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

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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;