

Cyflwynwyd yr ymateb i ymgynghoriad y [Pwyllgor Cydraddoldeb a Chyfiawnder Cymdeithasol](#) ar [Drais yn erbyn menywod, cam-drin domestig a thrais rhywiol: menywod mudol](#)

This response was submitted to the [Equality and Social Justice Committee](#) consultation on [Violence Against Women, Domestic Abuse and Sexual Violence: migrant women](#)

**MW07**

**Ymateb gan: | Response from: Welsh Women's Aid and BAWSO**

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# **Equality and Social Justice Committee Inquiry**

## **VAWDASV: Migrant Survivors**

*Written Evidence Submission by Welsh Women's Aid submitted jointly with BAWSO*

**This evidence submission focuses on the following aspects of the Inquiry's Terms of Reference:**

- The scope and coverage of specialist services and interventions which are adequately resourced and trained to support survivors from migrant communities, including meeting cultural and linguistic needs.
- Consideration of the barriers preventing migrant women and girls in Wales from accessing services and additional barriers faced by women with insecure immigration status, or whose immigration status is dependent on a spouse or employer or those who have No Recourse to Public Funds (NRPF).
- Whether the Welsh Government could take any steps to mitigate the disproportionate impact UK immigration policy has on survivors in Wales and deliver its aspiration of Wales as a 'Nation of Sanctuary'

## Context

In July 2021, a Steering Group for victims of VAWDASV with No Recourse to Public Funds (henceforth 'the Steering Group') was convened by the Welsh Government in recognition of the following facts:

- Survivors of VAWDASV continue to be locked out of essential, potentially life-saving support services and accommodation, on the basis of their immigration status and having no recourse to public funds (NRPF).<sup>1</sup> This has a disproportionate impact on Black and racially minoritized survivors, which means that in addition to the direct impact on the safety and wellbeing of individuals and families, it also amounts to discrimination against a group of people with a protected characteristic, contrary to the anti-discrimination provisions made under the Equality Act 2010 and Public Sector Equality Duty in Wales. This also presents a challenge to realising the aims and aspirations of the Welsh Government's *Nation of Sanctuary* and *Race Equality Action Plan*.
- Fundamentally, this issue is caused by the UK Government's Immigration Rules and system. In particular, due to:
  - the very limited eligibility for a 'change of conditions' application (to lift NRPF visa condition);
  - the very limited eligibility for SET(DV) and DDVC applications;
  - the sheer length of time it can take for applications for the above to be processed and decided.

The power to change the above systemic issues rests solely with the UK Government. It looks highly unlikely that the current UK Government will extend the eligibility criteria for the SET(DV) and DDVC to include all survivors of domestic abuse<sup>2</sup> and, although 2020 saw a sharp increase in the proportion of applications to the Home Office to lift NRPF condition which were granted,<sup>3</sup> this is likely to be an anomaly due to the COVID-19 public health crisis (and, in any case, the eligibility criteria remain very limited). The only action that the UK Government is taking<sup>4</sup> in relation to this issue - the 'Supporting Migrant Victims' pilot - has severe limitations, not only in relation to the amount of funding provided for the pilot, but also because

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<sup>1</sup> <https://domesticabusecommissioner.uk/wp-content/uploads/2021/10/Safety-Before-Status-Report-2021.pdf>

<sup>2</sup> This is something that organisations like Southall Black Sisters, LAWRS, Angelou Centre, Rights of Women have been campaigning on for years - most recently with proposed amendments to the Domestic Abuse Bill. The Home Office shows no sign of implementing such a change.

<sup>3</sup> <https://www.gov.uk/government/publications/no-recourse-to-public-funds-applications-to-change-conditions-of-leave-july-2020>

<sup>4</sup> It is acknowledged that some survivors - including some seeking asylum, as well as some survivors of modern-day slavery or trafficking - may be eligible for other forms of support through s.95/98 Asylum Support or through the NRM. However, many survivors are not eligible for either form of support. This briefing is focused on these survivors who are ineligible for NRM / Asylum support.

of implicit assumptions made about the extent to which social services are implementing their duties and meeting the needs of survivors.<sup>5</sup>

- However, there are actions which could be taken in Wales which, collectively, would ensure that all survivors with NRPf have access to safe accommodation and specialist support, *despite the immigration rules*. In other words, a Welsh solution can be designed to tackle the discrimination and additional danger and harm experienced by survivors because of their immigration status. These actions are identified below for the Steering Group and the Welsh Government's legal team's consideration, but first, this briefing sets out the problems which we *can* address in Wales.

### **The Problems (which we could address in Wales)**

The Immigration Rules are not the only factor affecting the likelihood of a survivor with NRPf accessing or being denied refuge / specialist support services. Other systemic issues include:

1. **The way in which refuges are funded, and the restrictions on some of the funding for specialist support services.** The fact that refuge rents are generally funded through Housing Benefit effectively excludes all survivors with NRPf from accessing refuge unless they can afford to pay refuge rent from their own income<sup>6</sup>, or the refuge provider has designated funding to cover the cost of rent for survivors who are ineligible for housing benefit. Moreover, some of the funding used to pay for the *support* elements of refuge, such as the Housing Support Grant, has been interpreted as the Welsh Government as being subject to immigration restrictions and therefore presents yet another barrier for services to support survivors with NRPf.
2. **The lack of understanding and implementation of social services' duties under the Welsh legislation - and a lack of accountability for these failures to implement duties.** Social services support is not a public fund for immigration purposes, and there are very few categories of immigration statuses which are exempt from this support.<sup>7</sup> In Wales, under the *Social Services and Well-being (Wales) Act 2014* (SSWBWA), social services have a **duty** to meet the care and support needs of children *and adults* if it is deemed necessary to

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<sup>5</sup> For example, the strict eligibility criteria for accessing funding under the SMV Pilot excludes all families with NRPf where there are dependent children, assuming that families will be supported by social services departments under their social care duties. However, anecdotal evidence and case studies from frontline services tells us that this assumption does not reflect the reality.

<sup>6</sup> This is highly unlikely for anyone as refuge rent rates are exceptionally high and many survivors are destitute and/or have no access to money.

<sup>7</sup> Those which are exempt are specified under Schedule 3 of the *Nationality, Immigration and Asylum Act 2002*. Even for those individuals or families who are exempt, an exception to this exemption exists which enables (and requires) support to be provided by social services when necessary to prevent a breach of human rights, where this breach of human rights cannot be addressed by a return to country of origin (e.g. if there are legal or practical barriers preventing their return). This can only be determined through undertaking a Human Rights Assessment.

prevent a risk of abuse or neglect. This duty in relation to meeting the needs of adults goes further than the corresponding duty in England's *Care Act 2014*, where the adult's needs must arise from additional vulnerabilities - such as mental ill-health, disability, lack of capacity - as set out in the Eligibility Criteria Regulations. In Wales, the duty to meet an adult's care and support needs is triggered **either** when they meet the eligibility criteria regulations, **or** if it is necessary to prevent a risk of abuse or neglect. In other words, *there is significant scope to ensure survivors with NRPF who are at risk of abuse are placed in safe accommodation and provided with subsistence and support by ensuring that duties under SSWBWA are implemented*. However, the following examples of decisions continuing to be made by social services departments illustrate the lack of understanding / implementation of duties under the SSWBWA<sup>8</sup>:

- Refusing to undertake a care and support needs assessment, instead making decisions about whether needs for care and support exist based on informal investigation or 'professional opinion'. This is unlawful since the duty to undertake a needs assessment arises where *it appears there may be* needs for care and support (a very low threshold), and regardless of immigration status. Finding out whether there *are* needs for care and support can only be established through undertaking the assessment. The same is true of human rights assessments for those otherwise exempt from social services support.
- Alternatively, in some cases, a 'proportional assessment' is made, informed by an informal investigation based on the person's and/or support organisations' *understanding* of the immigration status and access to services, without verifying whether these are correct. Many practitioners have a lack of knowledge about immigration policy / status, and thus a person's eligibility for services. Combined with the complexities inherent in the interface of migration and welfare legislation, this can result in poor practice and in some cases, a breach of a person's Human Rights.
- Refusing to meet care and support needs (e.g. funding a refuge placement and/or subsistence costs) of adult survivors with NRPF, citing that they are the responsibility of the domestic abuse service<sup>9</sup>, and/or that they have no duties to adults with NRPF unless there are children involved. Or, in the case of survivors with children, social services stating that they only have a duty towards the children and not to the adult survivor. Again - an incorrect application of the law: care and support needs of adults *and*

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<sup>8</sup> These examples are primarily drawn from the experiences of domestic abuse services - BAWSO and Welsh Women's Aid's membership.

<sup>9</sup> Perhaps this shows a lack of understanding among Social Services Departments of how DA services are funded - DA services are not funded in a way that enables them to do this. Local authorities / Welsh Government are not providing the funds to the sector to be able to apply this responsibility. This illustrates that DA services are not being fully resourced to meet the needs of populations.

children must be met by social services, either under eligibility regulations *or* in order to protect adult / child from abuse or neglect. Linked to this are continuing examples of social services threatening to take the children away from the survivor because she doesn't have the means to support the children.<sup>10</sup> The net result is that many survivors will not present for support, further entrenching the vulnerability of women and children to destitution and exploitation.

It must also be mentioned that a 'postcode lottery' operates in Wales in relation to the likelihood of survivors with NRPF being able to access refuge. This is partially due to different local arrangements and varying level of understanding of NRPF by professionals, especially within statutory services but also in the third sector. It is also exacerbated by the limited service provision in Wales for meeting specific needs that survivors with NRPF are more likely to have, such as larger families, and cultural and religious needs.

### **Proposed Solution: a two-pronged approach**

a) **Social Services:** Ultimately, consistent implementation by social services of their duties under the SSWBWA would ensure that the vast majority of survivors with NRPF are able to access refuge or other safe accommodation and support. The legislation is clear that, where it is necessary to prevent a risk of abuse or neglect, social services must meet the care and support needs of the survivor - this applies to both children and adults, in their own right. They could then be supported to regularise their immigration status, apply to lift the NRPF condition, or apply for DDVC and SET(DV). NRPF Network's data shows that the vast majority of families and single adults will exit social services support due to a grant of leave to remain or change in immigration status granting recourse to public funds.<sup>11</sup>

Creating this change will require high quality, regular training to be embedded into social work degree courses, and within the provision of training (including regular refresher training) for qualified social workers. It will also require strong leadership by the directors of Social Services Departments to foster culture that looks to use all possible means to offer support. This should be underpinned by clear legal and good practice guidance on the interface between immigration policy and social services' duties (and other local government services) by the Welsh Government. Moreover, there must be a mechanism for accountability (starting with robust data collection requirements<sup>12</sup> set by the Welsh

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<sup>10</sup> This was consolidated by the research evidence in the Uncharted Territory Review (2021) - [https://phwwhocc.co.uk/wp-content/uploads/2021/08/Uncharted-Territory-Rapid-Review-19\\_08.pdf](https://phwwhocc.co.uk/wp-content/uploads/2021/08/Uncharted-Territory-Rapid-Review-19_08.pdf)

<sup>11</sup> [NRPF Connect data report 2020 to 2021 | NRPF \(nrfpnetwork.org.uk\)](https://nrfpnetwork.org.uk)

<sup>12</sup> This should include, at minimum: all referrals made to support VAWDASV survivors, as well as referrals made for other reasons where it subsequently emerged there was also VAWDASV; the decisions made, and the reasons for those decisions. Data should be of sufficient quality /detail to enable disaggregation of according to immigration status and NRPF condition).

Government). This should be further bolstered by a team / network of NRPF specialists who work alongside Local Authorities to determine eligibility for support.

While this will create a long-term and *sustainable* change (as the duties are enshrined/protected in primary legislation), it is also likely to take years to embed and change practice. There is a need for the Welsh Government to step in in the interim to ensure survivors do not continue to be denied safety and support while awaiting this systemic change.

b) **‘Last resort’ funding:** We propose that, as an interim measure, the Welsh Government makes funding available to VAWDASV support services to ensure that they can resource their services when the usual means of funding (Housing Benefit) as well as other statutory support (Home Office Asylum Support, Social Services Support) are unavailable to them. This would ensure that whenever a survivor with NRPF was referred to a service, the service could accept the referral knowing that they will be able to cover the costs of providing the support without damaging the service (e.g. through having to use organisational reserves, or even redirect funding from other parts of the service).

Under section 4 of the *Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015* (VAWDASV Act), the Welsh Government is obliged to take “all reasonable steps” to achieve the objectives specified in the national strategy. One of the objectives in the current national strategy is to “Provide victims with **equal access** to appropriately resourced, high quality, needs led, strength based, gender responsive services across Wales”. Designating “last resort” funding for the purpose of enabling specialist VAWDASV services to support survivors with NRPF is within the Welsh Government’s competency and will constitute a “reasonable step” to achieving Objective 6 - equality of access to services. Arguably, failure to do so might put the Welsh Government in breach of the aforementioned duty.

We propose that funding is made available to VAWDASV support services through the existing Welsh Government VAWDASV Fund - by means of an uplift and ring-fencing. The purpose of the fund would be to enable VAWDASV support services to cover the accommodation and support costs of supporting survivors with NRPF. This part of the fund would be administered centrally (either by the Welsh Government or commissioned to a specialist service such as BAWSO) and would be accessible only to service providers (not to individual service users). Service providers would not be granted a set amount of funding; they would have to apply to the central fund as and when the need arises (similar to the Supporting Migrant Victims model). This would safeguard against any potential risk of misuse of public funds since the administrator of the fund would be responsible for ensuring that it has not been restricted by the UK Government for immigration purposes. Moreover, to be eligible to access the fund, services

would have to demonstrate that all other statutory funding options have been exhausted / failed.

### **Challenges raised by the Welsh Government**

The Welsh Government have been advised by their legal team that there is a risk to providing a designated fund. While we have not seen the advice, our understanding of what has been communicated is as follows:

- The UK Government could add the fund to the list of public funds which are restricted for immigration purposes. If individuals accessed the fund unaware that it had been added to the list of restricted public funds, they could face sanctions, including jeopardy of their immigration status, or current/future immigration applications. More concerning is the advice given to the Welsh Government that individuals could face *retrospective* sanctions - i.e. could be penalised for accessing the fund even if, at the time of accessing, it was not on the list of restricted public funds.

### **Response to the challenges**

There are two points to address here.

**First**, in relation to the risk to individuals, it would be helpful if the Welsh Government shared its legal advice - especially in relation to 'retrospective' sanctioning of beneficiaries. As the proposed fund would not be received by the individual but the organisation providing the support, it seems unlikely that individuals could be penalised for accessing a service - especially one which, at the time of accessing, they had every right to access. If there is no risk of sanctioning (retrospective or otherwise) to an individual, then consideration must be given to whether there is a risk to the service provider or administering body. However, it must also be considered whether any possible risk of providing the funding is likely to be outweighed by its lifesaving benefits.

**The second point** is in relation to the *ability* of the UK Government to challenge the provision of the fund, versus the *prospect* of them doing so, should the Welsh Government make funds available. It is clear that the UK Government *could* add any fund to the list of restricted funds for immigration purposes, even if it contravenes the Sewel Convention. We have seen in recent times (Covid, Brexit) that the Sewel Convention is simply that: a convention. The UK Government can essentially interfere in any aspect of policy and governance in Wales. Therefore, the fact that the UK Government *could* interfere is neither here nor there: it should not be the influencing factor on the decision of whether to provide the funding.



The question we should be asking is not whether the UK Government *can* add the funding to the list of restricted public funds, but whether it is *likely* to take such action.

This is likely to depend on how the funding is made available. If, for example, the funding was paid directly into individuals' accounts, then the UK Government will almost certainly add this promptly to the list of public funds (as they did with the Scottish Welfare Fund in 2016). This is because it would effectively create a new 'benefit'.

**However, this is not what we are proposing. As set out above, our proposal is for funding to be made available to resource VAWDASV services, on a case-by-case basis, as and when the need arises.**

Government funding for addressing needs arising from NRPF is not unprecedented: there are numerous examples of Police and Crime Commissioners and Local Authorities being granted / granting funds specifically for the purpose of addressing the accommodation and support needs of people with NRPF (see Appendix 1). The funding has come from the Home Office, Ministry of Justice, and the (formerly named) Ministry of Housing, Local Government and Communities. The Home Office's current SMV pilot also provides a further example of how public funds can be used to address this issue.<sup>13</sup>

Moreover, including conditions on the fund - such as evidencing that *all other statutory funding avenues have been exhausted* - would not only help to build a picture of where the specific shortfalls and barriers for securing funding for survivors with NRPF; it would also help to strengthen the sector's understanding of the different options that are available, and encourage a culture which sees statutory duties being properly implemented.

## **Conclusion and questions for the Welsh Government / Equality and Social Justice Committee**

This evidence submission has made the case for the Welsh Government to make available and designate last resort funding for VAWDASV services in Wales, for the purpose of ensuring equality of access to support for survivors with NRPF. We have proposed a mechanism which would ensure that the provision of funding comes at no risk to any individual benefiting from it.

**The urgency of implementing a Welsh solution cannot be overstated.** BAWSO's data shows that in the financial year 2019-20, out of 164 enquiries about support for survivors with NRPF, 76 service users were supported (46%) across all BAWSO services in Wales. In the financial year 2020-2021, 219 referrals were received, of which 98 service users were supported (45%).

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<sup>13</sup> It is also noteworthy that the Domestic Abuse Commissioner has recently made very similar calls for funding to be made available to local authorities and to specialist 'by and for' services: <https://domesticabusecommissioner.uk/wp-content/uploads/2021/10/Safety-Before-Status-Report-2021.pdf>

Welsh Women's Aid's membership data shows that, in 2020-21, there was a 29% increase in the number of survivors who were refused a refuge space due to lack of resourcing, compared to the previous financial year (18, compared to 14, respectively).

Moreover, the support provided by the Home Office via the Supporting Migrant Victims pilot has been shown by its administrators to be inadequate, with survivors still falling through the net. While the Home Office has indicated that the pilot will be extended, still no detail has been provided on how/what form this will take, and whether it will allow for the flexibility that is needed to support all migrant survivors, regardless of immigration status. Moreover, there is no guarantee of a sustainable policy solution. This might take years.<sup>14</sup>

This is happening in a context where the NRPf condition is affecting increasing numbers of people. People with pre-settled status under the EU Settlement Scheme who do not meet the qualifying criteria to access welfare benefits have, de facto, NRPf. While this is an anomaly which has not yet been addressed in the legislation, the expectation is that people who fall under this category are not treated any differently to those with NRPf stamped on their immigration / ID documents. Moreover, if the current provisions in the UK Government's *New Plan for Immigration* regarding imposing NRPf on refugees granted a Temporary Protection Leave are implemented, this will further increase the number of people vulnerable to destitution, exploitation, and abuse.

**In Wales, we have an opportunity to mitigate the impact NRPf policy is having on migrant survivors by earmarking funds for 'last resort funding' for VAWDASV services.**

Questions:

1. What, if any, are the risks to *an individual/family with NRPf* if they were to access a VAWDASV service which was funded in the way set out in the proposal above?
  - a. In relation to the caution raised by the Welsh Government - that the UK Government could add the fund to the list of public funds prohibited for immigration purposes - does the Welsh Government agree that this would *not* occur, if agreed in advance with the Home Office, or agreed in terms of not treating it as a public fund for immigration purposes?
  - b. In relation to the caution raised by the Welsh Government - that if the individual accessed the fund unaware of its inclusion on the list, they could be penalised - does the Welsh Government agree that this would not arise, if agreed in advance by the Welsh Government and Home Office to prevent such penalties?

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<sup>14</sup> The evaluation of the pilot will not be concluded before July 2022; after this, the UK Government will need to consider the findings, make policy proposals, and (assuming a policy solution is agreed), implement the policy change.

2. What, if any, are the risks to a *VAWDASV service provider* if they were to fund their service to survivors with NRPF through the mechanism set out in the proposal above?
3. What, if any, are the risks to the *Welsh Government / Ministers* if they were to provide a ring-fenced uplift to the existing VAWDASV fund and administer it in the way set out in the proposal above?
4. Given that the UK Government is itself trying to understand the extent of the problem (of survivors with NRPF being locked out of essential support and safety) via its Supporting Migrant Victims pilot, it would be accurate to say that our aim in this proposal does not contradict the aim of the UK Government.  
As such, what, if any, are the *political obstacles* that might face the Welsh Government if it were to decide that it wants to implement this funding proposal?
5. Given that the aim of our proposal is to better resource VAWDASV victim support services so that they are accessible to all survivors, and given that the UK Government has no policy / rule that explicitly seeks to prevent people with NRPF from accessing support services,<sup>15</sup> how, if at all, does our proposal interfere with immigration policy?
6. In relation to the concern raised by the Welsh Government - that the UK Government could accuse the Welsh Government of interfering in an area of policy that is reserved to the UK Government (immigration) - could the Welsh Government confirm source of this view and also why that cannot be pre-empted by agreement in advance between the Welsh Government and Home Office to ensure that this is not the case?
7. What is the alternative to survivors with NRPF if services are not provided with this last resort funding to ensure their equal access to support? How does the Welsh Government suggest they access support?
8. Has an Equality Impact Assessment been carried out by the Welsh Government to assess the impact that the ongoing refusal to provide funding is having on survivors with NRPF? If so, please can the Welsh Government provide a copy to the members of the NRPF/VAWDASV Steering Group?
9. In relation to Social Services: Would it be helpful for WLGA / Welsh Government Social Services Team to meet with LA Social Services Departments to better understand the issues they face in properly implementing the SSWBWA duties as they relate to migrant victims with NRPF?

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<sup>15</sup> To the contrary, their guidance on DA support for asylum seekers, as well as the existence of the Destitution Domestic Violence Concession (albeit severely limited), are clear examples of attempts by the UK Government to *improve* access to support services for survivors with NRPF.

### **Appendix 1: Examples of UK Government funding for NRPF-related issues**

1. **Lancashire PCC 2021:** Received £62,000 from the Ministry for Housing, Communities and Local Government (MHCLG) – No Recourse to Public Funds (NRPf) - which the Office administer and allocate. The fund is to support Domestic Abuse victims entering refuge who have no access to public funds.

2. **Suffolk PCC 2021:** made a grant of £40,000 to **Phoebe**, a specialist 'by and for' Black and migrant survivors of DA. The fund was granted to support their general work which includes "helping victims of DA to find safe temporary accommodation, completing visa applications, facilitate support groups, providing counselling and casework, and legal advice".

The PCC also made a grant of £51,000 to **Leeway Domestic Abuse and Violence Service** to support their "Project Safety Net" which would "enable 2 bilingual DA workers in Suffolk to continue to provide practical and emotional support to victims of DA with NRPF and where English isn't their first language."

Both grants were funded from the MOJ Victim Services grant 'Domestic Abuse Uplift' for 2021/22 and from the PCC commissioning budget.

3. **Bedford Local Authority:** Funded one house (4-bed spaces) for NRPF clients (not DA specific - Kings Arms Project) which was fully funded by the Ministry for Housing Communities & Local Government's 'Controlling Migration Fund' (awarded via the LA). In October 2018 this funding increased to include additional 8 rooms, providing total bedspaces for 14 NRPF with the right to work i.e. EEA nationals.
4. **West Mercia PCC (2015):** Funded £50,000 to West Mercia Women's Aid for the specific provision of services to support survivors with NRPF.