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## No Recourse to Public Funds and Local Authority Obligations – a Briefing

#### June 2019

### NRPF

No Recourse to Public Funds (NRPF) is a term which is used in a number of different ways. A person may have NRPF either because:

* They require leave to remain in the UK and do not have it; or
* They have been granted leave to remain subject to a NRPF condition; or
* They have been granted leave to remain subject to a maintenance undertaking

While those within the first category cannot access public funds due to a lack of immigration status, for those in the second two categories, no recourse to public funds is a specified condition of their immigration status. ‘Public funds’ within the context of an NRPF condition on leave does not apply to all funds paid for from the public purse, but is limited to a specific list of public funds which can be found within paragraph 6 of the Immigration Rules. Broadly speaking it refers to all non-contributory welfare benefits, an allocation of social housing through the council register and homelessness assistance.

### Children Act 1989, Community Care Act and Human Rights Act

Assistance under social services legislation is not a public fund and in certain circumstances, local authorities may have a responsibility to assist individuals with NRPF.

#### Families with Children

S17(1)(a) of the Children Act 1989 states that:

*“It shall be the general duty of every local authority... to safeguard and promote the welfare of children within their area who are in need.”*

There is a requirement in the Act that as part of this duty, local authorities must carry out child in need assessment when they become aware of a child in their area where there are concerns about the child’s safety or welfare. It should be noted that:

* The threshold for assistance if very low. For most NRPF families, an indication that they do not have adequate accommodation and/or sufficient income to meet their basic living needs should be enough to trigger an assessment;
* The immigration status of the parent or whether or not they have a pending immigration application is not relevant to the duty to carry out the assessment (though may be relevant in considering whether exclusions to support apply;
* ‘local connection’ is not an issue. The physical presence of the child within the borough is sufficient to trigger the obligation. If there is any dispute as to this (e.g. child lives in one borough but attends school in another) there is a duty on the local authorities concerned to cooperate and to ensure that the child’s welfare is safeguarded while responsibility is being determined.

Specific groups of people are, however, excluded from receiving support and assistance under s17 of the Children Act. These groups are set out in s54 and Schedule 3 of the Nationality Immigration Asylum Act 2002 as follows:

*(1) A person who is not currently seeking asylum and is unlawfully present in the UK, for example:*

* *Visa overstayer*
* *Illegal entrant*
* *Refused asylum seeker, where the person claimed asylum in-country (usually at the Asylum Screening Unit in Croydon), rather than at port of entry (for example, at an airport immediately on arrival to the UK before passing through immigration control)*

*(2) EEA nationals (not UK nationals)*

*(3) A person granted refugee status by another EEA State*

*(4) Refused asylum seekers who fail to comply with removal directions, i.e., they have been issued with removal directions that provide a set time and means of leaving the UK and have failed to take this up*

*(5) Refused asylum seekers with dependent children who have been certified by the Secretary of State as having failed to take steps to leave the UK voluntarily*

If the parent of a child who is the subject of a child in need assessment falls within one of the excluded groups, then in addition to the child in need assessment, a human rights assessment must also be carried out. This is because, when a parent falls within one of the excluded groups, support under s17 of the Children Act can only be provided where a failure to do so would result in a breach of the family’s rights under the European Convention on Human Rights (ECHR) or EU Treaty rights.

The purpose of a human rights assessment is essentially to establish whether it is possible for the family to avoid being destitute in the UK (such destitution being a breach of their rights under Article 3 of the ECHR) by returning to the parent’s country of origin. The No Recourse to Public Funds Network distil the human rights assessment down to three essential questions:

1. Can the family freely return to the parent’s country of origin?
2. If so, would return result in a breach of the family’s human rights under the ECHR?
3. Would return result in a breach of the family’s rights under European treaties? (EEA nationals and dependent family members of EEA nationals)

The third of these questions must now also be considered in light of the government’s commitments around EU settlement, as outlined below.

In carrying out a human rights assessment, the local authority must establish whether there are legal or practical barriers to return for a family.

Legal barriers to return would be that the family have an outstanding immigration application or pending appeal for an application based on human rights grounds, usually Article 3 of the ECHR or Article 8 of the ECHR (which has now been largely subsumed into Appendix FM of the Immigration Rules).

Practical barriers to return might include such circumstances is the family being unable to obtain travel documents or being unable to travel due to ill health or pregnancy.

If a person has a right of residence under EU law, then an offer of return would usually be deemed to breach their EU Treaty rights. It should be noted that a right to reside in EU law is not exactly equivalent to a right to reside under the Habitual Residence Test in welfare benefits regulations and that therefore a refusal of welfare benefits on the grounds that a person has no right to reside should not be used as in indicator that the person does not have a right of residence in EU law.

Families who have leave to remain subject to a NRPF condition do not fall within the excluded groups and therefore require only a child in need assessment and not a human rights assessment. Local authorities have seen a large increase of applicants within this category due to a Home Office policy introduced in 2012 to automatically impose an NRPF condition on leave granted under Appendix FM of the Immigration Rules unless they deem that the family will be destitute or that it would otherwise impact on the welfare of a child if the family were not given recourse to public funds. Representations can be made when leave is first sought to request that a family be granted recourse to public funds, or an application can be after leave with NRPF has been granted for a change of conditions to remove the NRPF condition. These applications should be carried out by an experienced immigration practitioner if they are to have a good chance of success. Recent statistics released by UKVI show that around 75% of applications for a Change of Conditions are unsuccessful. Compared with the success rate of such applications at Praxis (over 95% successful) this indicates that unrepresented applicants are unlikely to be successful.

Under s17 of the Children Act, a local authority also has the power to provide emergency housing and/or financial support pending completion of a full assessment and should do so if a family would be destitute without such support.

It should also be noted that s17 requires local authorities to assist the family as a whole. The best interests of the child are a primary consideration in all assessments and offering to accommodate a child alone or taking a child into care will rarely be in the best interests of the child unless there are other safeguarding concerns other than those arising from the family’s destitution.

#### Adults

Local authorities may have duties to assist adults with NRPF who do not have children under the provisions of the Care Act 2014

The duty to carry out a Care Act needs assessment is based on an appearance of need and is not dependent on a person’s immigration status. All assessments must comply with the Department of Health’s guidance, *Care and support statutory guidance* (the Statutory Guidance)***.***

Local authorities have a duty to undertake an assessment under the Care Act when it appears that a person may have need of care and support and “...is ordinarily resident in the authority’s area or is present in its area but of no settled residence”. The Statutory Guidance states that local authorities must not delay in meeting a person’s needs when ordinary residence is not certain.

Those with NRPF may often have no permanent address and have moved addresses a number of times in a short period of time. Sections 18 and 19 of the Care Act establish that local authorities have a duty to meet eligible needs and a power to meet ineligible needs of a person who is physically present in their borough but has no settled residence.

Those excluded from assistance under the Care Act are identical to those excluded from assistance under the Children Act as outlined above and, also as above, the exclusions do not apply where a refusal to assist would breach a person’s rights under the ECHR or their EU Treaty rights. Therefore, if a person falls within an excluded group, a human rights assessment must be carried out.

When carrying out care and support functions, section 1 of the Care Act 2014 imposes a duty on local authorities to give consideration to:

*a) personal dignity (including treatment of the individual with respect);*

*(b) physical and mental health and emotional well-being;*

*(c) protection from abuse and neglect;*

*(d) control by the individual over day-to-day life (including over care and support, or support, provided to the individual and the way in which it is provided);*

*(e) participation in work, education, training or recreation;*

*(f) social and economic well-being;*

*(g) domestic, family and personal relationships;*

*(h) suitability of living accommodation;*

*(i) the individual's contribution to society.*

An NRPF condition will be a key consideration in assessing a person’s social and economic well-being and the suitability of their living accommodation.

The *Care and Support (Assessment) Regulations 2014* require that the person carrying out an assessment must have “...expertise in relation to the condition or other circumstances of the individual whose needs are being assessed in any case where it considers that the needs of the individual concerned require it to do so.” Therefore any person carrying out an assessment of a person who is NRPF must have an understanding of the potential impact of an NRPF condition on a person’s wellbeing, their support options, and whether the exclusions apply.

A person who is not deemed to have eligible care and support needs is entitled to other assistance including information and advice necessary to reduce, prevent or delay current or future needs. For a person who is NRPF this may include information and advice on immigration or changes of conditions.

If a person is subject to immigration control, Section 21 of the Care Act 2014 prevents a local authority from meeting needs, or providing preventative assistance under section 2(1) to some people with NRPF:

*“(1 ) A local authority may not meet the needs for care and support of an adult to whom section 115 of the Immigration and Asylum Act 1999 (“the 1999 Act”) (exclusion from benefits) applies and whose needs for care and support have arisen solely—*

*(a)because the adult is destitute, or*

*(b)because of the physical effects, or anticipated physical effects, of being destitute.”*

If a person is deemed eligible for support, section 8(1) of the Care Act setting out some examples of what may be provided:

*“(a) accommodation in a care home or in premises of some other type;*

*(b) care and support at home or in the community;*

*(c) counselling and other types of social work;*

*(d) goods and facilities;*

*(e) information, advice and advocacy.”*

Social services will need to consider whether subsistence and accommodation should be provided in order to meet the needs of a person with NRPF for care and support.

If eligibility for care is established, the rules and regulations governing financial assessments are the same for all people regardless of their nationality or immigration status, so people with NRPF should be subject to the same assessment process as everyone else. The NRPF Network suggests that a light-touch financial assessment would be a sensible option when a person’s only means of support is payments from social services.

### Discretionary Powers

Local authorities do have discretionary powers to provide housing and financial support to a person with NRPF who is not eligible for care and support, including accommodation, under the Care Act 2014. Section 19(1) of the Care Act and section 1 of the Localism Act 2011 may be used to prevent a breach of human rights or to manage a situation where failing to meet a person’s needs could have serious long term consequences for the individual and local authority.

The Care Act 2014 requires local authorities to consider using the section 19(1) power when a person does not have eligible care and support needs. Failure to consider this and document reasons why the power is not engaged will be unlawful.

Support under section 19(1) of the Care Act may only be provided to a person who is in a group excluded by Schedule 3 of the Nationality, Immigration and Asylum Act 2002. When return is not possible, or where a person requesting assistance is not in an excluded group, then the local authority must determine whether their circumstances are such that refusing to provide accommodation under section 19(1) would result in a breach of their human rights.

**Pregnant Women**

The National Assistance Act 1948, which preceded the Care Act 2014, contained a power for local authorities to provide care and support to expectant and nursing mothers who do not have care needs in addition to those associated with pregnancy. There was no requirement for the pregnancy to be at a particular stage in order for this support to be provided. When the government consulted on the Care Act eligibility regulations, responders, including local authorities, confirmed that no one who would have been provided with accommodation under the previous legislation would fall out of scope of the Care Act.

When an expectant mother with NRPF, who has no children in her care, requests assistance with housing, then the local authority should therefore consider using the general power under section 19(1) of the Care Act to provide support, and may also provide interim accommodation under section 19(3) to prevent homelessness before a needs assessment has been concluded.

#### Localism Act 2011

Where a person does not have eligible care and support needs and the local authority has decided not to use section 19(1) of the Care Act 2014 to meet non-eligible needs, it should consider whether to use its general power of competence under section 1 of the Localism Act 2011. This gives the local authority a power to do anything that an individual generally may do, and may exercise this power in any way, including for the benefit of residents. An example of when this power may be used is when victims of trafficking, modern day slavery or domestic violence may require assistance due to the gaps in the support available to them.

#### Duty to Inform the Home Office

Paragraph 14 of Schedule 3 of the Nationality Immigration Asylum Act 2002 requires a local authority to inform the Home Office when a person requesting support from social services is, or may be, excluded from receiving care and support on the basis that they are:

* suspected or known to be unlawfully present in the UK,
* a refused asylum seeker who has not complied with removal directions, or
* a refused asylum seeker with dependent children who have been certified by the Secretary of State as having failed to take steps to leave the UK voluntarily.

This duty should be explained to a person when they present to the local authority and by any agencies referring people to social services.

### Homelessness Reduction Act

On 3 April 2018, the Homelessness Reduction Act 2017 came into force in England. Although those with NRPF are still excluded from an allocation of social housing from the local authority or homelessness assistance under the Housing Act 1996, local authorities do have a duty to provide advice and information about homelessness prevention and alternative options to everyone. This should include include details of how people can access support from social services, Home Office asylum support, welfare benefits advice, immigration advice and local voluntary services. Those who make a homelessness application and are found to be ineligible for assistance should be referred to any appropriate service for which they may be eligible.

To comply with the Homelessness Reduction Act 2017 and cooperation duties set out in the Care Act 2014 and Children Act 2004, homelessness teams and social services should establish systems to work effectively together to assist those with NRPF.

### EU Settlement Scheme

As noted above, the provision of social services assistance to EEA citizens and their family members is usually subject to a human rights assessment to determine whether any EU Treaty rights would be breached if the family were to leave the UK. However, the UK government has committed to protect the rights of EU nationals and their family members in the UK to remain in the UK and maintain their rights through the application of the EU Settlement Scheme. In light of this, the NRPF Network recommends that local authorities should be “cautious in applying the exclusion to social services’ support, and should seek further advice from their legal teams if there is any uncertainty about how to determine an application for support.”