member Third Sector & Community		
December 2014	Catford Town Centre CRPL Business Plan 2015/16	Wednesday, 13/05/15 Mayor and Cabinet	Janet Senior, Executive Director for Resources & Regeneration and Councillor Alan Smith, Deputy Mayor		
May 2015	Consultation on change of Prendergast School, Prendergast Vale School and Prendergast Ladywell School to Academy Status	Wednesday, 13/05/15 Mayor and Cabinet	Frankie Sulke, Executive Director for Children and Young People and Councillor Paul Maslin, Cabinet Member for Children and Young People		
May 2015	Issue raised by Scrutiny No Recourse to Public Funds	Wednesday, 13/05/15 Mayor and Cabinet	Kevin Sheehan, Executive Director for Customer Services and Councillor Kevin Bonavia, Cabinet Member Resources		
March 2015	Leathersellers Federation of Schools Academy consultation	Wednesday, 13/05/15 Mayor and Cabinet	Frankie Sulke, Executive Director for Children and Young People and Councillor Paul Maslin, Cabinet Member for Children and Young People		

FORWARD PLAN – KEY DECISIONS

Date included in forward plan	Description of matter under consideration	Date of Decision Decision maker	Responsible Officers / Portfolios	Consultation Details	Background papers / materials
April 2015	Governing Bodies Reconstitution	Wednesday, 13/05/15 Mayor and Cabinet	Frankie Sulke, Executive Director for Children and Young People and Councillor Paul Maslin, Cabinet Member for Children and Young People		
April 2015	Making of Instrument of Government - The Fairlawn and Haseltine Primary Schools Federation	Wednesday, 13/05/15 Mayor and Cabinet	Frankie Sulke, Executive Director for Children and Young People and Councillor Paul Maslin, Cabinet Member for Children and Young People		
March 2015	Allocation of Main Grants Programme	Wednesday, 13/05/15 Mayor and Cabinet (Contracts)	Aileen Buckton, Executive Director for Community Services and Councillor Joan Millbank, Cabinet Member Third Sector & Community		
May 2015	Carers Lewisham Contract Extension	Wednesday, 13/05/15 Mayor and Cabinet (Contracts)	Aileen Buckton, Executive Director for Community Services and Councillor Chris Best, Cabinet Member for Health, Wellbeing and Older People		
February 2015	Variation of Contract with Bailey Partners Provision of Services to Primary Places Programme	Tuesday, 26/05/15 Overview and Scrutiny Education Business Panel	Frankie Sulke, Executive Director for Children and Young People and Councillor Paul Maslin, Cabinet Member for Children and Young		

FORWARD PLAN – KEY DECISIONS

Date included in forward plan	Description of matter under consideration	Date of Decision Decision maker	Responsible Officers / Portfolios	Consultation Details	Background papers / materials
			People		
February 2015	Variation of contract for works at Forster Park Primary School	Tuesday, 26/05/15 Overview and Scrutiny Education Business Panel	Frankie Sulke, Executive Director for Children and Young People and Councillor Paul Maslin, Cabinet Member for Children and Young People		
May 2015	Prendergast Ladywell Primary: Authority Notice of Change 3	Tuesday, 26/05/15 Overview and Scrutiny Education Business Panel	Frankie Sulke, Executive Director for Children and Young People and Councillor Paul Maslin, Cabinet Member for Children and Young People		
May 2015	Edmund Waller: works required to admit 30 additional Reception pupils in 2015	Tuesday, 26/05/15 Overview and Scrutiny Education Business Panel	Frankie Sulke, Executive Director for Children and Young People and Councillor Paul Maslin, Cabinet Member for Children and Young People		
March 2015	Adoption Statement of Purpose 2015-16	Wednesday, 03/06/15 Mayor and Cabinet	Frankie Sulke, Executive Director for Children and Young People and Councillor Paul Maslin, Cabinet Member for Children and Young People		
March 2015	Fostering Statement of Purpose 2015-16	Wednesday, 03/06/15	Frankie Sulke, Executive Director for Children and		

FORWARD PLAN – KEY DECISIONS					
Date included in forward plan	Description of matter under consideration	Date of Decision Decision maker	Responsible Officers / Portfolios	Consultation Details	Background papers / materials
		Mayor and Cabinet	Young People and Councillor Paul Maslin, Cabinet Member for Children and Young People		
May 2015	Discretionary Licensing of the Private Rented Sector	Wednesday, 03/06/15 Mayor and Cabinet	Kevin Sheehan, Executive Director for Customer Services and Councillor Damien Egan, Cabinet Member Housing		
May 2015	Final Budget Outturn 2014-15	Wednesday, 03/06/15 Mayor and Cabinet	Janet Senior, Executive Director for Resources & Regeneration and Councillor Kevin Bonavia, Cabinet Member Resources		
May 2015	Flood Risk Strategy	Wednesday, 03/06/15 Mayor and Cabinet	Janet Senior, Executive Director for Resources & Regeneration and Councillor Alan Smith, Deputy Mayor		
February 2015	ICT Service Review	Wednesday, 03/06/15 Mayor and Cabinet	Kevin Sheehan, Executive Director for Customer Services and Councillor Kevin Bonavia, Cabinet Member Resources		
March 2015	Licensed Deficit Application Sedgemoor School	Wednesday, 03/06/15 Mayor and Cabinet	Frankie Sulke, Executive Director for Children and Young People and Councillor Paul Maslin,		

FORWARD PLAN – KEY DECISIONS					
Date included in forward plan	Description of matter under consideration	Date of Decision Decision maker	Responsible Officers / Portfolios	Consultation Details	Background papers / materials
			Cabinet Member for Children and Young People		
May 2015	Proposals by Archdiocese of Southwark St Winifred Infant School, St Winifred Junior School and Our Lady & St Philip Neri	Wednesday, 03/06/15 Mayor and Cabinet	Frankie Sulke, Executive Director for Children and Young People and Councillor Paul Maslin, Cabinet Member for Children and Young People		
May 2015	Section 75 Agreements between CCG and Council	Wednesday, 03/06/15 Mayor and Cabinet	Aileen Buckton, Executive Director for Community Services and Councillor Chris Best, Cabinet Member for Health, Wellbeing and Older People		
May 2015	Disposal of Land interest at Arcus Road/Chingley Close	Wednesday, 03/06/15 Mayor and Cabinet	Janet Senior, Executive Director for Resources & Regeneration and Councillor Alan Smith, Deputy Mayor		
May 2015	Deferral of the expansion of Sir Francis Drake primary school	Wednesday, 03/06/15 Mayor and Cabinet	Frankie Sulke, Executive Director for Children and Young People and Councillor Paul Maslin, Cabinet Member for Children and Young People		
May 2015	Demolition of 127 Mayow Road and secular of site	Wednesday, 03/06/15	Kevin Sheehan, Executive Director for		

FORWARD PLAN – KEY DECISIONS					
Date included in forward plan	Description of matter under consideration	Date of Decision Decision maker	Responsible Officers / Portfolios	Consultation Details	Background papers / materials
		Mayor and Cabinet	Customer Services and Councillor Damien Egan, Cabinet Member Housing		
May 2015	Children's Centres Contract Extension	Wednesday, 03/06/15 Mayor and Cabinet (Contracts)	Frankie Sulke, Executive Director for Children and Young People and Councillor Paul Maslin, Cabinet Member for Children and Young People		
May 2015	Housing Grounds Maintenance Contract	Wednesday, 03/06/15 Mayor and Cabinet (Contracts)	Kevin Sheehan, Executive Director for Customer Services and Councillor Damien Egan, Cabinet Member Housing		
May 2015	Ladywell Pop Up Village Contract Award	Wednesday, 03/06/15 Mayor and Cabinet (Contracts)	Kevin Sheehan, Executive Director for Customer Services and Councillor Damien Egan, Cabinet Member Housing		
September 2014	Prevention and Inclusion Framework Contract Award	Wednesday, 03/06/15 Mayor and Cabinet (Contracts)	Aileen Buckton, Executive Director for Community Services and Councillor Chris Best, Cabinet Member for Health, Wellbeing and Older People		
March 2015	Procurement of Occupational Health and Employee Assistance Programme Provider	Wednesday, 03/06/15 Mayor and Cabinet (Contracts)	Janet Senior, Executive Director for Resources & Regeneration and Councillor Kevin Bonavia,		

FORWARD PLAN – KEY DECISIONS					
Date included in forward plan	Description of matter under consideration	Date of Decision Decision maker	Responsible Officers / Portfolios	Consultation Details	Background papers / materials
			Cabinet Member Resources		
May 2015	Procurement of Children's Weight Management Services.	Wednesday, 03/06/15 Mayor and Cabinet (Contracts)	Aileen Buckton, Executive Director for Community Services and Councillor Chris Best, Cabinet Member for Health, Wellbeing and Older People		
May 2015	Broadway Theatre Working Group	Wednesday, 24/06/15 Council	Aileen Buckton, Executive Director for Community Services and Councillor Chris Best, Cabinet Member for Health, Wellbeing and Older People		
December 2014	Catford Town Centre CRPL Business Plan 2015/16	Wednesday, 24/06/15 Council	Janet Senior, Executive Director for Resources & Regeneration and Councillor Alan Smith, Deputy Mayor		
May 2015	Constitutional Matters	Wednesday, 24/06/15 Council	Kath Nicholson, Head of Law and Councillor Alan Hall, Chair of Overview & Scrutiny Committee		
March 2015	Housing Strategy	Wednesday, 24/06/15 Council	Kevin Sheehan, Executive Director for Customer Services and Councillor Damien Egan, Cabinet Member Housing		

FORWARD PLAN – KEY DECISIONS					
Date included in forward plan	Description of matter under consideration	Date of Decision Decision maker	Responsible Officers / Portfolios	Consultation Details	Background papers / materials
February 2015	Local Development Framework: Revised Local Development Scheme (version 7)	Wednesday, 24/06/15 Council	Janet Senior, Executive Director for Resources & Regeneration and Councillor Alan Smith, Deputy Mayor		
May 2015	Award of New Block Contractual Arrangements for Nursing Homes	Wednesday, 01/07/15 Mayor and Cabinet (Contracts)	Aileen Buckton, Executive Director for Community Services and Councillor Chris Best, Cabinet Member for Health, Wellbeing and Older People		
May 2015	Capital and Revenue Budget Monitoring	Wednesday, 15/07/15 Mayor and Cabinet	Janet Senior, Executive Director for Resources & Regeneration and Councillor Kevin Bonavia, Cabinet Member Resources		
May 2015	Children's Centres Consultation	Wednesday, 15/07/15 Mayor and Cabinet	Frankie Sulke, Executive Director for Children and Young People and Councillor Paul Maslin, Cabinet Member for Children and Young People		
May 2015	Formal Designation of Crystal Palace & upper Norwood Neighbourhood Forum and Area	Wednesday, 15/07/15 Mayor and Cabinet	Janet Senior, Executive Director for Resources & Regeneration and Councillor Alan Smith, Deputy Mayor		
May 2015	New Local Plan for Lewisham	Wednesday,	Janet Senior, Executive		

FORWARD PLAN – KEY DECISIONS					
Date included in forward plan	Description of matter under consideration	Date of Decision Decision maker	Responsible Officers / Portfolios	Consultation Details	Background papers / materials
	first round of Public Consultation	15/07/15 Mayor and Cabinet	Director for Resources & Regeneration and Councillor Alan Smith, Deputy Mayor		
June 2014	Surrey Canal Triangle (New Bermondsey) - Compulsory Purchase Order Resolution	Wednesday, 15/07/15 Mayor and Cabinet	Janet Senior, Executive Director for Resources & Regeneration and Councillor Alan Smith, Deputy Mayor		
January 2015	Waste Strategy Consultation	Wednesday, 15/07/15 Mayor and Cabinet	Kevin Sheehan, Executive Director for Customer Services and Councillor Rachel Onikosi, Cabinet Member Public Realm		
November 2014	Award of Highways Public Realm Contract Coulgate Street	Wednesday, 15/07/15 Mayor and Cabinet (Contracts)	Janet Senior, Executive Director for Resources & Regeneration and Councillor Alan Smith, Deputy Mayor		
February 2015	Review of Licensing Policy	Wednesday, 21/10/15 Mayor and Cabinet	Aileen Buckton, Executive Director for Community Services and Councillor Rachel Onikosi, Cabinet Member Public Realm		
May 2015	Voluntary Sector Accommodation Implementation Plan	Wednesday, 21/10/15 Mayor and Cabinet	Aileen Buckton, Executive Director for Community Services and Councillor Joan Millbank, Cabinet Member Third		

FORWARD PLAN – KEY DECISIONS					
Date included in forward plan	Description of matter under consideration	Date of Decision Decision maker	Responsible Officers / Portfolios	Consultation Details	Background papers / materials
			Sector & Community		
February 2015	Review of Licensing Policy	Wednesday, 25/11/15 Council	Aileen Buckton, Executive Director for Community Services and Councillor Rachel Onikosi, Cabinet Member Public Realm		

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