

## No Recourse to Public Funds – Frequently Asked Questions

### What do we mean by ‘No Recourse to Public Funds’?

No Recourse to Public Funds (NRPF) is used in a number of different ways. This can be confusing and often the first question you need to answer if you are dealing with someone who is defined as being NRPF is, “why does this person have NRPF?”.

To clarify NRPF can mean:

- A person has leave to remain in the UK but the leave is subject to a condition of NRPF. In this definition of NRPF there is a legal definition of what constitutes “public funds”.
- A person has no legal status in the UK and therefore cannot access a range of services including welfare benefits and housing because of that lack of status.
- A person is an EEA citizen but cannot pass the Right to Reside test to access welfare benefits to which the test applies or social housing.

Also, sometimes people who have immigration status may be unable to access public funds if they do not have the documents required to prove their status. This may be because they have lost them or because they were never given a legal document (as in the Windrush cases).

While asylum-seekers have NRPF in that they cannot claim mainstream welfare benefits or housing, there is a separate system of asylum support set up for asylum seekers who would otherwise be destitute while their asylum claim is processed.

### What are ‘public funds’?

Public funds are defined by s115 of the Immigration and Asylum Act 1999. They are:

- Attendance Allowance
- Carer’s Allowance
- Child Benefit
- Child Tax Credit
- Council Tax Benefit
- Council Tax Reduction
- Disability Living Allowance
- Housing Benefit
- Income-based Employment Support Allowance

- Income-based Jobseekers Allowance
- Income Support
- Personal Independence Payment
- Severe Disablement Allowance
- Social Fund Payments
- State Pension Credit
- Universal Credit
- Working Tax Credit
- Any discretionary welfare payment made by a local authority
- An allocation of housing under the Housing Act 1996

Public funds **do not** include contributory benefits, legal aid, social services support or health services (though access to health services is governed by other legislation). In addition, it **does not** include pay received under the Coronavirus Job Retention Scheme (ie furlough pay) or the Coronavirus Self-Employment Income Support Scheme.

## What powers to do local authorities have to support those 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 is 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 as 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 an 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.

## Do local authorities have to report people with no immigration status to 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.

There are no equivalent duties for any other local authority services and they should therefore have regard to their duties of confidentiality and data protection in relation to any other contact with those with insecure immigration status.

## Can people with NRPF access health care?

There is no restriction on who can register with a GP – anyone, regardless of immigration status is able to do so. However, those who have no immigration status may struggle if they cannot provide proof of address or identity requested by a surgery.

<https://www.bma.org.uk/advice-and-support/gp-practices/managing-your-practice-list/patient-registration>

Doctors of the World can help those who are struggling to register with a GP

<https://www.doctorsoftheworld.org.uk/patient-clinic/>

However, secondary care (generally includes all hospital treatment) is regulated by the Overseas Visitors Charging Regulations. These regulations state that to be entitled to free secondary care a person must be 'ordinarily resident' in the UK.

Those with no immigration status may find themselves refused treatment unless they can pay up front or charged for treatment which they receive.

Some kinds of treatment should always be free. This includes:

- treatment in A&E
- Treatment for STIs, including HIV
- Family planning services (excluding terminations)

- Palliative care services provided by a charity or social interest company
- Treatment for a specified infectious disease (eg TB)
- Treatment that is necessary as a result of torture, FGM, domestic or sexual violence

Treatment for Covid-19 has also been included in the list of diseases which will not be charged for.

Some groups of people should always be entitled to free health treatment. These are:

- Asylum seekers including refused asylum seekers in receipt of s4 Asylum support
- Refugees and their dependants
- Survivors of human trafficking who have passed through the National Referral Mechanism
- Children in the care of a local authority
- People who have paid (or been exempted from) the Immigration Health Surcharge (this will include everyone granted over six months of limited leave)
- Those compulsorily detained under a mental health order, immigration detainees and prisoners
- EEA nationals who are 'lawfully present'
- Citizens of countries with whom the UK has a bilateral health agreement

No one should be denied treatment which is 'immediately necessary and urgent'. However, they may be charged for the treatment. Only a clinician should decide what constitutes immediately necessary and urgent treatment. All maternity services are deemed 'immediately necessary'.

BMA guidance can be found here:

<https://www.bma.org.uk/advice-and-support/ethics/refugees-overseas-visitors-and-vulnerable-migrants/access-to-healthcare-for-overseas-visitors>

### **Do health services share data with the Home Office?**

An agreement between the NHS and the Home Office to provide contact data (ie address) for undocumented migrants was suspended indefinitely some time ago. However it has not been completely scrapped. Hospitals have a duty to inform the Home Office of any person who has a debt of £500 or more to the NHS. However, this should be restricted to name, date of birth and country of origin.

### **What are the pathways out of having no recourse to public funds?**

Pathways out of no recourse to public funds depend on the reason a person has no recourse to public funds:

### ***Those with Limited Leave to Remain with NRPF on the 5 year or 10 year pathway to settlement***

Those who have leave subject to an NRPF condition may be able to apply for a 'change of conditions' and get the NRPF condition removed from their leave. However, this is an immigration application and should only be carried out by a registered immigration adviser or solicitor. Advice should be sought, particularly by those on the 5 year pathway to settlement, as a change of conditions application can have consequences on their pathway to settlement.

### ***EEA Citizens who cannot pass the Right to Reside Test***

Strictly speaking, these are not people with 'no recourse to public funds' but in practice the impact of being unable to pass the right to reside test to access benefits is broadly the same. An EEA national may have a number of routes to access benefits, so a benefits adviser with expertise in this area should be consulted. However, broadly speaking, an EEA national gains access to benefits in one of two ways:

- By exercising treaty rights. That is by working, being self-employed, a student, a self-sufficient person, or a qualifying family member of an EEA national exercising treaty rights. Those who have worked or been self-employed for a period of time will retain 'worker status' for some period of time enabling them to access unemployment benefits.
- By obtaining settled status under the EU Settlement Scheme, which means that a person can evidence 5 years residence in the UK.

### ***Those with no immigration status in the UK***

Those with no immigration status in the UK will not be able to access public funds unless they are granted some kind of leave to remain in the UK. They will need immigration advice to establish whether or not an immigration application is possible.