



Working with non-UK Nationals

Bethan Lant

Praxis Community
Projects

Working to increase understanding of the challenges faced by undocumented migrants and those with uncertain immigration status

The Observer
Guardian and Observer
charity appeal 2017

Praxis: a light in the dark for immigrants with no benefits and nowhere left to go

The charity offers advocacy and legal support to victims of trafficking excluded by regular agencies and authorities

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This article is over 9 months old



▲ A trafficking survivor at the Praxis headquarters in Bethnal Green, east London. Photograph: David Levene for the Guardian



‘Subject to immigration control’

The Immigration Act 1971 introduced the concept of people ‘subject to immigration control’

People with a ‘right of abode’ in the UK are not subject to immigration control. Everyone else is.

Right of abode = right to live in UK and come and go freely

Who has a right of abode?

- British citizens
- Some Commonwealth citizens with a right of abode
- EEA citizens (and specified family members) who are **lawfully exercising treaty rights** - BUT Brexit!

Subject to immigration control

- No right of abode = 'subject to immigration control'
- Need permission from the Home Office to be present in the UK – usually known as 'leave to remain' or 'leave to enter'
- If you do not have permission or are in breach of permission that you hold you are not in the UK legally
- Your conditions of leave are set by immigration law

What kind of migrant?

- A migrant with leave to be in the UK BUT restricted in access to services
- A migrant with leave to be in the UK BUT lacking documents to prove status
- A migrant with no leave to be here BUT an ongoing immigration application of some kind
- A migrant with no leave to be here and no ongoing immigration application
- A migrant with some kind of EU right to be here struggling to access services

Has leave, can't access services

What is the basis of leave? May say on the BRP card OR they may have a Home Office status letter

- Are they still meeting the criteria for their grant of leave?
- is the problem of access a matter of law or a matter of discrimination or misunderstanding?
- "No Public Funds"?

No Recourse to Public Funds

NRPF – used in two different ways

- (i) Legal term with strict definition
- (ii) Catch-all term for anyone who cannot access benefits for whatever reason

Legal Definition

Actively imposed by the Home Office on people who have certain immigration status

Public funds defined within the Immigration Rules – largely allocation of public housing and non-contributory benefits

DOES NOT include healthcare, legal aid, contributory benefits, social services support

Getting recourse to public funds

- If NRPF is a condition of leave AND otherwise person is still meeting the conditions of leave, the HO may have a discretion to remove the NRPF condition
- Usually possible when someone has LLTR on family or private life grounds (partner, parent, long residence)
- 'Change of Conditions' application (immigration regulated). Need substantial evidence of destitution

— No longer meeting conditions of leave

- If a person has leave BUT is no longer meeting the conditions for which their leave was granted they **MUST** get immigration advice
- E.g. Leave as a student but no longer studying, leave as a spouse/partner but relationship has broken down

Leave but no docs

A person may have a right to be here but if they do not have the proof then are de facto 'undocumented'

Getting replacement documents can be as onerous, time consuming and expensive as making an immigration application

For those here prior to 1989 it is now easier & free due to the Windrush Unit

Most helpful thing to do is gather evidence of time in UK

No status, ongoing application

- What kind of application?
- Legal representation? Client care letter
- Asylum application = entitlement to asylum support (NASS)
- Other applications – no rights but possible social services assistance if either have children under 18 or a care need
- Non-stat options – nightshelter, hosting. Will want assurances re how long and likelihood of success

No status, no application

- The only way to change things is to see if an immigration or asylum application is possible
- will need good immigration advice
- legal aid only available for asylum, trafficking or DV cases
- may be useful to do a SAR to the Home Office to establish past immigration history

EU rights

- EU rights might benefit not only EU nationals but current or previous family members (e.g. spouse, stepchild)
- those here relying on EU rights transitioning from having a right of abode in the UK to being persons subject to immigration control
- During transition period existing EU rights run concurrently with new status system

EU Settlement Scheme

Good points:

- free
- get settled status if can show 5yrs

residence, NOT 5yrs exercising treaty rights

- Gaining pre-settled status puts you on the pathway to settlement
- UKVI will check your HMRC and DWP records automatically



EU Settlement Scheme

Bad points:

- application via app or online form difficult for those with low IT skills
- need a national passport or ID card
- substantial documentation required to show 5yrs residence if can't rely on HMRC/DWP records
- difficult for former family members to evidence status of EU family member
- status evidenced by a 'digital document' – access?

Brexit – other key points

- dual system during transitional period will cause confusion
- benefits & housing legislation – pre-settled status v settled status
- timelines differ according to whether there is a negotiated exit or a 'no deal' scenario
- 'no deal' would give government scope to further restrict rights of those with pre-settled status
- Some people will just not register and so will end up undocumented

Status - unknown

- SAR from UKVI
- possible risk to client in referral to statutory services
- likely to need immigration advice to work out what is going on

Service development

- commissioning or employing your own immigration advice will make it easier to work with homeless migrants
- developing temporary accommodation options while options are explored is helpful
- make sure your policies are non-discriminatory
- offer what services you can
- know your limits
- ethical & practical considerations around those with no way to regularise

