



**Project 17**

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Public Accounts Select Committee  
Lewisham Town Hall  
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Also by email to all Public Accounts Select Committee members

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### **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'<sup>1</sup> 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 assessment<sup>2</sup>.

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 cases<sup>3</sup>. 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;

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<sup>1</sup> Paragraph 6.2 of the Scoping Paper

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

<sup>3</sup> *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 disabled<sup>4</sup>

The local authority has a duty to promote the welfare of children in need within its area<sup>5</sup>. 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 it<sup>6</sup>. 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 ECHR<sup>7</sup>. 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,

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<sup>4</sup> S.17(10) Children Act 1989

<sup>5</sup> S.17(1)(a) Children Act 1989

<sup>6</sup> *Pryce v Southwark LBC* [2012] EWCA Civ 1572

<sup>7</sup> *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 rights<sup>8</sup>. 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

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<sup>8</sup> *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 review<sup>9</sup>. 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

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<sup>9</sup> 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](mailto: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 consideration<sup>10</sup>. 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.

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<sup>10</sup> *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.