



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

No Home from Home

Homelessness for People with No or
Limited Access to Public Funds



Executive Summary, Conclusions and Recommendations





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No or Limited Access to Public Funds

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September 2009
ISBN 1 903681 80 4

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Acronyms

CRC	Convention on the Rights of the Child
DHSSPS	Department of Health, Social Services, and Public Safety
DSD	Department for Social Development
EC	European Community
ECHR	European Convention on Human Rights
EU	European Union
HSS	Housing Selection Scheme
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
IOM	International Organisation of Migration
JCHR	Joint Committee on Human Rights
NFA	No Fixed Abode
NGO	Non-governmental organisation
NIHE	Northern Ireland Housing Executive
PSNI	Police Service of Northern Ireland
SSA	Social Security Agency
UDHR	Universal Declaration on Human Rights
UKBA	United Kingdom Border Agency
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
WRS	Worker Registration Scheme

In this report, the terms, 'UK national' and 'non-UK national' are defined as follows:

- 'UK national' refers to all British and/or Irish nationals residing in the United Kingdom.
- 'Non-UK national(s)' is used to refer to individuals who are not nationals of the United Kingdom and/or Ireland.

To protect confidentiality, the case studies in this report do not use real names.

Executive summary

1. In the context of growing concerns about the potential for destitution among non-UK nationals, the Commission decided in 2007 to conduct an investigation into homelessness and people with no, or limited, access to public funds. It wished to determine the practical impact of existing immigration legislation which limited access to public funds for non-UK nationals living in Northern Ireland. A particular concern was whether the legislation and its day-to-day interpretation were leading to destitution among non-UK nationals.
2. The Commission's investigators therefore looked at all categories of non-UK nationals in Northern Ireland, including people from the European Union, the new accession states, asylum seekers, unaccompanied minors and other people from outside of the European Economic Area. There was a particular concern about the additional vulnerability to destitution for victims of domestic violence, exploitation or racial intimidation. Similarly, the Commission was anxious to learn about the inter-relationship between ill-health and disability and destitution. In an effort to ensure geographical scope, the investigation covered three areas – Belfast, Cookstown and Dungannon. Three government agencies were identified as having greatest responsibility for homelessness and destitution – the Northern Ireland Housing Executive (NIHE), the Social Security Agency (SSA) and the Health and Social Care Trust(s) (the Trust(s)).
3. Terms of reference were issued to the government agencies in May 2008 and fieldwork began in June 2008. Until November 2008, the investigators collected internal agency documents, reviewed case files, observed agency/client interactions and interviewed staff, community/voluntary agencies and homeless non-UK nationals across the three geographical areas.
4. During the write-up of the investigation, using the information gathered, the Commission submitted evidence to the UK Border Agency, outlining concerns about the Worker Registration Scheme (WRS). The main investigation findings, including those relating to the WRS, are presented in this report.
5. The report outlines, in Chapter 2, the human rights standards that apply to homelessness and destitution. While states must realise progressively, to the maximum of their resources, the right to an adequate standard of living, there are certain minimum standards that ought to be met immediately. Therefore, legislation that deliberately excludes individuals from the basic means of shelter and subsistence is difficult to reconcile with basic human rights standards.
6. The investigation findings are presented in two parts. The 'agency findings' discusses the findings that are specific to the three government agencies, as listed above. The 'thematic findings' raise particular concerns, namely, those relating to exploitation, refugee and asylum seekers, domestic violence, ill-health and disability, and racial intimidation.
7. Chapter 3 discusses the legislation that governs the NIHE's response to homelessness and focuses on the day-to-day approach to non-UK national applicants. It finds that the legislative criterion unduly limits the response to homeless and potentially destitute non-UK nationals, meaning that in many cases non-UK nationals are simply ineligible for homelessness assistance. It also finds that,

in many respects, individual staff members work exceptionally hard to ensure that despite the legislative restrictions, non-UK national applicants receive some form of emergency help.

8. However, it is apparent that improvements can be made. For example, the investigation recommends greater human rights awareness among NIHE staff and improved recording of decisions in relation to the eligibility of non-UK national applicants. In addition, the practice of the NIHE could be further improved through development of a more robust referral process, ensuring that ineligible non-UK nationals are directed to the relevant Trust so that they can be assessed to establish if they are entitled to social care assistance.
9. Chapter 4 presents the findings for the Trusts. Again, overall, many of these stem from the restrictive legislative criteria. Nevertheless, unlike the other agencies considered for this investigation, Trusts may have a duty of care to support non-UK nationals, for example, where failure to do so would result in a breach of their rights under the European Convention on Human Rights.
10. The investigation found many examples of good practice from individual staff. However, there was an absence of guidance and training for Trusts in relation to destitute non-UK nationals. The investigation finds that in all cases, and particularly for non-UK national adults, the development of comprehensive guidance would ensure that the Trusts' response is greatly improved.
11. Chapter 5 discusses the outcomes of the investigation relating to the Social Security Agency. Again, as with the other agencies, it is clear that the response of the SSA to destitute non-UK nationals is often limited by legislation barring access to welfare benefits.
12. However, even with the legislative restrictions, there are a number of improvements in relation to day-to-day practices which could better protect the rights of non-UK nationals. For example, interviews with SSA staff revealed the need for greater awareness of human rights. In addition, recording within SSA case files could be improved so that signposting of ineligible non-UK nationals to the NIHE, the Trusts, or to the Social Fund is evidenced.
13. Chapter 6 presents concerns regarding UK immigration rules and the potential for these rules to exacerbate the consequences of exploitation. As a result of restrictive immigration rules, victims of exploitation are made all the more vulnerable because they cannot access homelessness assistance and welfare benefits. Particular issues arise in relation to the Worker Registration Scheme that applies to the majority of A8 nationals who come to work in the UK. The investigation uncovered examples of exploitation, including examples of individuals who had worked in the UK for several months being denied benefit because they did not register on the Worker Registration Scheme.
14. Also, in relation to exploitation, the investigation encountered three incidences of what would appear to be trafficking for labour. In two instances, the victims took part in an interview for this investigation. Their experiences show how UK immigration rules have prevented them from accessing support after escaping their alleged traffickers.

15. The circumstances of refugee and asylum seekers are discussed in Chapter 7. While asylum seekers are generally provided with support, known as NASS (National Asylum Support Service), legislative restrictions state that there are circumstances in which even this basic level of support can be removed. However, as found by the House of Lords in *Limbuella*, this must not occur where it is likely that removal of support will result in destitution to an extent engaging Article 3 of the European Convention on Human Rights (freedom from inhuman and degrading treatment).¹ The Chapter outlines concerns for failed asylum seekers, in particular single persons, who are less likely to be entitled to support on becoming destitute. This situation could be improved if individuals were entitled to work while awaiting travel arrangements to leave the UK.
16. Chapter 7 also discusses the current response in Northern Ireland to unaccompanied asylum-seeking children (UASC). There is evidence that Trusts are providing support in these cases and there are examples of good practice on the part of individual staff in this respect. However, there is a lack of guidance and training on this issue. In addition, in emergency situations, Trusts have on occasion responded by placing these children in interim bed and breakfast accommodation and this raises particular concerns including that of child protection.
17. Domestic violence and specific issues for non-UK nationals with no, or limited, access to public funds are reported in Chapter 8. This shows how victims are financially dependent on their partner due to immigration rules, which restrict non-UK national victims' access to public funds. The investigation outlines the Domestic Violence Rule, which is a concession made for certain visa nationals to ensure that, on proof of relationship breakdown due to domestic violence, the victim is entitled to access homelessness assistance and welfare benefits. While noting the benefits, gaps still exist despite the development of this rule.
18. Among the government agencies, the investigation uncovered a lack of interagency co-operation in relation to non-UK national victims of domestic violence. To improve this, agencies should work together to ensure that 'ineligible' non-UK nationals are referred to Trusts so that they can be assessed for assistance. Again, while there are examples of Trust support, there is an absence of guidance on how social workers should respond to this issue. Although government agencies refer victims of domestic violence to voluntary organisations, there was a lack of recognition regarding potential funding difficulties, where often, voluntary groups are not permitted to put core funding toward supporting 'ineligible' non-UK nationals.
19. The investigation finds that legislation which prohibits access to public funds presents particular difficulties for people with ill-health or who have a disability. These concerns are presented in Chapter 9 and show how illness can lead to a break in Worker Registration and subsequent homelessness due to an inability to access public funds. 'Rough sleeping' due to lack of homelessness assistance has resulted in illness to an extent warranting significant periods of in-patient hospital care. This is further exacerbated by the absence of accommodation and welfare benefits on discharge, which prevents appropriate aftercare.

¹ *R v Secretary of State for the Home Department (Appellant) ex parte Adam; R v Secretary of State for the Home Department (Appellant) ex parte Limbuella; R v Secretary of State for the Home Department (Appellant) ex parte Tesema (Conjoined Appeals)* [2005] UKHL 66.

20. Although there are examples of good practice from individual social workers, there is a need for guidance in relation to destitute non-UK nationals presenting with illness or disability. Moreover, while Trusts have been known to offer ill or disabled non-UK nationals travel assistance to return to their country of origin, guidance is required to ensure transparent and consistent decision-making in relation to this process.
21. Chapter 10 presents findings relating to racial intimidation. Two issues are considered. First, the situation of non-UK nationals who have experienced racial intimidation but are ineligible for homelessness assistance is examined. Here, the report considers if the legislation relating to ineligible non-UK nationals is compatible with international human rights standards and, in particular, adequate to prevent the inherent risk to life. The chapter includes case studies of victims of racial intimidation who are refused homelessness assistance due to the 'no recourse to public funds' rule. Second, the NIHE's approach to racial intimidation is examined. Using information from case files and interviews with NIHE staff, recommendations are made so that, across all district offices, the approach to homelessness claims based on racial intimidation is improved.
22. Chapter 11 concludes the investigation report and finds that, overall, the legislation is unduly weighted towards regulation of immigration without adequate regard for the rights of destitute non-UK nationals. In light of this, the Commission makes a number of recommendations under three main headings:
 1. Legislative amendments
 2. Government agency practices, and
 3. Specific areas of concern
 - exploitation and UK immigration rules
 - refugees and asylum seekers
 - domestic violence
 - ill-health and disability, and
 - racial intimidation
23. The main recommendation is that the Government's approach in this area should mirror international human rights standards. Therefore, the Commission recommends that, regardless of nationality or immigration status, everyone within the territory of the UK should have access to an adequate standard of living sufficient for that person and their dependents. It further recommends that public authorities should take all appropriate measures, including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of this right. In particular, no one should be allowed to fall into destitution. For the purpose of ensuring these recommendations, the Government should ensure that everyone has access to appropriate emergency accommodation. In addition, the Commission is of the view that, pending overarching legislative amendments, there are alterations that government agencies can make to their day-to-day practices to better improve the human rights protection of homeless and potentially destitute non-UK nationals.

Conclusions and recommendations

Introduction

As revealed in the preceding chapters of this report, the Commission had access to a large amount of material during this investigation. This enabled the consideration of various forms of evidence which expose the serious human rights concerns for homeless non-UK nationals who are at risk of destitution, but excluded from accessing public funds. Many of the report's findings are related to legislative exclusions, which prevent non-UK nationals from receiving homelessness assistance and welfare benefits. Consequently, the Commission makes several recommendations aimed at the urgent amendment of primary legislation. As much of this legislation relates to immigration, it is an 'excepted' matter (not devolved to the Northern Ireland Executive) and, therefore, requires UK-wide amendments. However, this should not detract from the fact that the local Executive has a role to play in bringing about this legislative change. Pending these wider legislative amendments, the Commission is of the view that other aspects of the recommendations can be locally administrated. In the interim period, the Commission recommends that the three government agencies, forming the focus of this investigation, make changes to the way in which they work to ensure better protection of the rights of homeless non-UK nationals.

The Commission's recommendations are organised under three main headings:

1. Legislative amendments
2. Government agency practices, and
3. Specific areas of concern
 - exploitation and UK immigration rules
 - asylum seekers and refugees
 - domestic violence
 - ill-health and disability, and
 - racial intimidation

The Commission acknowledges that, as with the realisation of many human rights, a number of these recommendations may have cost implications. However, it is likely that access to homelessness assistance will prove more cost effective because, at present, the way in which the system operates is often counterproductive. In many cases, access to homelessness assistance would prevent the need to rely on other government agencies, such as Health and Social Care Trusts and/or voluntary organisations for emergency intervention and support. In addition, exclusion from homelessness services can result in, or exacerbate, illness which, in the end, requires long-term, intensive care and assistance. The investigation has provided various examples of individuals who would have required only limited, short-term homelessness assistance instead of needing longer-term support. Moreover, the Commission is of the view that there is limited rationale for prohibiting any individual from exercising the right to work. In particular, the investigation finds that prohibiting work for asylum seekers, and refused asylum seekers, leads to a situation of destitution and, ultimately, reliance on public funds, which is necessary to avoid a breach of the *European Convention on Human Rights* (ECHR). All of this suggests that access to the basic means of shelter and subsistence would produce long-term benefits that far outweigh the immediate monetary costs.

In the current context, the Commission reminds the Government of the Committee on Economic, Social and Cultural Rights' General Comment 4, on the right to adequate housing. It states: "the obligations under the Covenant continue to apply and are perhaps more pertinent during times of economic contraction."¹⁷³ This is particularly so for those living in unfavourable conditions, which should include destitute persons whether they have UK nationality or a right of residence.

Finally, at the time of writing this report, the Government was examined by the United Nations' Committee on Economic Social and Cultural Rights. A number of the concluding observations are relevant to the findings in this report including the Committee's recommendation that the Government "take into consideration the *Homelessness Scotland Act 2003* as best practice, especially its provision relating to the right to housing as an enforceable right".¹⁷⁴ The background to the Act comes from the Homelessness Taskforce, which recommended the following:

*[...] over time, the rights possessed by those assessed as being in priority need under the 1987 Act should be extended to all those assessed as homeless and that therefore the priority need distinction should be eliminated. This will however need to be managed and phased so that accommodation and services are made available to those who do not currently come within the definition of priority need and so that those who are in the greatest need are not disadvantaged.*¹⁷⁵

The Act requires local housing authorities in Scotland to progressively realise the right to housing for all persons assessed as homeless through abolition of the 'priority need' test by 2012. This means that, from such day as the Scottish Ministers appoint, the local authority shall secure that permanent accommodation becomes available for those who are found homeless or threatened with homelessness whether or not they have priority need. Since progressive realisation is a key concept in economic and social rights, the Commission welcomes the Committee's recommendation and urges that the UK government consider a framework for responding to homelessness similar to that in the *Homelessness (Scotland) Act 2003*.

Legislative amendments

At present, the legislation governing access to homelessness services for non-UK nationals is unduly restrictive. The findings from this investigation confirm that it is disproportionately weighted towards the Government's aims of regulating migration, paying little regard to the consequences for individual rights. As a result, the legislation excludes homeless and potentially destitute persons from homelessness assistance and welfare benefits, and permits statutory support in very limited circumstances only if necessary to avoid a breach of ECHR rights. This represents a negative approach to human rights, taking heed only when it is likely that basic rights are at serious risk of being, or have already been, violated. Instead, the UK should adopt a more positive approach in line with international human rights standards, encouraging state agencies to promote rights by ensuring access to homelessness services in a way that ensures destitution does not arise in the first place. Therefore, legislation should be amended to reflect the Government's commitments under domestic and international human rights instruments. In light of this, the Commission makes the following recommendation:

1. Regardless of nationality or immigration status, the Government should ensure that everyone within the territory of the UK has access to an adequate standard of living sufficient for that person and her or his dependents. Public authorities must take all appropriate measures, including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of this right. No one shall be allowed to fall into destitution.

¹⁷⁴ Concluding Observations of the Committee on Economic, Social and Cultural Rights (2009) The United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories, 22 May 2009, para 29.

¹⁷⁵ The Homelessness Taskforce (2002) *Helping Homeless People: An Action Plan for Prevention and Effective Response*, Scottish Executive, para 27. Available: <http://www.scotland.gov.uk/library3/society/htff.pdf> [17 July 2009].

The Commission is of the opinion that everyone has the right to adequate accommodation appropriate to their needs. In particular, the Commission makes the following recommendations:

2. The Government should ensure that everyone has access to appropriate emergency accommodation.
3. For the purposes of ensuring Recommendations 1 and 2, the Government should discontinue the transitional arrangements relating to the new A8 and A2 accession states, (the Worker Registration Scheme and Worker Authorisation arrangements) (see Chapter 6).
4. In light of this report and the conclusions arrived at by the European Committee of Social Rights, the Government should review the current habitual residence test (see Chapter 5).
5. For the purposes of ensuring Recommendations 1 and 2, the Government should amend homelessness legislation so that those who are sleeping on the street, without any other means to access welfare benefits or accommodation, are given 'priority need' (within the meaning of the *Housing (Northern Ireland) Order 1988*) (see Chapter 3).
6. Pending Recommendations 1 and 2, the Government should allow people who are subject to immigration control to access social assistance if it is likely that they will become destitute. They should not have to show that they are 'destitute plus' (as currently required by Section 121 of the *Immigration and Asylum Act 1999*) (see Chapter 4).

7. Pending Recommendations 1 and 2, the Government should review Section 4 of the *Asylum and Immigration Act 1999* to ensure that refused asylum seekers are provided with greater levels of access to accommodation and financial support.
8. Pending Recommendations 1 and 2, the Government should amend homelessness legislation to ensure that family members, who are at present 'ineligible' non-UK nationals, can make a homelessness application in their own names rather than the current practice, which requires the application to be submitted by the 'eligible' partner (see Chapter 3).
9. Pending Recommendations 1 and 2, the Government should develop a fund that can be accessed by relevant voluntary organisations which accommodate or otherwise support individuals who have no, or limited access to, public funds.

The Commission strongly believes that everyone has a right to social security. In particular, the Commission makes the following recommendations:

10. Pending Recommendations 1 and 2, the Government should revise the eligibility criteria for a Crisis Loan payment in order to provide assistance for non-UK nationals facing destitution (see Chapter 5).

11. Pending Recommendations 1 and 2, the Government should amend the legislation permitting travel arrangements for non-UK nationals to leave the UK. The legislation should require 'local authorities' to consider the implications of the travel arrangements for the individual's rights, namely, her or his rights under Article 8 (right to private and family life) and Article 3 (freedom from inhuman and degrading treatment) of the ECHR. In addition, the legislation should allow accommodation pending travel for all destitute persons whether or not they have with them a dependent child. In order to ensure the dignity of the individual, cash assistance should not be prohibited (see Chapter 9).
12. The Northern Ireland Assembly should ensure implementation of clause 5 of the Housing (Amendment) Bill which provides for a statutory right of review and appeal of homelessness decisions (see Chapter 3).

Government agency practices

Many of the investigation findings relating to the Northern Ireland Housing Executive (NIHE), the Trusts, and the Social Security Agency (SSA) stem from the restrictions contained within domestic legislation and, therefore, will not be adequately addressed without the legislative amendments as contained in Recommendations 1 to 12. However, even without legislative amendment, the Commission is of the view that there are alterations that each agency should make to ensure better protection of non-UK nationals' rights. In this section, the Commission outlines recommendations, some of which apply equally to all three government agencies and others that are specific to each.

The Northern Ireland Housing Executive, the Trusts and the Social Security Agency

In order to ensure that, as the *Human Rights Act 1998* requires, the actions of the three relevant agencies are human rights compliant, the Commission makes the following recommendation:

13. All relevant staff across the three agencies should receive at least a basic level of human rights training. This training should take account of the Government's obligations under domestic and international human rights instruments. In particular, human rights training should cover the applicability of human rights standards to homeless non-UK nationals who are at risk of destitution (see Chapters 3 to 5).

The Commission is strongly committed to the principle of non-discrimination, enshrined in international and domestic law, and makes the following recommendations:

14. All relevant government agency staff should receive anti-racism training that is evaluated and updated, and compliant with the Macpherson report (see Chapters 3 to 5).
15. All government agency staff, including Trust staff, should be familiar with when, and how, to refer a homeless non-UK national, who is excluded from accessing homelessness assistance and welfare benefits, to the relevant Health and Social Care Trust for an assessment of her or his entitlement to assistance (see Chapters 3 to 5).

The Commission believes that everyone has the right to access essential public services in a language and a medium that they understand. The Commission makes the following recommendation:

- 16.** Each of the three government agencies should use appropriately experienced and accredited interpreters. Specially trained interpreters should be used in difficult cases, for instance, where the applicant has complex needs. Unless it is an emergency, face-to-face interpreting services should be offered. Government agencies should end the practice of using children to interpret. In addition, the practice of asking friends and family members to interpret without first offering an interpreting service should end. Government agencies should make time allowances where there are language barriers; in particular, consideration should be given to providing extra time for meetings and/or interviews (see Chapters 3 to 5).

International standards acknowledge the need for reasonableness. The Commission therefore recognises that it is not possible to translate all communication letters between government agencies and non-UK nationals. However, the Commission makes the following recommendations:

- 17.** The government agencies should include within each letter a standard statement, translated into several languages, explaining the purposes and urgency of the letter and how to contact the government agency for further information, explanation or a review of any decisions. In addition, government agencies should assess the extent to which certain letters, or parts thereof, can be standardised and therefore translated in advance (see Chapters 3 to 5).

- 18.** The government agencies should develop, agree and effectively disseminate reliable interagency protocols. The protocols should identify any potential gaps in service provision and ensure that, in all circumstances, there is a referral route so that a homeless non-UK national, who is excluded from homelessness assistance and welfare benefits, can be assessed to establish if they are entitled to any other form of support. Appropriate and formalised, referral arrangements should be included. In addition, the interagency protocols should outline the approach to be adopted for daytime and 'after hours' services. Following on from this, the government agencies should produce an interagency guide for their staff, outlining options for assistance and referrals for homeless non-UK nationals (see Chapters 3 to 5).

As the report has shown, voluntary sector organisations provide an invaluable source of support for homeless non-UK nationals that should be appropriately acknowledged and enabled to continue. However, the Commission makes the following recommendation:

- 19.** In responding to homeless non-UK nationals, government agencies should continue to engage with the voluntary sector. Where there is a statutory duty to assist, government agencies should not signpost to voluntary organisations for accommodation services without ensuring that the organisation is provided with appropriate financial support.

The Northern Ireland Housing Executive

The Commission makes the following recommendations (see Chapter 3):

- 20.** Inquiries in relation to eligibility ought to be evidenced in writing in the specific section of the homelessness application form. Findings relating to 'priority need' should always be recorded even if it is determined that the applicant is ineligible for homelessness assistance.
- 21.** The NIHE should develop human rights compliant guidance, outlining the circumstances in which having accommodation abroad can result in a finding that homelessness has been intentional.

The Trusts

The Commission makes the following recommendations (see Chapter 4):

- 22.** The Department for Health, Social Services and Public Safety should develop guidance, setting out the Trusts' responsibilities to homeless and potentially destitute non-UK nationals. The guidance should cover the Trusts' responsibilities to children, families with children, and single adults.
- 23.** At present, when Trusts decide to provide assistance to a homeless non-UK national under the 1972 Order or under the *Children (Northern Ireland) Order 1995*, the amount does not appear to be based on a clear assessment of need. While it may not be possible to set out minimum amounts, the Trust should develop guidance to ensure that payments to families are based on a proper account of potential costs, for example, accommodation, food, clothing and travel.

As well as the right to private and family life, the Commission is committed to the principle that in adoption, or any other child placement proceedings, the best interests of the child shall be the paramount consideration. Therefore, the Commission makes the following recommendation:

- 24.** Children should not be removed from their family, or threatened with removal, on the sole basis that those with parental responsibility are ineligible for homelessness assistance and welfare benefits.

In recognition of the right of every person to human dignity, the Commission makes the following recommendation:

- 25.** The use of voucher support as the sole means of support should end as soon as is feasibly possible.

The Social Security Agency

The Commission notes that decision-makers currently receive written guidance on benefit legislation and application. However, in order to better equip front line staff in their role as first point of contact, the Commission makes the following recommendations (see Chapter 5):

- 26.** All SSA staff should be issued with, and regularly trained, on an easy to read basic guide to the benefit legislation as it applies to non-UK national applicants. In particular, SSA staff should receive guidance on referral of applicants to the Social Fund and recording thereof.

- 27.** Pending review of the habitual residence test, in order to be able to demonstrate that the test has been applied consistently, SSA staff responsible for evidence gathering should be provided with a standard form to ensure that, in all cases, the same information is requested. All case files should contain an accurate record of how the decision on the habitual residence test was arrived at.

Specific areas of concern (Chapters 6 to 10)

The investigation has provided detailed findings in relation to the following specific areas of concern: exploitation, asylum seekers and refugees, domestic violence, ill-health and disability, and racial intimidation. As with the recommendations for each of the government agencies, many of the findings regarding these specific areas of concern will not be addressed without the legislative amendments as contained in Recommendations 1 to 12. Nevertheless, in the meantime, the Commission considers that there are a number of measures that ought to be taken, which can improve the Government’s response to non-UK nationals who experience homelessness related to one or more of the following:

Exploitation

The Commission reiterates its belief that every person has a right to access social security and to be free from all forms of exploitation. Therefore, the Commission makes the following recommendations to the Government (see Chapter 6):

- 28.** Pending discontinuation of the Worker Registration Scheme, there should be access to homelessness assistance and welfare benefits for those who have worked but who, for whatever reason, have not registered on the scheme. In addition, registration of a change of employment should not be a requirement of the WRS.

- 29.** Until the WRS is discontinued, the fee should be abolished.
- 30.** To ensure that workers can assert their rights, Worker Registration should not lapse if the individual is claiming unfair dismissal on loss of employment.
- 31.** Where an individual is out of work due to work related injury, WRS status should not impact on her or his entitlement to homelessness assistance and welfare benefits.

The Commission asserts that everyone has the right to be protected from sexual exploitation and sexual and other forms of trafficking. It is strongly committed to the rights of all victims to appropriate material, medical, psychological and social assistance. Therefore, the Commission makes the following recommendation to the Government:

- 32.** There should be homelessness assistance and welfare benefits for non-UK nationals who have been brought to the UK as a result of trafficking. The Government should consider how support can be provided even where victims do not wish to report their experiences to the ‘Competent Authority’. In addition, the Commission urges the Government to view its commitments under the *European Convention on Human Rights* as minimum obligations and to build upon the assistance that it provides to victims. In particular, the Government should ensure that the reflection period for victims of trafficking, which is currently 45 days, is extended in line with international best practice.

Asylum seekers and refugees

The Commission holds firm the belief that everyone has the right to work, and makes the following recommendation to the Government (see Chapter 7):

- 33.** All asylum seekers should be allowed to work pending the outcome of their application or, in the case of failed asylum seekers, until such time as they can be removed from the UK. Where possible, other individuals subject to immigration control should be allowed to work.

The Commission is committed to the principle that every child who is temporarily, or permanently, deprived of her or his family environment has the right to special protection and assistance for as long as they need it. In particular, the Commission makes the following recommendation to the relevant agencies:

- 34.** Where a doubt arises in relation to the age of a child, agencies should provide full support, including accommodation and subsistence, until it is established that the individual is not a minor.

The Commission is deeply concerned about the practice of accommodating children in unsupervised private accommodation, for example, bed and breakfasts. In order to ensure the right of every child to be protected from all forms of violence, maltreatment, neglect, exploitation and harassment, the Commission makes the following recommendation to the Trusts:

- 35.** The practice of accommodating minors in unsupervised and un-vetted private accommodation should end without delay.

Domestic violence

The Commission embraces the principle that everyone has the right to be free from all forms of violence and harassment including, but not limited to, domestic violence. In order to comply with this right and to ensure the care and protection of victims, the Commission makes the following recommendations (see Chapter 8):

- 36.** The Government should provide all victims of domestic violence with appropriate material, medical, psychological and social assistance and, in particular, advice on benefit and accommodation options, irrespective of their entitlement to public funds. Victims of domestic violence should be entitled to Social Fund assistance.
- 37.** The Government should extend the domestic violence rule to include all non-EU nationals who have entered the UK subject to a visa stating that they have no recourse to public funds. In addition, the application fee under the domestic violence rule should be abolished and legal aid provided to all victims.
- 38.** Trusts should devise, disseminate, and implement human rights compliant guidance on their duty to support all non-UK national victims of domestic violence who are ineligible for homelessness assistance and welfare benefits.

Ill-health and disability

The Commission is dedicated to the fact that everyone has the right to the highest attainable standard of physical and mental health and believes that everyone should be provided with support prior to, and after, discharge from alternative care, to assist towards independent living. The Commission further believes that public authorities should take all appropriate measures to promote the rights of older persons and those who are disabled to lead a life of independence. In this regard, the Commission makes the following recommendations (see Chapter 9):

- 39.** The NIHE should ensure that individuals presenting as homeless, with serious physical ill-health, can be considered for 'priority need' (within the meaning of the *Housing (Northern Ireland) Order 1988*).
- 40.** The NIHE should ensure that staff can identify alcohol and substance misuse as a potential indicator of mental ill-health or as an 'other special reason' for 'priority need'.
- 41.** The Government should ensure access to accommodation and welfare benefits to allow appropriate aftercare for non-UK nationals who are ineligible for homeless assistance and welfare benefits where they are ill or have been recently disabled.
- 42.** Pending amendment of the legislation (as per Recommendation 11), Trusts should issue guidance on travel arrangements, and accommodation pending travel, for ill or disabled non-UK nationals to ensure that the arrangements are implemented according to a clear decision-making process and one that is compatible with international human rights standards.

Racial intimidation

The Commission is committed to the fundamental principles of equality and non-discrimination and holds firm the belief that everyone has the right to be free from all forms of violence and harassment. Therefore, the Commission makes the following recommendation (see Chapter 10):

- 43.** The Government should ensure that all victims of intimidation have access to appropriate support including, where relevant, homelessness assistance.
- 44.** The NIHE should develop specific training for housing officers, outlining how to respond to homelessness applications made on grounds of racial intimidation. For all district offices, training should ensure that there is a consistent approach by staff when determining whether an attack has taken place and how to assess whether an incident should be categorised as intimidation as opposed to neighbourhood harassment. In addition, the training should be Macpherson compliant so that all staff are aware of the Macpherson definition of a racial incident, which is any incident perceived by the victim, or any other person, as racist.