

Supporting homeless EEA nationals: identifying benefit entitlement



At a glance

Advice organisations, homeless organisations and support workers may be asked to provide assistance to EEA nationals who have no entitlement to statutory support. Some may be long term unemployed or homeless and may have vulnerabilities – including addictions – which are exacerbated by their precarious living conditions.

Signposting / advising those in these circumstances can be difficult because they are not entitled to the usual homelessness services which tend to be paid through Housing Benefit.

This paper explains how 'Treaty rights' are important for EEA nationals applying for benefits. It also sets out some questions for advisers/support organisations to consider with each client, which may help identify a benefit entitlement.

Law Centre (NI)

- promotes social justice and provides specialist legal services to advice organisations and disadvantaged individuals
- in four areas of law: community care, mental health, employment and social security
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SUPPORTING HOMELESS EEA NATIONALS

EEA nationals and question for advisers to consider

Advice organisations, homeless organisations and support workers may be asked to provide advice to EEA nationals who have no entitlement to statutory support. Some may be long term unemployed or homeless and may have vulnerabilities – including addictions – which are compounded by their precarious situation.

For European migrants, there are two routes out of homelessness:

- a) Through employment, which generates income and may give access to Housing Benefit;
- b) By establishing benefit entitlement (including Housing Benefit) on the basis of exercising European treaty rights.

All EEA nationals are permitted to work; for the majority, work is likely to be the quickest way to alleviate homelessness. Croatian nationals are the one exception as some are required to apply for a registration certificate in order to work in the UK.¹ Croatian nationals should seek specific advice.

In contrast, not all non Europeans are permitted to work or access benefits. Non EEA nationals should check whether they are eligible before obtaining work or applying for benefits: this is important because working without permission /receiving benefits can be a criminal offence and can result in prison sentences, deportation and long-term implications in respect of settlement and citizenship.

Advisers should note that this paper refers only to the position with EEA nationals.

¹ <https://www.gov.uk/croatian-national>

European treaty rights: why are they important?

As a general rule, benefits are only available to Europeans who are exercising treaty rights and therefore have a right to reside. If not exercising treaty rights, then a migrant is not entitled to social security benefits. Social Services support may be available in very limited situations where there is a risk of a human rights breach.

A key task for advisers is to identify whether a migrant is exercising treaty rights.

A person is exercising treaty rights (a “qualified person”) if she is living in the UK as a:

- a) Job seeker
- b) Worker including ‘retained worker’ (someone who has previously worked)
- c) Self employed person
- d) Self sufficient person
- e) Student
- f) Family member of one of the above
- g) The primary carer of an EEA national

More information is provided on these categories – see below.

Why are European migrants particularly at risk of homelessness ?

Over recent years, the Conservative Government has introduced a number of changes to the residence requirements for benefit entitlement. The combined effect is that it is much more difficult for EEA nationals to obtain means-tested benefits. Jobseekers are particularly affected.

EEA nationals: Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

Questions for the adviser/support organisation to consider

Question	Notes
<p>Is the person working?</p> <p>See note 1</p>	<p>If yes, apply for Housing Benefit (seek advice if working casually, < 10 hours, etc.)</p> <p>Is work a possibility? Work is the quickest route out of this situation.</p>
<p>Has the migrant worked within the last 6 months?</p> <p>See note 2</p>	<p>If yes, check if she is eligible to benefits as a retained worker.</p>
<p>Is the migrant the wife/husband/civil partner / son or daughter < 21 years of an EEA national who is exercising treaty rights? Or are they a primary carer of an EEA national?</p> <p>See notes 6&7</p>	<p>If yes, check if she is eligible to benefits as a family member of an EEA national.</p> <p>A person might qualify as a family member even if relationship has broken down and the family members/partners are not living together.</p>
<p>Is it possible that the migrant actually has Permanent Residence?</p> <p>See note 8</p>	<p>If yes, check if she is eligible to benefits as a permanent resident and consider applying for a Permanent Residence document.</p> <p>Some migrants who are currently sleeping rough might have previously spent < 5 years as qualified person e.g. as a worker, student, family member, etc.</p>
<p>Does the person qualify for other benefits?</p> <p>See note 9</p>	<p>The person might qualify for a benefit that does not have a Right to Reside test including: contributory-ESA, contributory-JSA, DLA/PIP, Carer's Allowance or Attendance Allowance.</p>
<p>Does the migrant have any care needs / particular vulnerability? E.g. does she have a physical or mental disability, is she elderly, etc.?</p> <p>See note 10</p>	<p>If yes, check if she is eligible for Social Services support.</p> <p>The Trust is likely to offer a ticket home and accommodation < 5 days in such situations</p>
<p>Has the migrant received a letter from the Home Office threatening removal?</p> <p>See note 12</p>	<p>If yes, refer to an Immigration Solicitor and challenge the notice of removal</p>

Notes on the qualifying categories

1) Jobseeker

Many of the government restrictions are aimed at jobseekers. Recent restrictions are as follows:

1. People coming to the UK must have been living in the UK for 3 months before they can claim income based Jobseekers Allowance
2. A person can only receive Jobseekers Allowance for 91 days before Genuine Prospects of Work (GPoW) test.
3. EEA migrants who have jobseeker status only cannot access Housing Benefit

EEA national arrives in Northern Ireland to seek work

Time	Status
0-3 months	The person is technically a jobseeker but has no entitlement to income-based JSA during the first three months
3 – 6 months	The person is entitled to receive JSA for a limited period of 91 days but cannot receive Housing Benefit. The person is still considered as a jobseeker.
6 months +	The Genuine Prospect of Work test is applied after 91 days. If the person is deemed not have a genuine prospect, the JSA claim is terminated. The person is no longer considered as a jobseeker and has no right to reside.

An EEA migrant can generally only qualify as a jobseeker for 6 months (and is only entitled to Jobseekers Allowance for 91 days). After this time, EEA jobseekers and retained workers are subject to the Genuine Prospects of Work (GPoW) test. This test assesses whether the claimant can provide evidence of imminent work. If the person fails to show a Genuine Prospect of Work then the Jobseekers Allowance is terminated. The large majority (92%) of EEA migrants fail the GPoW test.²

2) Worker including ‘retained worker’

For many EEA nationals, obtaining ‘worker’ status offers the quickest route out of homelessness.

Clearly, working generates an income, thus allowing the person to pay for accommodation. However, when a person has ‘worker’ status, s/he is also eligible to apply for benefits. For example, a part-time

² Analysis of EEA Migrants’ Access to Income-Related Benefits Measures
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/548225/analysis-of-eea-migrants-access-to-income-related-benefits-measures.pdf

worker can apply for Housing Benefit and might also be eligible for Jobseekers Allowance depending on circumstances.

To qualify as a worker, any employment must be “genuine and effective and not marginal or ancillary”. There are no hard and fast rules about what constitutes employment. **Work can be full-time or part-time. The fact that someone does not have a contract of employment / is paid cash in hand / works irregular hours does not automatically mean that they do not qualify as a worker.** However, the worker will have to provide evidence of being a worker and this is usually demonstrated with payslips, a written contract of employment, a letter from the employer confirming employment. There is no minimum number of hours required in order to be recognised as a worker. While the courts have accepted that 10 hours is sufficient, they have indicated that 5.5 hours a week might also be sufficient. The Law Centre is keen to advise in any case where an EEA migrant is working.

Worker status is immediate: as soon as a person starts work, s/he can apply for Housing Benefit.

There are some circumstances where an EEA national who is no longer working can still be treated as a worker. This is known as ‘retained worker’ status and applies where e.g. a person is temporarily unable to work because of accident/illness; lost their work involuntarily and is job seeking and/or embarked on vocational training, etc. Women can retain their worker status following pregnancy.

3) Self employed

It is possible for self-employed persons to access benefits including Housing Benefit. However, due to the introduction of the “Minimum Earnings Threshold” in January 2014, it can be difficult for low earners (e.g. self employed people working in car washing or cleaning) to qualify as self employed person for the purposes of accessing benefits.

4) Self sufficient

A self sufficient person must show that she has enough money to cover her own and family member’s living expenses without being a burden. Note that a person who is volunteering with a charity that is meeting their living costs might be able to argue that she is self sufficient. Self sufficient persons must hold Comprehensive Sickness Insurance.

5) Student

To qualify as a student, the person must be enrolled at a recognised / accredited educational establishment and must have enough money to meet their living expenses (including through a scholarship). Students must hold Comprehensive Sickness Insurance.

6) Family member

It is possible to qualify as a family member (whether EEA or non EEA) of a person who is exercising treaty rights. Through the free movement principle, the non-EEA family member has the right to be

with their on-the-move EEA family member and has the same rights to work, study and to access social security benefits.

A person who is the wife, husband, civil partner, son/daughter under 21 years, mother/father of an EEA national exercising treaty rights may qualify. Sometimes people can qualify even if the relationship has broken down. For example, the Law Centre assisted a young woman (19 years) who presented to a Belfast charity as destitute. She is from an African country and had no benefit entitlement in her own right. However, her father – to whom she is estranged – had obtained Irish nationality and is working in Northern Ireland. As the father qualifies as a worker, she qualifies as a family member of a person exercising treaty rights. As soon as we were able to provide evidence that the father was working through HMRC contributions, his daughter was eligible to benefit as a family member of an EEA national.

7) Primary carer of an EEA national

It is also possible to qualify as a primary carer of a person who is exercising treaty rights. This would usually apply to a mother or father who has a child in education.

This is known as having a ‘derivative right’ and generally only lasts while the caring is taking place.

OTHER ISSUES TO CONSIDER

8) Permanent residence

It is important to check whether the EEA migrant is actually a permanent resident in UK: if so, their benefit entitlement is much clearer. Note that some people might not know that they are permanent resident.

If an EEA migrant has lived in the Common Travel Area (UK or Ireland) as a “qualified person” for a continuous period of at least 5 years, she may have permanent residence. Once a person has permanent residence, she would normally satisfy the Right to Reside/Habitual Residence test. There is no GPOW test. Temporary absences (generally less than 6 months) do not break continuity of residence but a prison sentence does. Permanent Residence it is only lost if a person leaves the UK for 2+ years.

An EEA national *may* apply to the Home Office for a document to certify their permanent residence (£65). However, a person does not actually need to have this document to have permanent residence.

The previous A8/A2 restrictions can complicate calculating the permanent residence: seek advice.

A person can acquire permanent residence before 5 years in certain situations. This includes those who have reached retirement age, stopped working due to a permanent incapacity or a family member of a deceased person.

9) Access to other benefits

Remember that the increased restrictions tend to apply only to means tested benefits. Because the Right to Reside test does not apply to the following benefits, migrants who are sleeping rough might be able to apply if they meet the other criteria: contributory-ESA, contributory-JSA, DLA/PIP, Carer's Allowance or Attendance Allowance. For example, a person with an addiction might qualify for the daily living component of PIP. Other tests such as Habitual Residence may be an obstacle but this is worth exploring so advice should always be taken. The Law Centre can provide advice in these cases.

10) Assistance from Social Services

Social Services might assist homeless /rough sleepers in some situations. Under community care legislation, Social Services may be required to intervene and provide support to destitute migrants if there is a risk of human rights breach. Support can include financial support and accommodation.

Generally, having to sleep rough does not amount to a human rights breach unless the person has a particular care need/ vulnerability e.g. a physical/mental disability, is elderly, has been a victim of crime, etc. In such situations you should approach Social Services Gateway Team (in Belfast Trust area: 028 9050 7000 / out of hours 028 9504 9999³) and request an assessment of need. If a need is identified, Social Services must meet that need.

The Trusts have powers to arrange travel assistance and temporary accommodation for migrants who are not eligible for mainstream services.⁴ Realistically, therefore, if a destitute migrant approaches the Trust for assistance, s/he might be offered assistance in returning and up to 5 days accommodation prior to removal. The law is complicated (see Law Centre briefing⁵ and a community care lawyer can provide advice.

Law Centre can provide advice on migrant workers' access to Social Services. Please contact the Community Care unit on Tel: 028 9024 4401

11) Right to rent

The Home Office Right to Rent scheme, which requires landlords to check that tenants have the correct immigration status, does not apply in Northern Ireland. There is no date for its implementation yet.

³ It is possible that Gateway will refer to Physical Disability: Tel: 028 9504 2367 / out of hours 028 9056 5444

⁴ The Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002. Note that asylum seekers and undocumented workers are not eligible for Trust support to return home. However, voluntary return arranged by the Home Office is possible. Contact Bryson Intercultural/ Asylum Support Tel: 028 90315744

⁵ Law Centre Community Care Information Briefing, 'Social Services duties to provide accommodation and other services' (2012) <http://www.lawcentreni.org/Publications/Law-Centre-Information-Briefings/Community%20care%20briefings/CCIinformation%20Briefing14Revised.pdf>

12) Home Office issue: EEA rough sleepers should not be removed

Advisers might be aware that the Home Office has attempted to remove some European nationals who are sleeping rough. The Home Office has argued that sleeping rough is an 'abuse' of Europe's free movement rights. However, an NGO in London is challenging Home Office policy and has cleared the first legal hurdle in doing so.

The legal hearing will take place in October 2017. Any EEA national who is served a notice of removal by the Home Office should be able to stop their removal pending the outcome of this case.

Any EEA national who has received a notice of removal should contact an Immigration Solicitor as soon as possible.

More information about this legal challenge and fact sheets in different languages is available here: <https://nelmacampaigns.wordpress.com/eea-removals/>

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