Supporting people with no recourse to public funds

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Rachel Salmon, LGIU Associate

Summary

• Legislation from successive governments aimed at reducing migration or cutting welfare spending means that more people have no recourse to public funds (NRPF);

• Despite this, local authorities can still be required to offer financial and personal support and accommodation, e.g. if the applicant has children facing destitution or if they are disabled and require care and attention;

• These requirements are placing increasing cost-pressures on councils at a time of declining resources, leading to allegations that central government is cost shunting;

• The Department for Communities and Local Government is currently assessing these impacts;

• This briefing estimates the numbers affected by NRPF and draws on good practice from councils and other agencies to identify what can be done to assist them;

• This briefing will be of particular interest to members and staff working in housing, benefits, adult, and children’s social care and those concerned with policy, human rights and equality

Briefing in full

Why do some people have no recourse to public funds?

Successive legislation means that increasing numbers of people have no recourse to public funds, but councils still have a duty to provide financial support and practical assistance in some cases.
Section 115 of the 1999 Immigration and Asylum Act states that a person has no recourse to a specified list of public funds if they are subject to immigration controls. However, support provided under community care or children’s legislation is not on the list. So, under Section 21 of the 1948 National Assistance Act councils have a duty to provide residential accommodation to those who, for reasons of old age, illness, disability or any other reason are in need of care and attention. They also have a power to support new and expecting mothers.

Section 17 of the 1989 Children Act requires local authorities to safeguard and promote the welfare of children in need and promote the upbringing of these children by their families – although they do not have to provide this support if the family is already in receipt of asylum support. Section 23C, 24A and 24B set out councils’ duties regarding on-going support to care leavers.

Councils cannot withdraw support they provide under the Children Act in cases where Leave to Remain applications are outstanding, or where they have been refused, but no removal directions served. Councils are dependent on the Home Office to resolve cases swiftly.

In 2012 the Home Office introduced the Destitution (Domestic Violence) Concession. Women in Britain on spousal visas escaping domestic violence can have their NRPF lifted to enable them to access housing and benefits while they apply for settlement.

Under schedule 3 of the 2002 Nationality, Immigration and Asylum Act local authorities are required to consider whether withholding support to EEA nationals or those with asylum status in other EEA countries here illegally would breech their human rights or their rights under EU treaties.

A change to the Family Migration Rules in 2012 means that families granted Leave to Remain also had no recourse to public funds, unless they can show that they were or have subsequently become destitute. However, from January this year destitute families can request the Home Office remove their NRPF status.

In 2011 the European Court of Justice ruled that a sole parent or guardian of a child who was a British national had the right to remain in the EEA even if they had ‘unsettled’ immigration status. In 2012 the British government amended benefit regulations to prevent these families accessing public funds.

Changes to regulations regarding financial support for higher education students in 2011 mean that local authorities must pay student fees and support costs of care leavers.

Guidance on NHS charges for hospital services for overseas visitors state that those with NRPF supported by local authorities are still liable to pay. Some Leave to Remain LTR applications may be refused if there are unpaid NHS bills, so local authorities may feel a moral obligation to meet NHS costs when they believe a client has a good case for LTR, or to ensure cases are resolved quickly. Measures to curtail Legal Aid for LTR applications made on the basis of ‘right to family and private life’ are leading to delays resolving cases and councils having to meet legal costs.
POLICY BRIEFING

Recent case law has also confirmed that councils cannot rely on Home Office support when care leavers claiming asylum have had Appeal Rights Exhausted, ARE. Councils in dispersal areas are also providing ‘stop gap’ support to asylum seekers before Home Office asylum support comes through, or after its withdrawal following a successful application.

In addition the government has recently introduced new restrictions on EEA nationals’ rights to Jobseekers’ Allowance and Housing Benefit, the 2014 Immigration Act introduced powers to extend charging for NHS services to non EEA nationals and provided for landlord checks for migrants, which could result in more evictions and destitution. Cases like PO v London Borough of Newham (2014) found that paying subsistence rates at child benefit levels was inadequate. There are also concerns that draft regulations governing eligibility for support under the 2014 Care Act are more ambiguous and therefore open to legal challenge than the 1948 National Assistance Act.

All this means that, at a time of shrinking resources, local authorities will increasingly have to shoulder the costs of supporting those with no resource to public funds.

How many people are affected?

An analysis by the NRPF Network in January 2014 of ten councils who use the NRPF Connect database found most of the 1,006 people with NRPF receiving support were visa overstayers awaiting decisions. The proportion of asylum seekers provided with stop gap support is higher in dispersal areas. EEA nationals are also represented. Jamaica and Nigeria, followed by Pakistan and Ghana are the most common countries of origin.

The Centre on Migration Policy and Society Compas, estimates there are at least 120,000 ‘irregular’ migrant children living in the UK. Housing Justice estimates there are nearly 300,000 people living in the UK with no recourse to public funds, who would have to turn to their local councils for support if they lost their job or became destitute.

How much is it costing councils to provide support to NAPF cases?

The total cost to these ten councils of providing NRPF support was £16 million. The average per household was £15,500. More than four fifths of households were being supported under the Children Act or were care leavers or expectant or nursing mothers. The average duration of support in cases recorded by NRPF Connect was 647 days. The longest case had been running for 14 years.

How are Councils and other organisations supporting people with NRPF?

Understanding Complex Communities: Southwark Council

Southwark Council commissioned ESRO to find out more about the daily lives and attitudes of growing new entrant communities in the borough on key topics like housing, employment, health and community safety. A range of methods were used...
including a survey, focus groups, ethnographic, and immersive techniques. Two reports have been published, the first on Chinese and Latin American Communities found significant numbers of students and undocumented migrants in these communities. While over 70% of adults in each community were in work, 40% of employees were paid in cash.

The second, on Families and Hardship in new and established communities looked at five communities likely to be undercounted in official estimates: Francophone Sub-Saharan Africans, Bangladeshis, Arabic speakers, Nigerians and Sierra Leoneans. Less than half of those surveyed had responded to the 2011 Census. Fear of being tracked by the UK Boarder Agency UKBA, was one of the reasons given for not responding.

Islington Council, along with others like Lambeth, Birmingham and Manchester runs a NRPF team providing specialist advice and emotional support, help accessing funding from the UKBA and other sources, signposting to voluntary agencies and statutory services like schools, as well as coordinating assessments for community care and NRPF eligibility. The Islington team also runs the national NRPF Network.

The London Hosting Network, Praxis

The London Hosting Network brings together those with a spare room or even a sofa-bed with homeless or destitute people with NRPF. The aim is to increase the supply of accommodation and reduce rough-sleeper numbers.

NRPF Connect, NRPF Network

This is a database which enables local authorities to track and monitor clients. It links with Home Office systems, other local authorities and teams within a council so intervention can be co-ordinated and checks made quickly to prevent fraud and speed up case resolution.

The Home Office and NRPF Network are encouraging councils to subscribe to the NRPF Connect, which costs £2,000 a year.

Free training for advisers Project 17/NRPF Network

Project 17 is a charity tackling destitution among migrant children. It offers direct advice and support to people with NRPF and provides training to frontline workers and those advising people with NRPF.

The NRPF Network provides training for councils as well as a series of online practice guides.
Policies on migration and benefits are creating a growing number of people with no recourse to public funds. However, the government has not provided a reliable estimate of numbers affected or the costs to local authorities, leaving it to charities and the NRPF Network to piece together data and come up with a best guess.

In recent months DCLG has indicated that it will undertake a New Burdens Assessment in relation to NRPF. Depending on the outcome it may: extend the process whereby destitute families can request the lifting of the NRPF condition; enable sole carers of children who are British nationals to access benefits; change rules in relation to the provision of stop gap support to asylum seekers and the requirement to meet higher education costs. The NRPF Network has said it will work with councils to collect evidence.

While these measures, if implemented, will ease some of the pressure on local authorities, plans to extend charging for NHS services and further curtail welfare entitlement for EEA nationals are likely to create fresh challenges and cost pressures.

In future the government must take full account of the impact of their policies on migrants and the councils who support them. They need to be adequately supported and recompensed.

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For more information about this, or any other LGiU member briefing, please contact Janet Sillett, Briefings Manager, on janet.sillett@lgiu.org.uk