Housing Rights

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Helping a destitute person with homelessness

This information is for professionals working in housing and homelessness in Northern Ireland.

If you are a member of the public looking for help, please visit our housing advice pages.

A vulnerable person who is destitute should contact the Housing Executive for help. But the Housing Executive cannot help if the person has no recourse to public funds.
Social services may have a limited duty to help a person who is ineligible for help from the Housing Executive if they are:

- an adult with care needs[1]
- a family with a child[2]
- a child or young person

Eligibility of migrants for social services help

A person who is ineligible for help because of their immigration status may be able to get help with accommodation from social services if:

- their household includes a child or
- they are destitute and have additional vulnerabilities not associated or caused by destitution

A person is usually ineligible for help from social services if they:[3]

- have refugee status in another country
- are an EEA national
- are a failed asylum seeker who has not cooperated with removal directions
- are a failed asylum seeker who has not taken reasonable steps to leave the UK
- are unlawfully in the UK and not an asylum seeker

A person in these categories will only be eligible if:

- they are a child or
- the trust must provide support or assistance to avoid a breach of the person's convention or treaty rights

Household is ineligible but includes a child

The trust has a duty to provide accommodation to any child in need in its area. Any services provided to a child in discharging that duty may also be provided to the family if this safeguards or promotes the child's welfare.[4]

In practice the trust is unlikely to provide long-term accommodation to a family that is ineligible for assistance because of their immigration status. They may:

- offer to help the family return to their country of origin
- agree to take the child into care but to cease providing accommodation to any adults

Advisers dealing with this case should get urgent advice from:

- The Law Centre NI for immigration issues
- The Children's Law Centre NI for help dealing with vulnerable children and young people

It may be possible to apply to lift the no recourse to public funds condition.

Breach of European Convention on Human Rights

The trust should provide financial and accommodation support to an ineligible person from abroad if failing to provide these services would be a breach of the person's human rights. The most relevant rights are:

- Article 2 which requires authorities to refrain from taking life intentionally and to safeguard life5
- Article 3 which prohibits torture, inhuman and degrading treatment
- Article 8 which guarantees respect for private and family life
- Article 14 which provides protection from discrimination

Article 3: Destitution

The threshold for showing that a person's Article 3 rights have been breached is high. These rights are breached if the person:6

- is unable to support themselves
- has no alternative sources of support and
- is denied shelter, food or basic necessities by the deliberate action of the state

Destitute plus test

The trust does not have a duty if the person's need for assistance arises only:7

- because they are destitute or
- as a result of the physical effects or anticipated physical effects of being destitute

The trust is only responsible if the person's need for care and support is increased or made more acute by something other than 'a mere lack of accommodation and funds'.8

This means the person must have another illness, disability or vulnerability that is not directly linked to being destitute.

Footnotes

- [1] Health and Personal Social Services (NI) Order 1972, Article 15.
- [2] The Children (Northern Ireland) Order 1995, Part IV, Chapter18.
- [3] Nationality, Immigration and Asylum Act 2002, Schedule 3.
- [4]The Children (Northern Ireland) Order 1995, Part IV, Chapter 18(3).
- [5] Association X v UK application 7154/75 (1978).

- [6] R (on the application of Limbuela, Tesema and Adam) v Secretary of State for the Home Department [2005] UKHL 66.
- [7] Health and Personal Social Services (Northern Ireland) Order 1972, Article 15(6).
- [8] O v London Borough Of Wandsworth [2000] EWCA Civ 201.