Supplementary Information for the Scottish Parliament Equalities and Human Rights Committee Inquiry on Destitution, Asylum and Insecure Immigration Status in Scotland

Introduction
1. COSLA has provided both written and oral evidence to the Equalities and Human Rights Committee Inquiry on Destitution, Asylum and Insecure Immigration Status in Scotland. Further to the two oral evidence sessions which were attended by Andrew Morrison (23/03/17) and Derek Mitchell (30/03/17), we are providing some additional information which we hope clarifies some of the points that were discussed during these sessions.

Powers and Responsibilities of Local Authorities
2. In some of the evidence that was provided to the Committee, and in subsequent media coverage, there seemed to be a misunderstanding about the extent of the powers and responsibilities that local authorities have to support people who have No Recourse to Public Funds (NRPF). The Immigration and Asylum Act 1999 shifted responsibility for providing accommodation and support to asylum seekers from local authorities to the Home Office and established the dispersal system. In this Act, and in subsequent legislation, including the Immigration Act 2016, successive UK Governments have sought to further limit the powers available to local authorities in respect of providing support both to asylum seekers and to other groups of migrants.

3. The residual powers that local authorities in Scotland have to provide support exist under social work and children’s legislation and, in the case of adults, can only be used when a person has needs over and above destitution. These powers are limited and interpretation of how they can be applied is contested. They should be considered at best as a sticking plaster to provide protection to people who would otherwise fall through gaps in the Home Office system.

NRPF Network
4. We are very concerned that the Committee has received evidence (as stated by the Chair during the session on 30/03/17) that the NRPF Network in Scotland, which the COSLA Migration Population and Diversity team hosts and chairs, has not met for two years. This is incorrect.

5. In the last two years, the Network has met on 22 April 2015, 3 and 4 September 2015 for training, 22 June 2016, 1 December 2016 and 28 March 2017. There
were no meetings between October 2015 and May 2016 due to the pressures on resources in the team resulting from the Syrian Resettlement Scheme.

6. Key items which have been discussed at recent meetings include:
   - Immigration Act 2016 – Scottish implications
   - Asylum cases
   - Non-asylum cases
   - Assisted Voluntary Returns
   - NRPF care leavers – their rights and LA duties
   - Managing offenders subject to NRPF
   - Dublin III cases.

7. We would be happy to provide further information on the work of the Network in Scotland if the Committee would find that useful.

RPF Guidance
8. A number of witnesses who presented evidence to the Committee made reference to the Guidance that was published by COSLA in 2012. COSLA lobbied the Scottish Government for funding to produce this guidance as it was recognised that councils needed support in untangling many of the complexities associated with the intersection between reserved and devolved legislation. Further to the funding being provided, a tendering exercise was carried out, and an independent expert produced the guidance, assisted by a project steering group and a number of experts who commented on drafts and clarified difficult issues. The guidance is available to view on our team website at http://www.migrationscotland.org.uk/migration-information/resources/rights-and-entitlements.

9. This guidance was not, and should not, be viewed as either definitive or prescriptive, but as a tool to support local authorities as part of a broader decision making process. It is clear that there are differing and equally valid ways to interpret current legislation and, in the absence of relevant case law, local authorities must take their own legal advice in deciding how they should act in relation to specific cases. As such, while we appreciate that the committee has heard evidence requesting more directive guidance, this could be in conflict with current case law and / or legislation, and be open to challenge from the Home Office.

10. The nature of guidance such as this is that it also goes out of date very quickly, particularly in the current context of numerous pieces of legislation since 2012 which relate to immigration, and with changes associated with the Immigration Act 2016 and welfare reform due to be introduced in the coming months. That said, we would be open to discussing the production of refreshed guidance subject to funding being made available to allow this to take place.
**Freedom of Information (FOI) request**

11. As mentioned in our oral evidence, we are concerned that a partner organisation has chosen to investigate apparent issues with current practice by submitting a FOI request to all 32 councils. The first indication that we were aware of that the organisation had concerns was when a local authority shared the formal request with us for our information. We are very disappointed that we were not approached to discuss current practice given the role we have in supporting councils in this regard. Indeed, we are concerned that the request seemed to be designed to expose councils, rather than to work with them in a collegiate manner to address any gaps in policy or practice that may exist.

12. That issue aside, we do not believe that the information received through the FOI reflects the totality of the picture in terms of how local authorities deal with NRPF cases. It is worth noting that the request only asked for copies of specific written policies and procedures, and numbers dealt with, rather than seeking information about practice. The nature of FOI requests is such that they often elicit specific answers to the specific questions that are asked and do not provide the nuanced information that would perhaps have been provided by another means.

13. Our own experience of working with councils, both through the NRPF Network and more generally, is that they have a far more detailed understanding of the complexities associated with the rights and entitlements of migrants than has been suggested. The lack of a specific NRPF policy or procedure is not an indicator of bad practice. The evidence provided by the councils represented at the session on 23/03/17 has hopefully illustrated that point further.

14. That said, we recognise that there is room for more learning in this regard, not least because some councils have smaller migrant populations and have, to date, dealt with very few NRPF cases. As such, we are committed to continuing to develop our NRPF Network and discussing other approaches which might support the work that councils do with their migrant populations.

**Supporting people**

15. Both our written and oral evidence highlighted the significant challenges local authorities have in supporting cases for which they receive no funding from either UK or Scottish Government. However, despite these challenges, local authorities and individual local authority officers seek to deliver the best outcomes for people for whom they have a statutory responsibility, and will continue to do so.

16. We are concerned that some of the submissions that were provided to the Committee seemed to paint a picture of local authorities actively seeking to withhold support from individuals and families. If there is specific evidence that local authorities are failing to fulfil their statutory duties, advocacy agencies should be working with local authorities and using established escalation routes to deal with problems in practice.
17. A number of contributors to the inquiry also highlighted the need for human rights assessments to be carried out by local authorities, and expressed concern that this is not happening. Local authorities are of course fully committed to embedding a culture of human rights across the services that they provide and COSLA, and individual local authorities, are heavily involved in the work associated with the Scottish National Action Plan on Human Rights.

18. However, human rights assessments should not be viewed as a panacea that leads to more support being provided to people. Such assessments can be used to justify both the provision and the withholding of support, and it is our understanding that the latter is often the case in other parts of the UK where these are perhaps more commonly used than in Scotland. That said, while there is not a statutory requirement for human rights assessments to be carried out, human rights are considered by local authorities, whether that is by means of an additional human rights assessment, or through a broader social work or GIRFEC assessment. Again, we trust that the oral evidence provided by council colleagues on 23/03/17 clarified this for the Committee.

Structural and financial challenges
19. Finally, we would wish to return to what was perhaps the overarching point that we, and others, sought to make to the Committee; namely that destitution is an inevitable consequence of the UK Government’s approach to immigration and asylum policy. We are not seeking to make a political point here but are merely highlighting the fact that UK Government policy and resultant legislation under successive administrations since 1999, has been designed to make this country a ‘hostile environment’ for those who do not have a legal right to be in the UK. As such, the UK Government seeks to ensure that support is withheld from such people – and the Immigration Act 2016 is the latest example of legislation designed to close apparent ‘loopholes’ in this regard – and that local authorities and other statutory services do not provide it. As stated above, while some residual powers do exist, these essentially provide little more than a sticking plaster and are often both limited and contested.

20. What is more, in the current financial context local authorities have very limited budgets available to exercise the powers that they do have. Indeed, the Accounts Commission has estimated that councils’ social work spending would need to increase by between £510 and £667 million by 2020 (a 16-21 per cent increase) to maintain current levels of service. Despite this, local authorities continue to spend significant amounts of money in this area.

21. Current data from the UK NRPF Network for 43 local authorities across the UK, including Glasgow and Edinburgh City Councils, highlights that they spent a combined total of £36.4 million in 2016/17 supporting families with NRPF. These

are housing and financial support costs only and do not include staff time and resources, so are an underestimate of the true cost to councils. 29% of referrals were taken on for support, and the average number of days on support was 869, which was an increase from the previous year. 17% of the households supported were lawfully present with NRPF and had been prevented from accessing mainstream benefits by the UK Government for immigration control purposes.

22. We recognise that the current system is unpalatable to many, including local authorities which have actively sought to tackle destitution in their communities, but it is the reality within which councils are operating. All of Scotland’s councils are operating in very difficult financial circumstances and are seeking to navigate and untangle the very complex issues associated with migrants’ rights and entitlements. That does not mean that they are failing to fulfil their statutory obligations or their duty of care towards people. However, it does mean that they are unable to support some people who, according to the UK Government, do not have a right to be in this country and do not have a right to access public funds or services.

Conclusion
23. We would wish to reiterate our thanks to the Committee for giving us the opportunity to present evidence to this inquiry. We would be happy to answer any additional questions that members might have for us, and would also be very happy to host a visit from the Committee if members would like to receive more of an insight into the work that we do on a day to day basis.

COSLA Migration, Population and Diversity Team
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