

Public Accounts Select Committee			
Title	No Recourse to Public Funds: Scoping Paper	Item No	5
Contributors	Scrutiny Manager		
Class	Part 1	Date	22 September 2014

1. Purpose of paper

- 1.1. At its meeting on 9 July 2014, the Committee decided as part of its work programme to undertake an in-depth review looking at the increased number of cases of people with no recourse to public funds (NRPF) and their impact on Lewisham Council as both a financial and a service pressure for the organisation.
- 1.2. This paper sets out the rationale for the review, provides some background information on the current situation within Lewisham and sets out proposed terms of reference for the review.
- 1.3. The in-depth review process is outlined at Appendix A.

2. Recommendations

3. The Select Committee is asked to:
 - note the content of the report
 - consider and agree the proposed terms of reference for the review, outlined in section 6 and the timetable, outlined in section 7.

4. Background

- 4.1. No Recourse to Public Funds (NRPF) refers to people from abroad who are subject to immigration controls and have no entitlement to welfare benefits, public housing or financial support from the Home Office. Section 115 Immigration and Asylum Act 1999 states that a person will have “no recourse to public funds” if they are subject to immigration control, i.e., they have: leave to enter or remain in the UK with the condition “no recourse to public funds”; or have leave to enter or remain in the UK that is subject to a maintenance undertaking; or they require but do not have leave to enter or remain (for example, visa overstayers, illegal entrants, refused asylum seekers who claimed asylum after entering the UK).
- 4.2. Although these individuals and families have NRPF, they may still be eligible for financial and housing support from the local authority as a result of two pieces of legislation:
 - Families can request support under s17 of the Children in Need Act 1989. Essentially, this act puts a duty on all local authorities to safeguard the welfare of children in their area and to promote their upbringing by their families. To support this local authorities may provide assistance in kind, accommodation or cash.

- Individuals can seek support under S21 of the National Assistance Act 1948. This confers a duty on local authorities to support with accommodation and subsistence people who are ill, disabled or an expectant or nursing mother. This support should be provided to people who have NRPF providing that their need does not arise because of destitution alone.
- 4.3. 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 other means of support available
 - Their immigration status does not exclude them from support
- 4.4. The numbers of people with NRPF presenting to the local authority has risen in recent years and represents a significant and growing budget pressure for Lewisham Council at a time of severely restricted finances.
- 4.5. The Committee has been aware of the issue of NRPF since 13 June 2013, when it was first brought to the Committee's attention as part the Committee's budget monitoring responsibilities. The Committee has discussed the issue as part of the regular Revenue and Capital Budget Monitoring reports on 17 July 2013, 11 November 2013 and 25 March 2014. The issue of NRPF was also addressed by the Committee as part of the Annual Budget 2014/15 item at the 6 February 2014 meeting.
- 4.6. The Financial Outturn Report 2013/14 that was received by the Committee in July 2014 highlighted that NRPF had created a cost pressure of £4.6m for the year and this contributed the majority of the overspend of £6m within children's social care services.¹ The Financial Forecasts 2014/15 report that was received by the Committee in July 2014 showed that NRPF is creating a cost pressure of £5.7m for 2014/15.²
- 4.7. At the meeting of the Public Accounts Select Committee on the 9 July 2014, the Committee discussed undertaking an in-depth review looking at the impact of NRPF on the finances of London Borough of Lewisham, what is being done to address this and what could be done in the future.

5. Policy context

- 5.1. The numbers of people with NRPF presenting to the local authority has risen significantly in recent years. This is particularly the case for families. In 2011/12 Lewisham was supporting 23 families, in November 2013 it had risen to 178. In June 2014 Lewisham was supporting a total of 256 cases, as opposed to approximately 50 cases 5 years ago.³

¹ Financial Outturn 2013/14 – Public Accounts Select Committee 9 July 2014

<http://councilmeetings.lewisham.gov.uk/documents/s30121/05FinancialOutturn20131409072014.pdf>

² Financial Forecasts 2014/15 – Public Accounts Select Committee 9 July 2014

http://councilmeetings.lewisham.gov.uk/documents/s30290/FinancialForecasts2014_15May_PAC_Reviewed.pdf

³ No Recourse to Public Funds – Presentation to Executive Management Team, June 2014

- 5.2. Recent estimates from the NRPf Network⁴ based at Islington Council are that around 2000 individuals are being supported across London at a cost of over £27m per annum. This figure may be underestimated as many boroughs do not record information on whether cases being supported are NRPf. Lewisham has a high number of NRPf cases compared to other London Boroughs. As of June 2014 Lambeth has 280, Greenwich 189, Croydon 117 and Southwark 80, compared to the abovementioned 256 for Lewisham.⁵ Since June officers have worked more closely with Southwark and Greenwich, who estimate that their figures are higher and closer to Lewisham's.
- 5.3. Lewisham's Sustainable Communities Strategy sets out six key priorities for the borough as a whole. This review will contribute to the 'Healthy, active and enjoyable' priority, where people can actively participate in maintaining and improving their health and wellbeing as well as the 'Safer' priority, where people feel safe and live free from crime, antisocial behaviour and abuse.⁶
- 5.4. Factors contributing to recent rises in demand nationally include Home Office policy changes, changes to legislation and case law, local assessment approaches, the economic downturn and changes to Legal Aid.

Home Office policy changes

- 5.5. Changes include a focus on asylum rather than managed migration as well as the introduction of the 7 year child concession rule in 2012, which allows individuals to apply for stay on the grounds of family life as a parent of child who lived in the UK continuously for seven years. Delays in Home Office decision making means cases are taking longer to resolve so local authorities are providing support longer periods of time.

Changes to legislation and case law

- 5.6. The recent Court of Justice of the European Union ruling on the case of Zambrano provided that a non-European Economic Area (EEA) national who had been living and working in Belgium without a work permit, had a right to reside and to work so that his Belgian national children were not forced to leave the European Union (EU) and prevented from exercising their rights as EU citizens.⁷ The ruling means that non EEA nationals who are the primary carer of a dependent British child have a right to reside and work if the British child would be otherwise forced to leave, although they do not have entitlement to benefits. This means that more families can request support.

⁴ NRPf Network <http://www.nrpfnetwork.org.uk/Pages/Home.aspx>

⁵ No Recourse to Public Funds – Presentation to Executive Management Team, June 2014

⁶ Lewisham's Sustainable Community Strategy 2008-2020

<http://www.lewisham.gov.uk/mayorandcouncil/aboutthecouncil/strategies/Documents/Sustainable%20Community%20Strategy%202008-2020.pdf>

⁷ The Social Security (Habitual Residence)(Amendment) Regulations 2012 - Department of Work and Pensions, October 2012

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220217/eia-zambrano-right-to-reside-and-work.pdf

- 5.7. As a result of changing case-law (such as Zambrano and the 'Newcastle judgement'), there are a very limited number of reasons why a local authority can decide not to support presenting individuals:
- 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

Local assessment approaches

- 5.8. The establishment of the National Asylum Support Service (NASS) in 2000 resulted in the majority of local authorities disbanding their asylum teams. With this, much of the specialist immigration knowledge, which also related to NRPF cases, was lost. NRPF cases became absorbed into routine social work processes where there was neither the expertise nor processes or systems to respond effectively to cases of this type.

Economic downturn

- 5.9. The economic downturn has meant that many families in Lewisham are now supporting claimants that they had been earning living from jobs in the informal economy but that there has been less work available. Individuals also present on the basis that the British citizen who had been supporting them no longer has the financial means of doing so. Welfare reforms such as the bedroom tax and Council Tax Reduction may be having an impact on the ability of people to sustain their accommodation arrangements.

Legal Aid changes

- 5.10. Legal Aid changes means that there is now more limited access to Legal Aid for immigration appeal work. Legal Aid changes that came into effect in April 2013 mean that some types of case are no longer eligible for public funds, including divorce, child contact, welfare benefits, employment, clinical negligence, and housing law except in very limited circumstances. The changes also reduced the amount of money available for solicitors carrying out Legal Aid work.
- 5.11. Further to this, new rules were introduced in the 2013 Standard Civil Contract (the contract documents for providers of face-to-face Legal Aid services in family, immigration and asylum, housing and debt) which limited the extent to which emergency funding could be drawn down by solicitors for judicial reviews. In all but a handful of cases, funding for judicial reviews must now be applied for centrally from the Legal Aid Agency.

Presenting to local authorities

- 5.12. Analysis of the situation in Lewisham shows that individuals presenting in Lewisham as NRPF are typically women from the Caribbean and Africa. They are usually visa over-stayers who have been in the country for a number of years and have been supporting themselves (either through working illegally or being supported by friends or family). They often have children who are British citizens. Their presentation to the

local authority is usually on the basis that support arrangements have broken down and they are therefore homeless and have no financial means to support themselves.

6. Action taken so far in Lewisham

- 6.1. In November 2013, Lewisham's Executive Management Team commissioned a review of current NRPF processes in Lewisham to quantify the current and future financial pressure on the organisation and identify whether there were opportunities to redesign current processes to reduce this burden. At the time, the review found that there were 223 NRPF cases in children's social care, costing an average of £23,318 per annum, with the total costs circa £5.2m per annum. In adult social care there were 18 cases at an average cost per case of £13,000 per annum, although there were significant variations depending on case need, resulting in a total cost per annum of £240,000.⁸ The review found that Lewisham did not have a written policy, assessment process or dedicated system for decision making and recording outcomes and that the assessment process was needs led not eligibility led. The review also found that there was no resolution-focused case management approach and that the separation of functions in housing, adult and children's social care makes it more difficult to develop a standard corporate approach.
- 6.2. In order to address these findings, action was taken to invest £300,000 in setting up a dedicated team to tackle NRPF. This consists of a specialist team of 5 case workers & a Home Office secondee and introduced a pilot approach in June 2014. The team are also supported by specialist officers in fraud and a small housing procurement team who are responsible for ensuring that the council drives down costs for families Lewisham is obligated to support. The team links strongly with child protection officers in Children's Social Care to ensure that any safeguarding concerns are picked up. 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 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. These include obtained signed declarations from those who have previously provided support, GPs, schools and where appropriate fraud referrals for detailed background checks on individuals applying and associated with the application.
- 6.3. This 'robust front door' approach has started to have significant impact on managing spend in this area. In the first two and a half months, 96 people presented to the council seeking support with housing and subsistence (approx. 10 per week). Of these:
- Lewisham has accepted a duty to provide ongoing support (until their immigration status is resolved) for one case
 - Lewisham is temporarily supporting 8 pending the outcome of the full assessment
 - The remainder of cases have been refused either at triage or full assessment.

⁸ No Recourse to Public Funds – Presentation to Executive Management Team, June 2014

- 6.4. Before the pilot, at least half of all cases were being accepted for support, usually lasting at least one year.
- 6.5. The team has established a reassessment process to check the status of all current cases in order to determine whether support should continue to be provided. The status check process is now complete and five cases have been closed with action plans due to commence this month for a further 63 cases where officers are not satisfied that the conditions for support are being met.
- 6.6. Lewisham is about to submit a bid to the DCLG for a project to develop the approach tested in Lewisham into a mainstreamed model using a single assessment and data collection approach across five boroughs (Lewisham, Lambeth, Southwark, Greenwich and Bromley). The funding will be used to:
- Appoint a programme manager and borough based project officers responsible for designing and implementing the single assessment approach
 - Develop a single system for recording information on cases which will enable potential fraud to be identified and investigated at both an individual case level and at a strategic level.
 - Conduct detailed investigation of trends identified across the five boroughs.
 - Embed counter fraud investigation and interview skills amongst front-line officers responsible for assessments across the boroughs.

It is still unclear how quickly the action taken will reduce the current £5.7m overspend by March and beyond as the pilot is still in its early stages. Additionally, there have been no legal challenges in the Courts to the approach taken and any rulings could impact on the strategy being taken to reduce costs.

7. Future pressures

- 7.1. It is likely that demand due to NRPF will increase further as a result of welfare reforms affecting EEA nationals and the Immigration Act. From 1st April 2014, the Department for Work and Pensions (DWP) made a number of changes to the extent to which EEA nationals were able to access benefits in the UK. The key changes introduced were:
- No entitlement to income-based JSA for those in the UK for less than three months
 - No income-based JSA for EEA migrants after three months (previously six months) unless the DWP assesses that they have a 'genuine prospect of work'
 - No entitlement to Housing Benefit for EEA jobseekers
- 7.2. DWP figures suggest that London has approximately 177,000 of the 397,000 non-UK national benefit claimants (45% of the total).⁹ If the proportion of EEA nationals is the same as non-UK nationals as a whole, then the financial burden for the 32 London local authorities would be between £101m and £169m per annum. This is equivalent to between £3.2m and £5.3m per local authority per annum. It should be noted that it is likely that costs would be at the upper end of the range because of higher accommodation costs in London.

⁹ DWP Quarterly Statistical Summary – August 2014
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/344650/stats-summary-aug14.pdf

- 7.3. The forthcoming Immigration Act will introduce a number of measures including tightening access to bank accounts, driving licenses and private rented sector accommodation for people who are here illegally. This is likely to increase the number of cases being identified and subsequently presenting to Lewisham Council, although the numbers are unknown. The Immigration Act will reduce the number of appeal stages in the current immigration decision making process from 17 to 4 which should help speed up case-resolution.
- 7.4. The Care Act 2014 will reform the provision of care and support to adults, consolidating current legislation and implementing new duties on local authorities. Some changes will come into effect in April 2015 and the rest will be implemented in April 2016. Section 8(1) Care Act 2014 sets out how needs may be met, which includes the provision of “accommodation in a care home or in premises of some other type”. The draft regulations set out a three-stage eligibility test to determine whether a local authority will have a duty to meet a person’s needs.
- 7.5. Concerns have been raised by the No Recourse to Public Funds Network¹⁰ that the Care Act and draft eligibility regulations do not appear to consider the needs of those people who have no access to mainstream benefits and housing. They highlight that:
- It is unclear whether it will still be the responsibility of the local authority to provide accommodation to asylum seekers and refused asylum seekers who have care needs, who would otherwise be accommodated by the Home Office
 - If greater numbers of migrants with NRPF are able to access accommodation from the local authority, then this would be very costly to local authorities when NRPF service provision is not funded by central government.
 - It is likely that such matters will only be resolved by extensive and costly litigation following legal challenges being made to local authorities.

8. Meeting the criteria for a review

- 8.1. A review into no recourse to public funds meets the criteria for carrying out a scrutiny review, because:
- The issue affects a number of people living working and studying in the borough
 - The issue is strategic and significant
 - The issue is of concern to partners, stakeholders and/or the community

9. Key lines of Inquiry

- 9.1. Given the complexity of NRPF, the Committee should first establish:
- The national and local context surrounding NRPF
 - Who presents as NRPF in Lewisham and the types of support provided to them
 - The extent of the problem in Lewisham and how Lewisham compares to other local authorities

¹⁰ NRPF Network – response to Department of Health consultation on the Care Act 2014
<http://www.nrpfnetwork.org.uk/Documents/Care%20Act%20Consultation%20response%20August%202014.pdf>

- The interventions that have been taken in Lewisham to address the increase in NRPF and effectively manage the number of NRPF cases that Lewisham supports
- The future NRPF pressures expected for Lewisham (such as changes to the eligibility of EEA nationals) and the potential financial impact of these pressures

9.2. Once this information has been provided, the Committee can consider the following key lines of inquiry:

- How effective have the interventions taken to address the growth of NRPF cases been
- How will the expenditure on NRPF be managed within the current and future financial pressures for Lewisham Council
- What are the impacts of the interventions taken on those presenting as NRPF in the borough and what impacts will further interventions have
- What Lewisham is doing to work with groups and agencies that support people who have NRPF and signpost them to the Council
- What Lewisham is doing to address projected future NRPF pressures, such as changes to the eligibility of EEA nationals, the Immigration Act and the Care Act.

10. Timetable

10.1. The Committee is asked to consider the outline timetable for the review as set out below:

First evidence-taking session (5 November 2014):

Report from officers providing information on the background to NRPF, including:

- The national and local context around the rise of NRPF
- Details about who is presenting as NRPF in Lewisham
- Comparator information with other local authorities on the levels of NRPF in Lewisham
- What the support provided for NRPF cases looks like and how much this costs

External witnesses at the meeting could include organisations that work directly with people who present to the Council as NRPF.

Second evidence-taking session (10 December 2014)

Report from officers providing information on:

- Interventions taken to address the issue of NRPF within Lewisham
- Future NRPF pressures on Lewisham, actions that are being taken to address these and potential actions that could be taken.

External witnesses at the meeting could include representatives of government agencies that deal with groups that present as NRPF as well as organisations that are carrying out work looking at future pressures arising from NRPF.

Recommendations and final report (5 February 2015)

The Committee will consider a final report presenting all the evidence taken and agree recommendations for submission to Mayor & Cabinet.

11. Further implications

11.1. 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.

For further information please contact Andrew Hagger, Scrutiny Manager on 020 8314 9446 or email andrew.hagger@lewisham.gov.uk

How to carry out an in-depth review

