

Case Study

Gemma*

Child in Need and family, EU Pre-Settled Status

Gemma, a toddler, was referred to her local authority for support, with her mother, Salma, and her father Jorge, in June 2021. They had been staying with a friend after fleeing from domestic violence by Salma's family, but the friend was no longer able to accommodate them. They were destitute and homeless, and Salma was pregnant.

Salma is an EU national and held Pre-Settled Status under the EU Settlement Scheme at the time of referral. Gemma is also an EU national. There was not a 'no recourse to public funds' ('NRPF') condition attached to Salma's Pre-Settled Status, but she was not eligible to access mainstream means-tested benefits because she did not have an additional right to reside in the UK, such as based on employment in the UK.

A local support agency referred Salma to the relevant local authority, emphasising that the family were at their hub and were about to become street homeless. They requested appropriate support and that a Child in Need Assessment be carried out. However, there was disagreement between social work teams about responsibility for the family – the Assessment and Short-Term Intervention team (ASTI) and the No Recourse to Public Funds team (NRPF) each considered that the other team had responsibility to undertake the assessment. Both teams declined to carry out the requested assessment. When it became apparent that the local authority would not assist without further intervention, the support agency referred the family for legal advice, as they were concerned the family would become street homeless that day, resulting in risk of significant harm.

The family's legal adviser sent a Pre-Action Protocol letter to children's services, which then agreed to provide interim financial and accommodation support for the family under Section 17 of The Children Act 1989. A human rights assessment was not required and was not conducted.¹

During this difficult period, and despite advocacy by the legal adviser, the family were placed in hotel accommodation and moved from one hotel to another until Salma was granted Settled Status under the EU Settled Status Scheme at the end of July 2021.

The local authority closed the case 5 days after Salma was granted Settled Status.

Shortly after being granted EU Settled Status, Salma applied for council housing, but a few months later, the local authority (incorrectly) informed her that she was not eligible for housing due to her immigration status. After further intervention by her legal adviser, Salma was informed (in March 2022) that she was eligible for council housing and should update her application with her current address and add her new baby. When she did that, the council's system said she was not eligible due to her immigration status, but she also received an email saying her application had been successfully submitted and would be assessed.

Best Practice

What should have happened?

Gemma's family should have been assisted immediately on referral to the local authority. Local authority staff should be aware that there is no bar to providing Section 17 support for a destitute EEA national child (whose mother has Pre-Settled Status but is not eligible for mainstream benefits) and her family; rather, the local authority is required to conduct a Child in Need assessment and provide for such a child, as for any other child in need.

Upon disagreement between ASTI and NRPF teams, the teams should have discussed the case and agreed which would take responsibility, as a matter of urgency given the threat of street homelessness and the other vulnerabilities of the family.

A Child in Need assessment should have been initiated immediately, and the local authority should have arranged interim support and accommodation, without the need for legal intervention by the family's legal advisor.

The local authority should have placed the family into stable accommodation, suitable for a family, as well as providing for any other needs to an adequate level, in accordance with the Children Act.

Upon Salma being granted Settled Status, the local authority should have reviewed the family's needs and assessed whether there would be any ongoing needs during the period it would take for the family to transition to mainstream welfare benefits.

If there were any ongoing needs, the case should not have been closed until all needs were resolved. The local authority should also have correctly informed Salma that she was eligible for council housing and then allocated suitable housing without the need for further legal intervention.

Notes

*Name changed to protect privacy

Thanks to [ASIRT](#) (Asylum Support and Immigration Resource Team) for providing this case study.

1. A human rights assessment is only needed for people who are excluded from support by Schedule 3, NIAA 2002, to assess whether they can avoid their destitution by returning to their country of origin. Schedule 3 bars the provision of social services support to a person who is 'in breach of immigration laws', unless the support is necessary to prevent a human rights violation. EEA nationals with Pre-Settled Status have permission to stay in the UK, so they are not in breach of immigration laws, and no human rights assessment is needed.

KIND UK (Kids in Need of Defense UK) works to protect undocumented children in the UK.

- We provide free legal help to children, young people and families as they navigate the UK's immigration and nationality procedures. We partner with lawyers and law firms across the country to ensure the best quality legal advice and representation
- We protect the rights and wellbeing of undocumented children and young people
- We campaign for systemic change to ensure that all children are safe and able to thrive regardless of their immigration or nationality status

Last year we supported over 700 undocumented children, young people and families. Over 450 lawyers from 20 partner law firms worked on KIND cases, and we achieved a success rate of 99%.

KIND UK is a collaboration between five award-winning, UK based organisations that specialise in children's immigration and asylum law: Migrant and Refugee Children's Legal Unit, JustRight Scotland, Coram Children's Legal Centre, Central England Law Centre, and Greater Manchester Immigration Aid Unit.

We partner with KIND, a US charity supporting legal representation for children facing deportation proceedings alone.

For information about accessing KIND UK's services visit:

www.kidsinneedofdefense.org.uk/cases-we-take

Initial information about a child's immigration status/citizenship at:

www.pathtopapers.com

For information on other sources of legal advice visit:

www.kidsinneedofdefense.org.uk/where-to-get-legal-advice

For queries about this resource, please contact:

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