11th February 2019

Dear Work and Pensions Committee

This letter concerns a particular problem in the Department for Work and Pensions’ approach to investigating entitlement to benefit for European nationals and their family members who have recently fled domestic abuse. DWP guidance fails to adequately reflect the Department’s legal responsibilities and, as a result, vulnerable women and their children are being left without financial support for long periods of time.

When a claimant applies for benefit the responsibility falls to them to prove that they are entitled to the benefit. European nationals and their family members are required to show that they have a right to reside (part of the habitual residence test).

Many European claimants are able to provide the necessary evidence without difficulty. However, the most vulnerable claimants may not be able to provide this information. This is especially the case for women who have recently left abusive relationships. Many women in this situation will be able to show that they have a right to reside of their own (e.g. as a worker).

However, there are many of these women who are reliant on their ex-partner’s right to reside for their own right to access benefit – it may be that the abuse they experienced meant that they were unable to accept or maintain work and therefore do not have a right of their own. However, having left the abusive relationship they will be unable to contact their ex-partner for evidence of the ex-partner’s right to reside (e.g. wage slips, self-employment records, etc) without putting themselves at risk.

In the weeks before Christmas CPAG was contacted by a domestic violence support worker in a women’s shelter. She was supporting ‘Anne’ (not her real name) and her two pre-school age children, whose only income to meet living expenses was Child Benefit (a total of £34.40 to meet the costs for all three family members).

Anne had moved into the shelter shortly after she left her husband in October. Anne claimed Universal Credit at the start of November and had provided as much evidence as was
available regarding her husband’s self-employment (the best route for her to show that she was entitled to Universal Credit).

The decision maker refused to accept that her husband was self-employed or even present in the UK and Anne was unable to provide any further evidence due to the risk of violence if she made contact.

The decision maker was aware that Anne had been subject to violence and abuse by her ex-partner but failed to make any attempt to seek information which might have confirmed Anne’s husband’s self-employed status or residence in the UK.

The decision maker then went on to decide that, as Anne had not supplied relevant information (which was not available to her without her making contact with her abusive ex-partner), Anne had no right to reside and was not entitled to Universal Credit.

CPAG supported Anne to write to the Department’s legal section, an option not easily available to most claimants and their advisers, and helped her to lodge an appeal. Even with the involvement of the Department’s legal section the issue took a month to resolve (three months without income for Anne and her children, including over Christmas). Had Anne relied solely on the appeals process it might have taken even longer to resolve the issue.

During these months, at a time of traumatic personal and emotional upheaval, Anne and her two pre-school age children were without sufficient income to enable them to afford food and other basics and were forced to rely on food banks.

For some women experiences like this may push them to return to their abusive partner.

Cases such as Anne’s have been considered by the courts\(^1\). The judgment in *Kerr* made clear that where information is available to the Department rather than the claimant (such as in the case of a woman relying on their partner’s European worker status but unable to evidence this due to having recently fled the abusive relationship), then the Department must take the necessary steps to enable it to be traced.

However, CPAG finds that the guidance made available to decision makers is inadequate in guiding them to seek relevant information and that the guidance does not properly reflect the duty of the decision maker to seek information available to the Department.

Although, in Anne’s case, the Department resolved the issue the Departmental lawyers dismissed the suggestion that the guidance does not adequately reflect their legal responsibilities. CPAG believes that this response is incorrect and will mean that more women and children will be left unable to afford food and other essentials shortly after leaving abusive partners.

\(^1\) *Kerr (AP) v Department for Social Development* (Northern Ireland) [2004] UKHL 23
If Departmental guidance accurately reflected DWP’s duties, as set out in Kerr, then vulnerable women and their children will be less likely to experience destitution at the time that they are most in need of help to keep them and their family safe.

Yours sincerely,

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