

Campaign to Abolish No Recourse to Public Funds Response to Recent Government Proposal on the No Recourse Pilot Scheme

This joint statement is made by the UK's leading violence against women, women's rights and human rights organisations.

We welcome the commitment of Government to continuing to work with us to address the problem of abused women who have an insecure status and cannot access essential services, including safe housing, without which they cannot protect themselves.

Six months ago, we rejected a proposal offered by the Government to make retrospective payments for up to 25 working days to cover accommodation and basic living costs for women who are successful in obtaining indefinite leave to remain under the immigration Domestic Violence Rule (DV rule). We deemed this to be inadequate and unworkable and would not achieve what it set out to do - which was to protect women from violence and abuse.

We are therefore extremely pleased and grateful that Government has made a determined effort to address our concerns, to rethink the proposal and have now produced a revised version.

The new version proposes a pilot scheme to be delivered by Eaves Housing, which will act as the National Co-ordinator, in conjunction with the UKBA. The scheme gives payments of up to £230 per week in rent with an additional sum of £30 per woman and £30 per child for subsistence for a period of up to 40 days for those who are in the UK as spouses/partners subject to the two-year probationary period and have applied to remain under the DV rule.

We very much welcome the new proposal and look forward to participating in the pilot scheme. We are grateful that some of our main concerns have been addressed, particularly with regard to the following issues:

- The need to make payments at the point of demand rather than retrospectively;
- That payments are not subject to a successful outcome of the domestic violence immigration application;
- The payments have now been extended from 5 to 8 weeks and that the amounts payable have increased.

However, we still have a number of concerns that, of course, the pilot will provide an opportunity to test. We think it is useful to highlight these concerns and issues at this stage so that we can ensure that the pilot is as effective as possible in providing protection for women and their children and develop and implement an effective monitoring system for the pilot scheme.

For the scheme to work, detailed monitoring must be carried out of all the issues outlined below for the duration of the pilot to provide the relevant information to review the scheme and implement the best possible provision following on from the scheme. It is also vital that government addresses the need for future provision in relevant budget setting processes for 2010. We set out our concerns below:

1. Access to legal representation

Our experience shows that supporting women with no recourse to public funds is in many cases a complex and time consuming process. The timeframe set out in this proposal is 20 days – but it can take considerably longer to prepare and submit a good quality application for Indefinite Leave to Remain (ILR). Supporting organisations such as women’s refuges and other specialist domestic violence services will need to refer women to specialist legal aid lawyers who are willing to assist, as organisations cannot give immigration advice or assist with an immigration application unless they are properly accredited to do so under the immigration accreditation scheme operated by the Office of Immigration Services Commissioner (OISC). The experience of specialist domestic violence services in finding a legal aid lawyer can be a lengthy and frustrating process because increasingly immigration firms are no longer undertaking legal aid work, and those that do, often refuse to take on cases due to lack of capacity. The process of securing an appointment with an immigration lawyer alone can take 3 weeks or more in some cases. Without this specialist advice and advocacy women fleeing domestic violence are unable to gather evidence and seek representation. This will create a situation where poor quality applications for leave to remain under the domestic violence rule are submitted and it is vital that victims receive a proper high quality service.

2. Collection of evidence

Gathering evidence in support of a woman’s application for ILR under the DV rule is also a lengthy process and can take many weeks if not months. For example, obtaining police evidence alone can take up to 40 days. We note that you have addressed this issue through your agreement with the Association of Chief Police Officers (ACPO) which stipulates that police reports will be sent to the UK Border Agency (UKBA) within 72 hours of information being requested. However, we are concerned that these reports are not being made available to legal representatives within the same time frame. It is necessary for legal representatives to be privy to this information before the UKBA so that adequate representations on this point can be incorporated in any application for leave to remain. The failure to do this will damage the quality of the application, which will in turn infringe the rights of women to have adequate legal representation and a fair hearing. We remain very concerned about this matter. We understand from ACPO that their main concern is that the police report is received quickly in a secure manner. We recommend that where a legal representative can provide a secure means of receiving information within 72 hours, the police report should be submitted to them before the UKBA. It should also be noted that additional evidence, such as medical and social

services reports, also can take considerable time to gather, and can also delay the application.

3. Refuge services take-up of Scheme

Finding an appropriate agency and lawyers to assist, coupled with evidence gathering and preparation of a good application can take many weeks and months, and much longer than 20 days. Refuge services will not be willing to accommodate a woman and her children if they cannot be certain that her immigration matter will be resolved within 40 days. SBS' experience in operating the 'No Recourse Fund' clearly shows this to be the case. This scheme involves advance payment for accommodation and subsistence costs for a period of up to 6 weeks for women who are destitute. Despite this, the current take up rate is extremely low as refuges want financial assurances and do not want to breach their duty of care to such women. Many refuges and other social housing providers do not want to take the risk of evicting destitute and desperate women and have informed SBS that they would only be willing to accommodate such women where there is a guarantee of at least 6 months funding in advance. Women's Aid (Federation of England) Annual Survey 2009 shows that 450 women with no recourse were accommodated over the year, but this represents only 28% of refuge services. Even putting duty of care issues aside, housing law means that a refuge would not be able to ask a woman to leave because she will have signed a license agreement/short hold tenancy within the first 5 days.

Refuges are unlikely to participate in this scheme if they feel that they are likely to face a deficit in the long term. Already women's organisations and refuges are struggling to survive financially and are clearly indicating that they are unable to support women unless they can guarantee that long term and adequate funding is available. For example, Refuge had to close its doors to women with no recourse to public funds because it could no longer afford the £200,000 core funding required to house these women. In cases where a refuge space is unavailable in an area which meets a victim's needs we suggest the scheme funds specialist services to utilise alternative safe accommodation.

4. Payment for support while immigration status is confirmed

As it can take up to 5 days before confirmation of a woman's immigration status is received, refuge services may well be reluctant to accept women without knowing whether or not they are eligible under the proposed pilot. Payments for this period should be made regardless of whether the applicant is eligible or not.

5. Unsuccessful applicants and appeals

There are concerns that there is no funding available to support a woman during an appeal process. Our experience suggests that perfectly sound applications are being rejected as many cases are won on appeal. The unrealistic timeframe for submitting applications can increase poor quality applications, resulting in more refusals and

appeals. Consequently, refugees may be reluctant to support women if they fear that their applications will not succeed.

6. Period prior to application

Often women fleeing domestic violence are brutalised and traumatised by their experiences of violence and abuse and require a period of intensive counselling and support before they feel they are ready to tackle what will often be quite intrusive questioning and often complex social, housing and immigration problems. As a consequence, this proposal will not help women who are not in an immediate position to make an application because they need time to seek help, and to report and recover from abuse.

7. Level of rent payments

Women's Aid (Federation of England) did a snap survey of refuge services (June 2009) and found that the average rental was £190 per week and so the proposed maximum threshold limit of £230 for weekly rent payments should be adequate for some refugees. However, the UK wide picture is unknown, and we know that in some cases, rents will exceed this threshold, so there should be discretion to meet this need.

8. Women who fall outside the Domestic Violence Rule

We are concerned that the proposal only applies to women who were legally entering the UK as spouses or intimate partners. Although it includes those who have 'overstayed', often through no fault of their own, the two-year probationary period, we remain concerned that abused women who have overstayed having entered the UK on another basis and other women affected by no recourse, including trafficked women and migrant workers, subjected to abuse and exploitation are not protected. The UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) requires that we provide equal access to safety and justice for all women in the jurisdiction fleeing violence. This is not dependent on the nature of their visa or immigration status.

We would like to remind the government that they have an obligation under international human rights law to act with due diligence in providing protection and support to all women with their jurisdiction who are at risk of or experiencing gender based violence. In 2008 the CEDAW committee noted with concern that women with insecure immigration status cannot access support and protection because of the no recourse to public funds requirement. Therefore this proposal still falls short of the CEDAW obligations as recommended to UK Government by the CEDAW committee. The human rights of women in this situation are at risk as they face a stark choice of remaining with a violent abuser or becoming destitute.

In summary

We welcome the opportunity to work with colleagues from the Home Office and UKBA to progress this pilot as quickly as possible. We have considered how and what we want to monitor and welcome the opportunity to discuss what formal monitoring and evaluation they have planned for the Scheme and how this will be contracted out. We also understand that Eaves Housing are committed to working with other partners in the sector in implementing the pilot, and that the role of the National Co-ordinator will be open to tender if the scheme continues after the pilot. We therefore look forward to finalise details with the Home Office and Eaves Housing prior to the start of the pilot. We recommend that once the pilot starts it is reviewed on a monthly basis by the working group. It is also critical that the Home Office consults on how it will put in place the relevant measures required to roll out, and amend and expand the proposal e.g. identifying longer term funding for at least 6 months and appropriate delivery mechanisms, and to develop a more permanent solution which exempts women experiencing violence from the no recourse requirement. We would like to do this before "Purdah", the 6 week bar on new initiatives in the run up to an election which is like to start mid-March 2010.

We look forward to working with you to deliver this vital pilot scheme and also welcome the opportunity to discuss how it will be launched. Information and publicity must be disseminated to specialist domestic violence services, other relevant agencies and the general public and local communities so that women (and their children) who are in this situation are be able to seek and receive the help that they could not do previously.

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Signed by:

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12. Kalayaan
13. Kiran Project
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