



## Welsh Refugee Council

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### Welsh Refugee Council response to the Home Office & Ministry of Justice's Domestic Abuse Bill Consultation (May 2018).

#### 1. Welsh Refugee Council.

1.1 For over 25 years, Welsh Refugee Council has worked people who are fleeing persecution, conflict & oppression. We deliver direct specialist support services to people seeking asylum and people with refugee status in Cardiff, Wrexham, Newport, Swansea, Rhondda Cynon Taff, Merthyr Tydfil and Bridgend & work to empower asylum seekers & refugees to build new futures in Wales. Our services include the Welsh Government funded Asylum Rights Programme and Move-On services, various Home Office funded SVPRS contracts with Local Authorities and a Comic Relief funded specialist paralegal service for vulnerable women. We work extensively with a range of community; voluntary & statutory sector partners & strive to contribute to the creation of a society where respect & equality for all is paramount & where human rights are enjoyed. We co-chair the Wales NRPF Forum with the British Red Cross and the Wales Strategic Migration Partnership and are an active member of both the Welsh Refugee Coalition<sup>1</sup> & Nation of Sanctuary<sup>2</sup> movement in Wales.

1.2 Working in partnership with agencies like the British Red Cross, Welsh Refugee Council see on average of 20 to 25 people who are destitute & homeless each week. We provide people in need with small payments of between £5-£10 per week, items of clothing & occasionally food, as well as offering advice on where people can access community & faith-based support (e.g. Oasis & Nightshelter in Cardiff). These funds are entirely dependent on donations, with access to the fund often limited to a certain number of weeks. Although the funds are limited, they do provide a link with people who might otherwise lose contact with services. Whilst offering small payments, we also strive to secure access to those statutory, public welfare protection services to which people are entitled.

1.3 The people accessing these destitution services can be people seeking asylum whose asylum support may be yet to start, people whose asylum support has stopped for some reason, as well as people with positive immigration status. All asylum seekers have a NRFP condition on their leave, however while they have an active immigration case pending, they can claim NASS support if

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1 A coalition of organisations working in Wales with asylum seekers & refugees at all stages of their journey, & with the communities in which they live. We work together in the interests of asylum seekers & refugees, to ensure that our limited resources can be used to best effect & to speak with one voice on policies & practices affecting people seeking safety in Wales.

2 <https://cityofsanctuary.org/>

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destitute, which provides for basic needs. However, if a grant of leave is given that is not Refugee Status or Humanitarian Protection, then the leave often carries a condition of NRPF. This should not be the case if the applicant has shown that they are destitute, though often this is not fully considered (e.g. a destitute asylum seeker in receipt of NASS should not be given a NRPF condition if granted leave on the basis of Article 8, although in practice are often given NRPF conditions on their leave). Further, in situations where there is domestic violence and the victim has a condition of NRPF, this can make it difficult for person to flee, unless they qualify for 3 months support under the Destitute Domestic Violence Concession, which is limited to those individuals who came in on a spouse visa.

1.4 Given our contact with people who have experienced domestic violence and who have the NRPF condition applied to their status, we welcome the opportunity to submit our views as part of this inquiry and in particular on the question 'In addition to reviewing who may be eligible for the Destitute Domestic Violence Concession, what other considerations could the Government make in respect of protecting domestic abuse victims with no recourse to public funds?'

## **2. In addition to reviewing who may be eligible for the Destitute Domestic Violence Concession (DDVC), what other considerations could the Government make in respect of protecting domestic abuse victims with no recourse to public funds?**

### **2.1 Limitations of the DDVC scheme**

2.1.1 Whilst we appreciate this question is not about who may be eligible for the DDVC, in our experience, this question is critical to ensure that people experiencing domestic violence are able to access the support they need to safely leave the violence that places them and possibly their children, at risk of significant harm.

2.1.2 Domestic violence affects a diverse group of people with different types of immigration status. According to a report funded by the Home Office, 'asylum seeking, migrant and refugee women face higher levels of domestic violence than native-born women'<sup>3</sup> and yet statutory support is limited to only a small group of people. The Home Office's application of the DDVC scheme leaves a large proportion of victims without an adequate remedy or support following escape from their abusers.

2.1.3 The DDVC scheme is only offered to those who enter the United Kingdom or are given leave to remain in the United Kingdom under Part 8 of the Immigration Rules as a spouse, civil partner, unmarried or same sex partner of a British Citizen or someone who is present and settled in the UK or under the partner route of Appendix FM.

2.1.4 Women who have been supported by our Women's Paralegal include those who met their partners while in the country and who were therefore unable to apply under the DDVC scheme, due to the requirements outlined in 2.1.3. Further, the fact that support is not available to some domestic violence victims means that they are unlikely to flee their current situation as they fear destitution. This includes those with children, as statutory services are often reluctant to be forthcoming with support.

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<sup>3</sup> A Hubbard, J Payton and A Robinson Uncharted Territory: violence against migrant, refugee and asylum seeking women in Wales  
[www.wmp.org.uk/documents/wmp/WSMP%20Info/Uncharted%20Territory%20Executive%20Summary%20English.pdf](http://www.wmp.org.uk/documents/wmp/WSMP%20Info/Uncharted%20Territory%20Executive%20Summary%20English.pdf)



### **Recommendations:**

**(A) The Home Office should extend the group of victims able to rely on the DDVC to include any spouse or partner fleeing domestic violence or domestic abuse regardless of whether they arrived in the UK on a spouse visa or not. This includes post-flight spouses of refugees who experience and flee domestic violence upon their arrival to the UK.<sup>4</sup>**

**(B) The Home Office should ensure that Local Authorities are financially resourced to compensate for the costs of supporting NRPF cases, including domestic abuse victims who submit a notification under the DDVC scheme and victims who fall outside of the DDVC scheme and who would need to make other applications to remove NRPF conditions where these applications are anticipated to take longer than 3 months to resolve.**

**(C) Financial resourcing for Local Authorities should extend to cover training to frontline staff providing face to face support for victims.** This is supported by views of women supported by our Women's Paralegal, one of whom remarked during a recent speech to at Wales' Sanctuary in the Senedd event in January 2018: "Most places I went, people were telling me, "I don't know" or "we don't know what to do", because she had a NRPF condition attached to her discretionary leave after fleeing an abusive relationship which she had started when she arrived in the country<sup>5</sup>.

## **2.2 Barriers to accessing services**

2.2.1 Although the number of people experiencing domestic violence is difficult to quantify, we know that the impacts of domestic violence combined with the impacts of No Recourse to Public Funds (NRPF) are devastating to individuals and their children. A large proportion of those experiencing domestic violence are women, though we also support men who have been victims of domestic violence. Some of the reasons for non-disclosure we hear from the people we support have also been detailed in Wales Strategic Migration Partnership's 'Uncharted Territory'<sup>6</sup> report. They include:

- Victims do not come forward to report incidents due to isolation from wider community or fear of removal. This means they stay away from those public services which could offer important welfare protections.
- Where people are inclined to report their experiences, limited English or Welsh language skills can act as a barrier to approaching support organisations to report experiences. This can mean victims staying with their abusers longer than is necessary.
- Gender based stigma and shame, particularly for men, can make it difficult to come forward to report experiences of domestic violence

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<sup>4</sup> Rights of Women, 'Changes and challenges to the Destitute Domestic Violence Concession': <http://rightsofwomen.org.uk/wp-content/uploads/2014/10/Update-The-destitute-domestic-violence-concession-changes-and-challenges.pdf>

<sup>5</sup> PN statement, Sanctuary in the Senedd: <https://www.walesonline.co.uk/news/wales-news/doctor-who-fled-warzone-ready-14199192>

<sup>6</sup> A Hubbard, J Payton and A Robinson Uncharted Territory: violence against migrant, refugee and asylum seeking women in Wales: [www.wmp.org.uk/documents/wsmmp/WSMP%20Info/Uncharted%20Territory%20Executive%20Summary%20English.pdf](http://www.wmp.org.uk/documents/wsmmp/WSMP%20Info/Uncharted%20Territory%20Executive%20Summary%20English.pdf)



- Professionals limited knowledge of NRPF and associated entitlements: Welsh Refugee Council's Women's Paralegal frequently supports women who have been victims of domestic violence who are signposted to service after service, due to limited knowledge of NRPF and domestic violence for people subject to immigration rules.
- Lack of financial resources to pay for basic commodities, especially if victims are dependent on a partner for financial support.
- Exceptionally limited refuge space and organisations providing specialist support to victims with the NRPF condition.

#### **Recommendations:**

**(D) The Home Office should introduce a system<sup>7</sup> which enables victims of domestic violence with a NRPF condition to access public funds or support including access to refuge accommodation as soon as they make a notification under the DDVC to reduce the risk of victims staying with their abusers unnecessarily due to fear of homelessness or lack of financial support.**

**(E) The Home Office should also extend the financial support to domestic violence victims who do not qualify for the DDVC scheme, but who have provided evidence that they are fleeing abusive relationships.** A report by N Z Kesete highlighted that the requirement to register for biometric registration at the start of the process has meant victims of abuse have had to wait longer than necessary to access financial support while applying for ILR resulting in some staying with their abusers.<sup>8</sup>

**(F) The Home Office should ensure there is a system in place either through Local Authorities or via non-governmental organisations providing support to this group, to record the numbers and needs of people with the NRPF condition.** This data should be used to improve services provided to this group of people through monitoring the services they are accessing and their needs.

**(G) The Home Office should assess the impacts of the use of the NRPF condition each time the condition is considered. Where the application of NRPF would cause destitution, the Home Office should not apply it.**

**(H) The Home Office should work with other government departments such as the Department for Work and Pensions (DWP) to fast-track benefit applications for victims of domestic violence with status and NRPF as delays can result in victims returning to their abusers because of financial dependence.** According to a survey conducted by Kesete, 60% of respondents reported a problem when accessing benefits which delayed their access to benefits forcing some to return to their abusers.<sup>9</sup> The DWP can assist applicants granted 3 months leave to remain under the DDVC scheme make an application

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<sup>7</sup> The current UK Border Agency has a target to outcome notifications within 5 working days of receiving a notification.

<sup>8</sup> N Z Kesete, 'Destitution Domestic Violence Concession – Monitoring Research Report' (2013) {Eaves and Southall Black Sisters} – available here <http://i2.cmsfiles.com/eaves/2013/12/DDV-Concession-Scheme-Monitoring-Report-Final-fl4013.pdf>

<sup>9</sup> N Z Kesete, 'Destitution Domestic Violence Concession – Monitoring Research Report' (2013) {Eaves and Southall Black Sisters} – available here <http://i2.cmsfiles.com/eaves/2013/12/DDV-Concession-Scheme-Monitoring-Report-Final-fl4013.pdf>



for benefits and crisis loans without a need to request for a crisis loan as the victims often do not have any other source of funds.

### **2.3 The impact of domestic violence and the NRPF condition on children**

2.3.1 Victims of domestic violence often have children and the impact of a NRPF condition can adversely affect these children. Families supported by Welsh Refugee Council report significant hardship and harm to children's health and welfare, due to poor diet and a lack of play facilities caused by lack of financial support and poor housing conditions. For some families, the threat of family separation impacts on both the parent and child mentally and emotionally. Some Local Authorities that Welsh Refugee Council liaise with on behalf of clients offer to support children, though not parents. This causes much distress and can cause families to disappear – a safeguarding issue that should be of paramount concern to all concerned.

#### **Recommendations:**

**(I) The Home Office should consider the circumstances of the family and the welfare of the children when making decisions to issue a NRPF condition on the parent's status. The fact that a family is in receipt of NASS support should be used as a "passport" to not having the NRPF condition imposed on their leave.** By issuing a NRPF condition on the parent, this will negatively impact on the child's welfare because the parent cannot have access to benefits such as child and housing benefit.

**(J) Local Authorities in Wales should be financially supported to ensure that when making decisions to provide support to children whose parents have the NRPF condition applied to their immigration status, that they are able to fully and confidently discharge the requirement for due regard to the rights of the child in accordance with both the Rights of Children and Young Persons (Wales) Measure 2011<sup>10</sup> and the Social Services and Wellbeing Act (Wales) 2014<sup>11</sup>.**

**(K) The Home Office should consider funding independent specialists within or for Local Authorities to advise on appropriate responses to supporting people with the NRPF condition in line with the requirements of Welsh legislation.**

### **2.4 Financial costs incurred by victims**

2.4.1 The costs of applying for indefinite leave for victims of abuse with discretionary leave is excessively high for someone fleeing domestic violence and, in all likelihood, with limited financial support. The fee to make an application is £1033.00 (+ £500.00 NHS surcharge) for each applicant, often making it inaccessible for victims to apply for ILR, especially if they have children to consider. However, if a person is granted status by the court or the Home Office as part of considering their asylum application, then they are not charged a fee, but will need to pay the fee when they renew their leave subsequently.

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<sup>10</sup> Rights of Children and Young Persons (Wales) Measure 2011 – particular attention to Article 9 of the schedule (no child shall be separated from their parents without their will), and Article 16 (arbitrary intervention with family or home or correspondence).

<sup>11</sup> s.6(4.a),7 (2 & 3) and s.81 Social Services and Well-being (Wales) Act 2014



2.4.2 If a person qualifies to make an application for ILR under the DDVC scheme, the fee will be waived, though for those who are not destitute, the high fees and the time limit to make an application, makes money a barrier to making an application.

**Recommendation:**

**(L) The Home Office should remove unnecessary fees which act as a barrier to vulnerable persons (both those who qualify under the DDVC scheme and those who do not) applying for indefinite leave and introduce a similar process akin to that for refugees - no fees when applying for ILR / settled status.**

**2.5 Access to domestic violence and immigration legal advisors**

2.5.1 Domestic violence cases require a great deal of expertise to deal with and for victims without settled status, they also require expert immigration advice. Although legal aid funding is available to domestic violence victims, third sector organisations in Wales have used their limited resources to extend their service provision to victims of domestic violence with NRPF, because not everyone is able to meet the eligibility criteria for legal aid funding. In Wales, although community organisations and non-governmental organisations provide some support to this group there remains 'no formal remit or funding for supporting individuals with NRPF condition'<sup>12</sup>.

**Recommendations:**

**(M) The Home Office should fund third sector organisations providing expert advice to victims of domestic violence with the NRPF condition.**

**(N) The Home Office should invest in training to ensure that all relevant statutory and third sector providers have the same level of expertise, regardless of the organisation and location they work in, to ensure all victims in Wales receive expert advice.**

**(O) The Home Office should lower the burden of proof required to ensure victims have access expert legal aid support.**

**(P) The Home Office should increase the length of time granted to domestic violence victims under the DDVC scheme to 6 months, to enable victims and their legal representatives ample time to gather evidence to support any application for ILR.**

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<sup>12</sup> D Mackenzie and A Stephens, 'Research into how 'No Recourse to Public Funds' status affects those experiencing gender based violence, domestic abuse and sexual violence in Wales' (Local Government Data Unit, 2015): <http://www.wsmf.org.uk/documents/wsmf/No%20Recourse%20to%20Public%20Funds/No%20Recourse%20to%20Public%20Funds%20Research%20report%202015%20FINAL%20v4.pdf> >