

**Scottish Parliament
Equalities and Human Rights Committee (EHRC)**

Inquiry into Destitution and Asylum in Scotland 2017

Written Evidence from the Asylum Seeker Housing Project

Introduction

The Asylum Seeker Housing Project (ASH) was originally set up in 2014 in response to growing concerns about the standard of housing being provided to asylum seekers supported by the Home Office COMPASS contract in Scotland which was awarded to the multi-national company Serco in 2012 and was recently extended until the 30th of September 2019.

ASH is a partnership between Community InfoSource, a community interest company and the Scottish Asylum Seekers Residents Association, an independent, service user led tenants organisation. Our aim is to address the housing and support issues experienced by asylum seekers, refugees and those with insecure immigration status.

We strive to make a positive contribution by;

- Conducting research into the housing and support provision for these client groups in order to highlight potentially illegal and poor practice by statutory agencies
- Empower service users by raising awareness of their rights and responsibilities
- Support service users to engage with, and report issues to statutory agencies

ASH achieves these aims by recruiting and training volunteers, predominantly from the asylum seeking and refugee communities to lead on research into current service provision and to assist individuals to engage with statutory agencies to report issues.

Our staff team and volunteers come from a wide range of backgrounds including academics, social workers, housing professionals, refugees, asylum seekers and individuals who previously worked for asylum accommodation providers.

We welcome the opportunity to submit evidence to the Equalities and Human Rights Inquiry into Asylum and Destitution in Scotland and would like to highlight potentially illegal and poor practice which we believe leads to preventable homelessness of these client groups.

1. Potentially Illegal Evictions of Asylum Seekers by Asylum Accommodation Provider

It is estimated that there are approximately 4000 asylum seekers accommodated in Glasgow, the only city in Scotland to agree to accept asylum seekers under the Home Office Dispersal Programme since it was enacted in 1999.

The Home Office advises that the average time for asylum applications to be determined is [6 Months](#) and given that over 60% are refused at the [Initial Decision](#) stage, there will be a significant number of asylum seekers who are being evicted from their properties on an annual basis.

We believe that this issue is exacerbated by Serco, the current asylum accommodation provider potentially illegally removing many asylum seekers from their accommodation leading to unnecessary destitution of this client group.

Current practice by the provider is to issue a 7 day Notice to Quit letter to all asylum seekers when their [Home Office asylum support](#) has been terminated.

All asylum seekers must be issued with an Occupancy Agreement (Appendix 1)¹. We believe that this document confers contractual rights for service users as clause 1.1. unequivocally states;

“To make the property available to the occupant on a temporary basis, on behalf of the UK Border Agency **whilst** his/her asylum application is being assessed.”

We contend this clause entitles asylum seekers to continue to reside in their accommodation regardless of whether their Home Office support has been terminated as long as it can be demonstrated that the initial asylum application refusal is subject to

¹ Orchard and Shipman was dismissed by Serco as their principle sub-contractor in December 2016. ASH has had sight of the current Serco occupancy agreement and it is a verbatim copy of this document

some form of [appeal](#) including Judicial Review or the submission of a fresh asylum claim.

Furthermore, Serco's Policy on evicting tenant's states;

"Orchard and Shipman (now Serco) will follow due legal process to evict the service user" (Annex 2 - Serco SOP 9.4 Negative Decision SNI)².

The Policy also confirms that where a service user has refused to vacate a property, the provider will "begin legal proceedings to secure an eviction order".

To date, we are not aware of the provider applying to the Scottish Sheriff Courts for any [eviction order](#). Instead, residents are either bullied or intimidated out of properties or their locks were changed when they are not home.

Examples of such practices have regularly been highlighted in the media and can be accessed via the following links;

1. <https://www.theguardian.com/uk-news/2016/mar/01/glasgow-asylum-seekers-allegedly-locked-out-of-homes>
2. <http://www.scotsman.com/news/uk/mps-to-look-into-allegations-asylum-seekers-in-glasgow-locked-out-of-their-homes-1-4040750>
3. http://www.eveningtimes.co.uk/news/13290813.Asylum_seekers_locked_out_of_homes/
4. http://www.eveningtimes.co.uk/news/13294713.Pregnancy_won_t_halt_eviction/
5. <http://www.bbc.co.uk/news/uk-scotland-35639585>

² It is our understanding that Serco is now responsible for carrying out all actions stipulated in this document

This negative publicity around lock changes appeared to force the previous sub-contractor, Orchard and Shipman to cease this practice. This company was eventually dismissed by Serco in December 2016. We are concerned however, that recent statements by Serco imply that lock changes may once again be utilised as a means of potentially evicting tenants.

In addition to lock changes, as mentioned previously, there is compelling evidence that Serco has bullied and intimidated asylum seekers out of their accommodation. Tactics employed include;

- Arriving unannounced at the accommodation and advising the service user to “pack up”
- Numerous telephone calls telling the service user to leave followed up by hand delivered “eviction notices”
- Serco staff saying to service users that they will tell the Home Office that they are refusing to leave and implying that they may be taken into detention
- Not “topping up” electricity or gas card meters leaving people with no power or cooking facilities in their accommodation

In many cases, these practices lead to asylum seekers being summarily evicted with no opportunity to make alternative arrangements, for example to temporarily move in with friends or approach agencies for support and some may end up “street homeless”.

ASH is also aware of circumstances where evicted asylum seekers have not even been given the opportunity by the provider to pack up their belongings in the property which are then never returned to them.

We believe such tactics constitute harassment as defined by the [The Rent \(Scotland\) Act 1984](#) and that the provider could be prosecuted under the terms of this act.

ASH has been working in partnership with the [Govan Law Centre Public Interest Litigation Unit](#) (PILU) to identify test cases to confirm that these practices are illegal.

To date, the cases that we have referred onto PILU have been resolved at the stage where letters have been issued to Serco informing them that they may be in breach of Scottish housing legislation. This implies that Serco may be aware that they are acting illegally and in the very small number of cases where they are threatened with court action, the company takes the pragmatic decision to let the individuals concerned continue to reside in their accommodation.

It should be noted that if Serco were compelled to secure eviction orders the [timescales](#) for the sheriff courts granting these is in the region of 4-5 months. This would give asylum seekers a much needed period of “grace” during which they could consider their asylum and immigration options.

Recommendations to EHRC to Alleviate Destitution of Asylum Seekers

1. The Scottish Government Infrastructure and Capital Investment Committee consider launching an inquiry into potential breaches of Scottish Housing Law by the Asylum accommodation Provider. This could include potentially illegal evictions, harassment of service users to leave their accommodation, confiscation of personal belongings and entry into properties with no notice being provided.
2. The Scottish Government in partnership with key stakeholders lead on identifying test cases to confirm that Serco is potentially illegally evicting asylum seekers.
3. A significant proportion of the properties that are utilised to accommodate asylum seekers are leased from Registered Social Landlords (RSL's). The Scottish Housing Regulator should therefore exercise its powers under [Section 107\(2b\) of the Housing \(Scotland\) Act 2010](#) and instruct RSLs to amend their leases with Serco to include a clause compelling the provider to seek eviction orders from the Scottish Sheriff Courts.

2. Social Services Support for Destitute Migrant Families with ‘No Recourse to Public Funds’ (NRPF)

Case study evidence is obtained from a PhD social work researcher at Glasgow Caledonian University in conjunction with The Asylum Seeker Housing Project (ASH). All case study evidence involves families with ‘no recourse to public funds’ attempting to access statutory support from social services and the local authority. All names are anonymised for confidentiality.

No Recourse to Public Funds (NRPF) & Destitution: The Legal Context

No recourse to public funds ([NRPF](#)) is a legal restriction used and applied to people who are ‘subject to immigration control’. This prevents people from accessing public funds, such as entitlements to welfare benefits, social housing and homelessness assistance. Therefore, they are prohibited from making homelessness applications and are not eligible for local authority housing registers. This may include those who are;

- Appeal rights exhausted (ARE)
- Visa overstayers
- Those subject to a deportation orders
- Zambrano carers

However, **“as financial support from a local authority under community care and children’s legislation is not a ‘public fund’**, if a person with no recourse to public funds becomes destitute and/or homeless they may be entitled to support with accommodation and subsistence from the local authority Local Authority Duty of Care” ([CORAM Children’s Legal Centre, 2013](#)).

Key legislation from [Section 12 Social Work \(Scotland\) Act 1968](#) and [Section 22\(1\)](#) states there is “a general duty to safeguard and promote the welfare of children in need.” Furthermore, [Section 22 of The Children’s Act 1995](#) states that services may be provided:

1. For a particular child;
2. If provided with a view to safeguarding or promoting his or her welfare, for his or her family;
3. If provided with such a view, for any other member of his or her family.

In addition, legal duties apply under [“The UN Convention on the Rights of the Child \(UNCRC\)”](#) which state all children’s rights should be respected, “without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

‘Gatekeeping’ Support for NRPF Families

Evidence gathered is concerned with the ‘gatekeeping’ practices of social services and the local authority regarding families with ‘no recourse to public funds’. A tension is evident between immigration laws which exclude families from mainstream support (NRPF), and between the local authorities which have a clear duty to safeguard and promote the wellbeing of a ‘child in need’. In particular, the [NRPF Network](#) stresses “refusing to provide support to a family who would otherwise be homeless and destitute would be a breach of Article 3 of the European Convention on Human Rights. To leave a family without accommodation or any financial support, when there is no alternative support available whilst assessments are being undertaken is likely to be unlawful”.

Case law makes this clear in [Secretary of State for the Home Department v Limbuela & Ors \[2004\] EWCA Civ 540.](#)

Case Study Evidence

The following concerns have been made evident during research with families who have 'no recourse to public funds' and are denied essential support.

1. Social Service Assessments & 'NRPF' Status

(a) When asking for an assessment/support;

"All the time, their advice, you guys go back to country. I said we are not coming to ask for advice for immigration, we ask for house, because of the rules of Scotland to child you must act. But they are always coming to the circle point, you are not allowed, because at that time they want to lock us because of immigration status. They are not treating me like a human being...their advice straight away was; you are not allowed to stay in this country...you are not eligible to stay in this country. They never care a single thing, they never listened." (Service User X)

(b) When asking for written documentation;

"I said I need notes for the decision you made in the meeting. He said you are going to get a copy. This has almost been the second week, they have not sent anything."

(Service User K)

"They never give you written anything, they will say, we want to speak to our higher position people. They are always gonna say, we told our team leader. They never, ever give any written anything. This is proof." (Service User X)

(c) When ASH advocate asked for a human rights assessment to be conducted after accommodation denied;

“We don’t carry out human rights assessments, I’ve never heard of a human rights assessment. We only assess through the GIRFEC process.” (Children and Families Team Leader)

(d) Stating families are not entitled to support due to ‘NRPF’ status;

“They’ve just got notes on their screen to say they cannot support me, they themselves cannot support me because I’ve got no recourse to public funds. If a child has been left six months without support, the city council has to be answerable to.” (Service User K)

(e) Relying on ‘networks’ and ‘community groups’ instead of statutory support;

“So Red Cross joint up with Positive Action In Housing....they are not going to provide housing, they are gonna give you more torture, more pressure because every time they are gonna say go back to country. If I say who is the enemy? I say my social work, that’s what I want to say, because they treating completely out of the human heart, they don’t know how to talk to human beings, how to treat people who are innocent....they don’t know. I never like to go to that place; I don’t want to talk to them.” (Service User X)

Key Points of Social Service Assessments & ‘NRPF’ Status

Case law highlights social services have a legal obligation to undertake an assessment whereby it appears a child may be in need. ([See R \(G\) v Barnet LBC \[2003\] UKHL 57](#)). Good practice from the [Convention of Scottish Local Authorities \(COSLA\)](#) states “all children are covered by the Children (Scotland) Act 1995 **regardless of immigration status**” AND “in cases where a child’s carer is excluded from the Children (Scotland) Act local authorities should undertake a human rights assessment in conjunction with the child in need assessment.” Furthermore, according to the [NRPF Network](#), “assistance provided by social services is not a public fund so a person with NRPF is not prevented from getting help from their local authority’s social services department, and should not be refused support because they have NRPF.”

2. Threats to Remove Child Rather Than Provide Support & Poor Treatment

(a) Threats to remove child;

“They use threatening words. Usually they say go back to Sri Lanka, now they using take baby away!” (Service User X)

(b) Accommodate child but not parent;

“In a situation whereby I had nowhere to go, they think about the well-being of the child, so that was to put the baby in with another family, that’s what they threatened me with.” (Service User K)

“They gonna say to take the baby away from us, we can provide the house for your baby, not for you. So my wife cried, I cried, this is our baby! My wife said, I cut my belly because of my son, so to give to you guys! They never care about this.” (Service User X)

(c) Intimidation and needing a ‘witness’ as things will be made up;

“When we went to the social work, all the time the Red Cross came with us, they saw the problems, what, how they are treating us. I’m saying to the lady, if you are not here, they are going to say a lot of things to us. Because I’ve been myself, nearly 4 or 5 times, so I know how different they are reacting with or without you. “They will treat innocent people harshly, because no one knows but inside. No one knows.” (Service User X)

“I’ve never felt like an illegal immigrant until social work turned up at the hospital. I even felt like I didn’t even have a case, I felt like I didn’t have anyone representing me. They came up saying all sorts of things, making me, actually belittled me to the ground to the point to make me feel, yes, I was angry. Probably they’ll even be saying things that have not come out of my mouth. I just thought maybe the Home Office was that strongest fear, whereby you feel they are out just there to punishing you that much, that deliberate approach. But, going through this with a baby, I feel like the local authority

has actually surpassed the Home Office treatment, because this has a baby involved.”
(Service User K)

(d) Degrading treatment;

“We’d been there from 9am, we stayed until 4pm, still I remember, the hotel from the Gorbals to... do you know the Ibrox stadium, stadium Rangers? How far away is that? It’s quite far away. The person said, just walk down... we walk walk walk, nearly one hour and she’s with the buggy. Do you know what happened next day? My wife, she already had an emergency caesarean. I provide all the information, her medical story, my medical story, every single document to them. Next she had a problem last night because she is stitched up, next day; we got emergency ward at Queen Elizabeth hospital. When the social work sent us to that hotel, they knew how far away, but they point just 15 minutes’ walk, but I took more than 50 minutes.” (Service User X)

Key Points Threats to Remove Child Rather Than Provide Support & Poor Treatment

[The Public Law Project](#) highlights “social services may threaten to remove the child/ren rather than offer support to the entire family. We consider that where destitution is the only concern, such an approach is likely to be unlawful” AND “requiring a child to be accommodated away from his/her family (or not be accommodated at all) will almost certainly entail a breach of the family’s rights under Article 8 EHCR”.

3. Inadequate Levels of Support Provided

(a) Service user correspondence with social worker and advocate

“You came to visit me on Friday 15/12/2016 after 6pm to the house. You left me telephone numbers to contact and follow up on the accommodation matters when I also made it clear to you that the B&B was not a healthy option for me and the baby when you were dropping us off £50 to take us till January 2017 when you're back to work. I have no idea what your bosses are doing regarding housing for a little baby and myself. I am truly bitterly disappointed... it's still disappointing payments we're receiving, £25 a week with the baby.” (Service User K)

(b) Uncertain hotel accommodation

“So what happening, the social work provide 3 times hotel, 3 times hotel, all the time, different hotel, every time, we go every Monday to that place, morning till until 4pm, we gonna stay in the office, last minute they booking hotel to send me.” (Service User X)

(c) B&B accommodation

ASH case study advocating on behalf of client and two children with ‘no recourse to public funds’ being supported under Section 22 for two years in B&B accommodation. Concerns included no cooking or laundry facilities. Family recently moved to alternative accommodation when lawyer issued Glasgow City Council notification of possible Judicial Review due to the unsuitable levels of support.

Key Points Inadequate Levels of Support Provided

[Home Office](#) asylum support is set at £36.95 per person for an asylum seeker and £35.39 per person on a payment card for a refused asylum seeker. At £25 per week for a mother and baby, such low levels of support are concerning. As outlined in the case of [R \(VC & ors\) v Newcastle City Council 124](#), such a minimal level of support does not promote the welfare and best interests of the child. In addition, according to [Shelter Scotland](#), “local authorities cannot place households with children and pregnant women

in “unsuitable” temporary accommodation.” Minimum standards had to include “access to on site laundry facilities” and “adequate cooking facilities”.

Recommendations to EHRC to Alleviate Destitution for Families with ‘no recourse to public funds’

1. The Scottish Government ensure the effective implementation of The Good practice Guidance issued by COSLA, [Establishing Migrants Access to Benefits and Local Authority Services in Scotland, 2012](#). The guidance clearly states; “immigrants should receive a humane response when approaching local authorities.” We believe our case studies demonstrate that in many cases, local authorities’ treatment of this client group is in fact appalling with threats and intimidation and misinformation a regular occurrence.
2. The Scottish Government should consider leading on the development of specific legal advice for families attempting to access local authority support
3. The Scottish Government ensure that there is a Human rights approach to social services assessments
4. All NRPF families should be allocated an Advocate who attends all social work meetings.
5. Ensure appropriate and consistent levels of support provided by local authority.

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