NRPF Network Factsheet

Supporting people with no recourse to public funds during the coronavirus (Covid-19) pandemic

Introduction

The UK is currently facing a public health crisis due to the coronavirus (Covid-19) pandemic. Government regulations and Public Health England guidance on self-isolation, social distancing, and the shielding of vulnerable individuals apply to everyone living in England, regardless of their nationality, main country of residence or immigration status.

Local authorities have led responses to protect their residents, including the provision of emergency accommodation to people who have no recourse to public funds (NRPF) and who would have otherwise been unable to comply with shielding, self-isolation and social distancing requirements.

Although planning for longer-term solutions must begin to prevent people who have been accommodated from returning to rough sleeping after the lockdown measures are eased, the economic impacts of the lockdown, the potential for further localised outbreaks and the roll out of the test and trace programme are likely to lead to more people experiencing homelessness as incomes are affected and requirements to self-isolate continue to apply.

As a result, it is highly likely that local authorities will experience increasing numbers of support requests from people with no recourse to public funds whilst the pandemic is ongoing and throughout the recovery period. Many local authorities have reported that government funding has been insufficient to cover the full costs of the emergency responses they are delivering to protect vulnerable residents. Despite calls from the sector and others for the no recourse to public funds condition to be temporarily suspended, a significant number of residents remain unable to access the safety-net offered by the Government through the benefits system. Without such immigration policy change or further funding, supporting people with no recourse to public funds will continue to place additional pressures on local government budgets.

We aim to keep this factsheet updated as the situation changes but latest government guidance should always be referred to.

This factsheet provides information for local authorities in England on:

Part 1: Support for people with NRPF

Part 2: Rights, entitlements and Home Office changes

Information on housing, social care and health may be different in Wales, Scotland and Northern Ireland.
Part 1: Support for people with NRPF

1 Homelessness response

On 26 March, the Government’s ‘bring everyone in’ strategy to assist homeless people during the pandemic, including those who have no recourse to public funds, was announced through a letter to local authority Chief Executives and Leaders, requiring councils to accommodate people who were rough sleeping, at risk of rough sleeping or living in accommodation where it is difficult to self-isolate, such as shelters and assessment centres.

As of mid-May, local authorities have reported that they have accommodated 14,610 people. It is not reported how many of these people are subject to the no recourse to public funds condition or are EEA nationals who are ineligible for benefits.

Whilst Covid-19 remains a public health risk, local authorities will need to continue to provide accommodation when this is required, alongside identifying longer-term arrangements for those already in emergency accommodation.

The Government has recently confirmed that ‘the legal position on those with no recourse to public funds has not changed’. Despite multiple calls from local government and others for the temporary removal of the no recourse to public funds condition to enable all residents in need to access the support they require, there have been no changes to this immigration policy, or to the housing and benefit eligibility rules. Although requested by local authorities, the Government has not provided any further guidance to local authorities with regards to how they can achieve sustainable long-term accommodation solutions for people who have been assisted as part of the public health response when no legal duties or powers are engaged to provide ongoing support.

Whilst accommodation is being provided on public health grounds, local authorities will need to use this opportunity to work with individuals to identify and achieve sustainable step-down outcomes. This will include establishing whether a person can be referred to social services or the Home Office for support and how a sustainable outcome may be achieved, for example, by obtaining legal advice to make an immigration claim.

2 Social services’ support

2.1 Social services’ support for adults

Section 18 of the Care Act 2014 requires a local authority to meet an adult’s eligible care and support needs that have arisen due to a disability, illness or mental health condition. This may include the provision of accommodation, where this is required to enable the appropriate care to be administered. Section 19(1) provides a power to meet non-eligible care and support needs. Section 19(3) provides a power to meet urgent care and support needs whilst a needs assessment is undertaken.

Provisions in the Coronavirus Act 2020, which came into force on 31 March 2020, allow for Care Act ‘easements’ to be implemented by a local authority when certain circumstances apply. If applied, the local authority will have a power to meet needs and would only have a
duty to meet care and support needs when failure to do so would breach the person’s human rights. The easements may only be applied when a local authority is unable to meet acute needs due to a depleted workforce or significant service demand. A decision to apply the easements can only be taken in line with government guidance.

The Courts have ruled that section 1 of the Localism Act 2011 (the general power of competence) cannot be relied upon to provide accommodation when a person is ineligible under the Housing Act 1996 and the Care Act 2014.

2.2 Social services’ support for families

Section 17 of the Children Act 1989 will be engaged to provide accommodation and/ or financial support to a family where the child is assessed as being in need because of their parent’s lack of income or resources to be able to meet their living and/or housing needs.

Some of the measures introduced by the Government to assist people who lose employment during the pandemic may be accessed by people with no recourse to public funds, but if they do not meet the requirements or this provision is insufficient to adequately protect a family’s income and/ or accommodation arrangements, the local authority may be required to provide support under section 17. Whilst Covid-19 continues to present a public health risk, a flexible approach may need to be undertaken when assessing need to ensure that children are protected and public health risks are reduced.

The local authority may need to consider the following:

- Interim support can be provided whilst a child in need assessment is undertaken.
- To what extent investigations into the parent’s financial circumstances need to be undertaken in light of the urgent need to protect children and reduce any public health risks by taking immediate steps to prevent homelessness.
- Signposting to information about entitlement to Statutory Sick Pay and other measures if the parent is unable to work or has lost employment. See Part 2(5).
- Whether finance support (subsistence) may need to be provided to families who are able to stay in their accommodation but have a reduced income due to coronavirus.

2.3 Schedule 3 exclusion

Schedule 3 of the Nationality, Immigration and Asylum Act 2002 places a bar on a local authority from being able to provide support under the Care Act 2014 or section 17 of the Children Act 1989 to a person who is in an excluded group, unless this is necessary to prevent a breach of human rights. When the exclusion applies, the local authority will undertake a human rights assessment to determine whether the person is able to return to their country of origin to avoid a human rights breach, which may arise from their situation of destitution in the UK.

Many countries have closed their borders or introduced entry restrictions, and several airlines have stopped operating or significantly reduced their service, so travel to the majority of countries is going to be extremely difficult or impossible to arrange. Additionally, a person who contracts coronavirus, or who is required to self-isolate or shield themselves, cannot be expected to travel for public health reasons. Whilst these barriers to return apply, local authorities will be unable to refuse or withdraw support when a person is an excluded group and is eligible for assistance under section 17 of the Children Act 1989 or the Care Act 2014.
2.4 Assisting people who are receiving social services’ support

Local authorities will need to consider how they can continue to deliver support to people with no recourse to public funds to enable them to comply with government guidance on shielding, self-isolation, and social distancing.

Some steps that may be taken include:

- Maintaining regular telephone or email contact with a person who has been diagnosed with coronavirus or is required to self-isolate.
- Provide reassurance and help a person to understand and follow any advice given to them by medical professionals and/or their housing provider.
- Ensure that the service has an accurate record of elderly people and people with complex medical conditions who may be more seriously affected if they contract coronavirus; maintain regular contact to monitor their wellbeing.
- Provide information to people about how they can reduce risks and keep updated about school closures and linking them to any local volunteer services if help is needed with getting essential applies.
- Provide information to people who are working about their rights to Statutory Sick Pay or other government assistance if they are required to self-isolate or are unable to work due to contracting the virus.
- Make arrangements for subsistence payments to continue when face to face contact is not taking place, for example, by using pre-paid cash cards or extending payment periods.
- Ensure that each person’s contact details are up to date and that people receiving support are provided with contact details for their social worker/ caseworker and their housing provider.
- Advise people to inform their social worker/ caseworker if they have any problems accessing legal advice or relating to their immigration case.

2.5 Subsistence payments

Administering subsistence payments will need to be done by avoiding methods involving face to face contact and cash transactions, where possible, for example, by:

- Issuing pre-paid cards and pre-ordering these to have ready
- Paying funds directly into a bank account, if the person has one
- Providing payments to cover longer periods of time than usual

It may be necessary to review the amounts regularly paid to reflect the impact of having to stay at home for more time than usual and to help people to maintain their physical and mental wellbeing during the pandemic.

For example, payments may need to take account of the following:

- Children may need access to books, writing and drawing materials
- Children may no longer be receiving free school meals (N.B. Children in households receiving section 17 support are now eligible for the voucher scheme or alternative free school meal provision)
- Increased use of utilities
- Increased use of more expensive local shops to avoid travel to supermarkets or due to shortages of key items in larger stores
• Increased use of mobile phones and the internet for communication, education and social interaction
• Increase of asylum support rates recently announced by the Home Office, particularly when these are benchmarked in local subsistence policies

2.6 Ending support

A local authority will need to comply with changes to eviction and possession proceedings that have been introduced by the Government and courts to protect the position of tenants during the pandemic and prevent homelessness. As a result of these changes, and in line with government guidance on postponing home moves (which have recently been eased), some local authorities have imposed a blanket ‘no eviction’ policy. The protections for tenants and/or any local policy must be followed when social services’ support would normally be withdrawn following a change of circumstances. For example, when a grant of leave to remain with recourse to public funds would normally lead to a move into temporary accommodation provided by a housing authority, social services may need to continue providing accommodation and subsistence until a safe transfer can be arranged and benefits are received. See Part 2(6).

3 Home Office asylum support

A person who has claimed asylum or is appeal rights exhausted (ARE) following an asylum application may be eligible to apply for Home Office asylum support. The Home Office has stated that: ‘those asylum seekers who would otherwise be destitute are supported by the Home Office on application, rather than local authorities’.

If Home Office support cannot be immediately accessed, the local authority may need to provide accommodation to prevent homelessness on public health grounds or when social services’ duties are engaged. A subsequent safe transfer to asylum support would need to be undertaken with regards to any local policy regarding ending local authority support. See Part 1(2.6).

The Home Office has confirmed that, until at least the end of June, it will not be asking people leave their asylum accommodation when their asylum claim is finally determined.

As of 15 June, section 95 and section 4 asylum support rates increased to £39.60/ week.

For more information about current measures relating to asylum support, see:

• Home Office Factsheet - Asylum Accommodation, Applications and Interviews
• Right to remain - Changes to the asylum and immigration process due to Covid-19

For more information about applying for asylum support, see:

• Migrant Help
• Asylum Support Appeals Project - Covid-19 and asylum support
Part 2: Rights, entitlements and Home Office changes

1 Coronavirus (Covid-19) information

Government information on coronavirus should be referred to in the first instance for the current requirements that the general public and local authorities need to follow with regards to self-isolation, social distancing and providing services. This information changes regularly.

For more information, see:

- UK Government - Coronavirus (COVID-19): what you need to do
- UK Government - Coronavirus (COVID-19): guidance for local government
- Local Government Association (LGA) - Information for councils

2 No recourse to public funds (NRPF)

No recourse to public funds (NRPF) is an immigration condition that prohibits access to:

- Certain benefits
- Homelessness assistance under Part VII of the Housing Act 1996
- A local authority allocation of social housing under Part VI of the Housing Act 1996

A person will have no recourse to public funds when they are a national of a non-EEA country and have:

- Leave to remain with the NRPF condition
- Leave to remain subject to a maintenance undertaking e.g. adult dependent relative
- No current immigration permission e.g. a visa overstayer

European Economic Area (EEA) nationals and their family members are not subject to the NRPF condition but may be unable to claim benefits and housing assistance if they have not obtained settled status (indefinite leave to remain) under the EU Settlement Scheme and are not economically active.

3 NHS treatment

People who are in the UK on a visit visa, or who do not have any current immigration permission, will usually be required to pay for secondary and community NHS healthcare, including most types of treatment provided in a hospital. However, special provisions have been made regarding NHS charging in relation to coronavirus:

- No charges will be made for the diagnosis or treatment of coronavirus (COVID-19). This includes testing, even if the result is negative, or any treatment provided if the result is positive or up to the point that it is negatively diagnosed.
- NHS trusts have been advised that no immigration checks are required for overseas visitors who are known to be only undergoing testing or treatment for COVID-19.
For more information, see:

- NHS Migrant Health Guide
- Doctors of the World (translated information)

## 4 Assistance for extremely vulnerable people

Public Health England continues to recommend that people who are at very high risk of severe illness from coronavirus because of an underlying health condition, including children, follow shielding measures to keep themselves safe. Food and medicines may be delivered to people who are shielding and need help getting essential supplies. The person, or someone on their behalf, can request this support by completing this online form.

For more information, see the Government guidance:

- Guidance on shielding and protecting people defined on medical grounds as extremely vulnerable from COVID-19
- Get coronavirus support as an extremely vulnerable person (online form)

## 5 Assistance for people who lose employment

The Government has announced a series of measures to help people who are unable to work due to contracting coronavirus or having to self-isolate, or who have lost their employment or closed a business due to coronavirus.

The following types of assistance are not 'public funds' for immigration purposes and can be claimed by a person who has no recourse to public funds when they meet the relevant requirements:

- Statutory Sick Pay (SSP)
- ‘New style’ or contribution-based Jobseeker’s Allowance (JSA)
- ‘New style’ or contribution-based Employment and Support Allowance (ESA)
- Wages paid through the Coronavirus Job Retention Scheme (‘furloughed workers’)
- Coronavirus Self-employment Income Support Scheme
- Other work-related benefits that are listed here

The following types of assistance are ‘public funds’ for immigration purposes and cannot be claimed by a person who has no recourse to public funds:

- Universal Credit
- Other benefits on this list

For more information, see:

- UK Government - COVID-19: guidance for employees, employers and businesses
- Home Office - Coronavirus (COVID-19): get support if you're a migrant living in the UK
6 Free school meals

Whilst schools are closed, free school meals may still be provided to children who are eligible for these. If schools are unable to arrange this, parents of eligible children will have access the Government’s national voucher scheme.

Free school meals are provided universally to children who are in reception, year 1 and year 2. Children can receive these regardless of their or their parent’s immigration status.

For children in other school years, the Government has previously only funded free school meals when a parent is receiving a qualifying benefit, indirectly excluding children in households where parents have no recourse to public funds.

As a temporary measure during the coronavirus crisis, the following children will now qualify for free school meals:

- Children whose parents/carers are ‘Zambrano’ carers (has a European derivative right to reside in the UK as the primary carer of a British child) and have a maximum income of £16,190.
- Children in families who have been granted leave to remain with NRPF on the basis of Article 8 (family or private life) grounds and have a maximum income of £16,190.
- Children in families who have no recourse to public funds (NRPF) and are receiving support from the local authority under section 17 of the Children Act 1989 and have a maximum income of £16,190.
- Children in Appeal Rights Exhausted (ARE) asylum seeking families who are receiving section 4 asylum support from the Home Office.

For more information, see the Government guidance:

- Coronavirus (COVID-19): free school meals guidance for schools

7 Protections for tenants

Measures to prevent people who are renting from being made homeless through eviction proceedings have been extended until the end of August. Legislation has been passed that requires landlords to give all tenants at least three months’ notice if they intend to end the tenancy, regardless of the grounds for this. This will apply to most types of tenancies issued in the private and social housing sectors.

The courts have suspended all ongoing housing possession action until the end of August. This covers some types of tenancies and licence agreements.

For more information, see the Government guidance:

- COVID-19 and renting: guidance for landlords, tenants and local authorities

8 Home Office change of conditions applications

A person who has leave to remain with no recourse to public funds condition may be able to apply for a change of conditions to request that the NRPF condition is lifted if: they are
homeless and/or cannot afford their basic living costs, or are at imminent risk of this; a child’s welfare is at risk; or other exceptional circumstances apply.

The change of conditions process is available to a person who has been granted leave to remain under one of the following categories:

- A partner or parent under Appendix FM under the 10-year route to settlement
- Private life under paragraphs 276BE(1) or 276DG of the Immigration Rules
- Outside the private life rules on Article 8 grounds under paragraph 276BE(2)

In new guidance, the Home Office states:

‘You can also be eligible to apply if you have leave to remain under the 5 year partner/parent route. If you’re accepted you would be considered to have moved on to the 10 year route to settlement and as such any future applications for leave will be considered under the 10 year route. However, when you come to reapply if you feel that you again meet the criteria under the 5 year route you should be aware that any leave you had previously accumulated under the 5 year route will not count towards your new 5 year period.’

This may be an option for some people with NRPF who lose employment and cannot get back into work due to the impact of the coronavirus pandemic. However, it will not help, for example, a person who has leave to remain granted under the points based system. In all cases, it is advisable that assistance is sought from an immigration adviser to make the application, particularly if they are a person with leave to remain as a partner or parent on the 5-year route as this may affect when they are able to apply for indefinite leave to remain.

For more information, see:

- Home Office - Online application information
- Home Office - Family life (as a partner or parent), private life and exceptional circumstances (policy document)
- NRPF Network - Legal aid and finding advice

9 Home Office processes

The Home Office has made changes to some of its processes and has introduced measures for people to extend their leave if they are unable to leave the UK or if they are certain NHS or social care workers. Anyone else will need to apply for leave to remain in the usual way. Where possible, it is advisable for a person to obtain immigration advice for help with making their application or to find out their best course of action if the new measures apply.

For up to date information about Home Office changes, see:

- Home Office factsheets
- Free movement blog
- Right to remain
- Refugee Council

Written by Catherine Houlcroft, NRPF Network Principal Project Officer
Email: nrpf@islington.gov.uk