

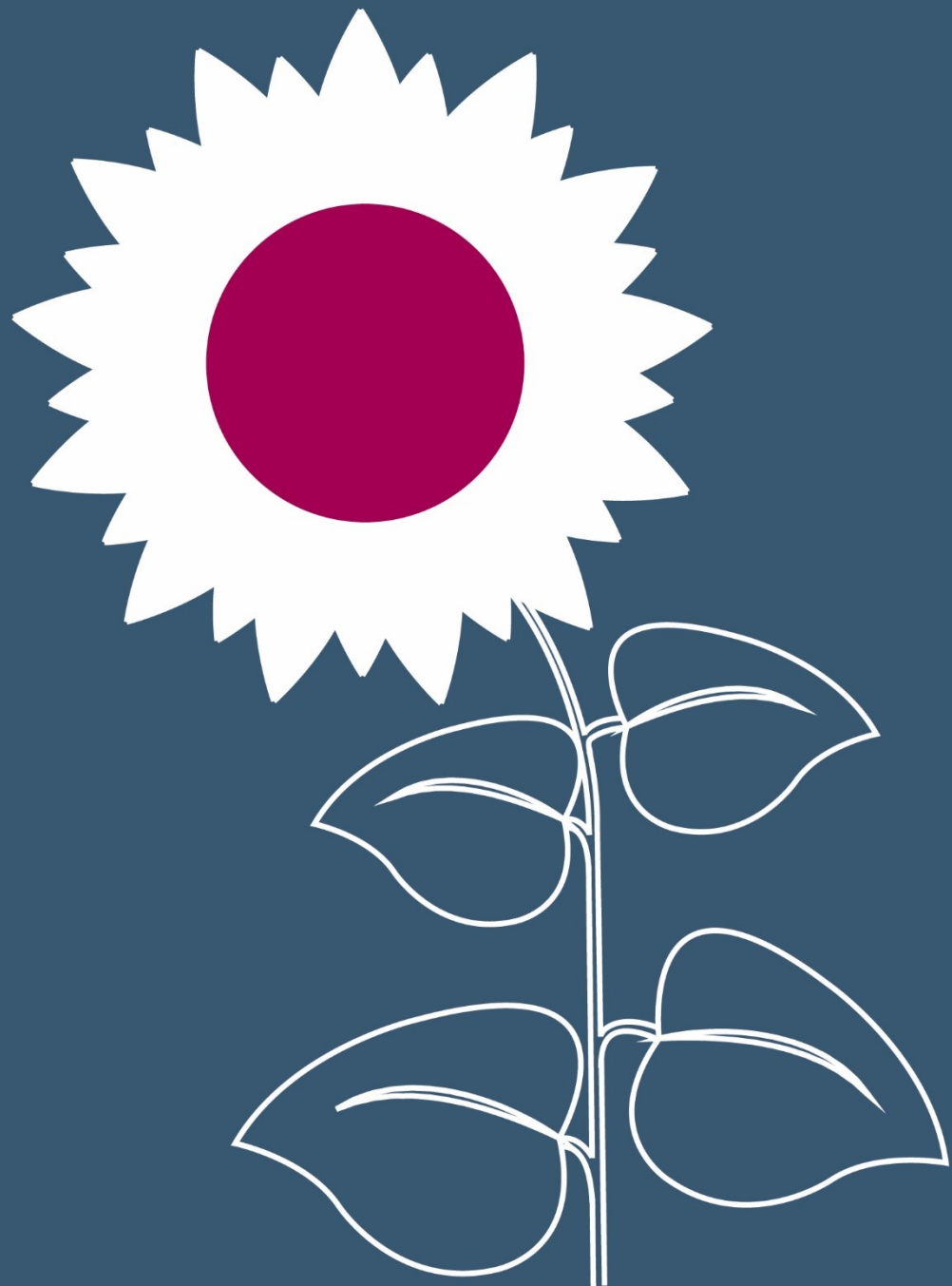


City of  
**Stoke-on-Trent**

# No Recourse to Public Funds

Tri x 3\_3\_5 (August 2023)

Review August 2024



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# 1. Who has NRPF?

No Recourse to Public Funds (NRPF) applies to a person who is 'subject to immigration control' in the UK and has no entitlement to welfare benefits or public housing.

The definition of 'subject to immigration control' is set out in section 115 Immigration and Asylum Act 1999 ('exclusion from benefits'), and includes people who:

- Require leave to enter or remain in the UK but do not have it (e.g. an illegal entrant, Appeal Rights Exhausted asylum seeker or visa overstayer);
- Have leave to enter or remain in the UK which is subject to a condition that they do not have recourse to public funds (e.g. a spouse of a settled person, a Tier 4 student and their dependents or those with leave to remain as a visitor or under 'family or private life rules'; or
- Have leave to enter or remain in the UK given as a result of a maintenance undertaking (e.g. adult dependant relatives of people with settled status).

When a person has leave to enter or remain that is subject to the NRPF condition, the term 'no public funds' will be stated on their residence permit, entry clearance vignette, or biometric residence permit.

# 2. EEA Nationals and Family Members

Following the UK's departure from the European Union, an EEA national's immigration status will be relevant when establishing their entitlement to benefits and housing assistance.

European Economic Area (EEA) citizens coming to the UK under the points-based immigration system from 11pm on 31 December 2020 will have the same access to benefits as non-EEA migrants. EEA nationals and their family members are required to obtain leave to enter or remain in order to live in the UK. Those coming to the UK to live will need to apply for a visa in advance of their arrival.

All non-British citizens (excluding Irish citizens) who arrive in the UK from 1 January 2021, will be restricted from accessing income-related benefits, and an allocation of social housing or homelessness assistance, until they have achieved indefinite permission to stay (this is typically achieved after 5 years' residence in the UK).

Those who were living in the UK before the end of the transition period on 31 December 2020 have different residence rights and entitlements to services. They must have applied by 30 June 2021 under the EU Settlement Scheme to obtain a form of leave to remain (settled or pre-settled status) and retain their lawful status in the UK. Additionally, certain close current family members and future children of EEA nationals with settled or pre-settled status will be entitled to apply under the EU Settlement Scheme rather than meeting the family migration requirements of the Immigration Rules. Non-EEA national family members will be able to apply for **a family permit** in order to enter the UK on this basis.

## Voluntary Returns

The Home Office may assist an EEA national with a voluntary return, including arranging and purchasing travel documents and financial assistance, if they are without status or leave in the UK.

An EEA national wishing to return to their country of origin should be advised to seek legal advice about how this will impact on their future residence rights. If they have pre-settled status they may need advice about how return will impact on their ability to meet the continuous residence requirement to apply for settled status.

See also: [Get Help to Return Home if You're a Migrant in the UK \(GOV.UK\)](#).

## 3. Meaning of 'Public Funds'

- Attendance allowance;
- Carer's allowance;
- Child benefit;
- Child tax credit;
- Council tax benefit;
- Council tax reduction;
- Disability living allowance;
- Discretionary support/ welfare payment made by a local authority;
- Domestic rate relief (Northern Ireland);
- Housing benefit;
- Income-based jobseeker's allowance;
- Income-related employment & support allowance;
- Income support;
- Personal independence payment;
- Severe disablement allowance;
- Social fund payment: budgeting loan, sure start maternity grant, funeral payment, cold weather payment and winter fuel payment;
- State pension credit;
- Universal credit;

- Working tax credit.

**(section 115 Immigration and Asylum Act 1999 and paragraph 6 Immigration Rules and Home Office Guidance: Public Funds)**

Section 118 Immigration and Asylum Act 1999 excludes a person subject to immigration control from being entitled to access an allocation of social housing through the council register and homelessness assistance.

Compulsory school age education does not count as public funds for the purposes of the Immigration Rules.

NHS treatment does not fall within the definition of public funds for immigration purposes. People coming to the UK for more than 6 months and who are not settled in the UK are required to pay an Immigration Health Surcharge.

## 4. Who has Recourse to Public Funds?

**People with the following types of immigration status WILL have recourse to public funds:**

- Indefinite leave to enter or remain, or no time limit (apart from adult dependent relative);
- Right of abode;
- Exempt from immigration control;
- Refugee status;
- Humanitarian protection;
- Discretionary leave to remain, for example:
  - Leave granted to a person who has received a conclusive grounds decision that they are a victim of trafficking or modern slavery;
  - Destitution domestic violence concession.
- UASC leave;
- Limited leave to remain granted under family and private life rules where the person is accepted by the Home Office as being destitute or at risk of imminent destitution. NOTE that the High Court in **ST (a child, by his Litigation Friend VW) & VW v Secretary of State for the Home Department [2021] EWHC 1085 (Admin)** held that immigration caseworkers, when deciding whether to accept that the applicant is 'destitute or at risk of imminent destitution' are required to 'have regard to the need to safeguard and promote the welfare' of any children involved in the application, in accordance with section 55 Borders, Citizenship and Immigration Act 2009.

## 5. Role of the Local Authority

There are 2 stages that a local authority will usually follow to establish whether it has a duty to provide support to a family with NRPF:

- **Pre-assessment screening:** establishing the facts of the case prior to assessment;
- **Assessing need:** determining eligibility for the provision of services.

### 5.1 Pre-assessment Screening

When a family is referred for or requests accommodation and/or financial support, the local authority will need to consider:

- Whether there is a duty to undertake a child in need assessment;
- What the parents' nationality and immigration status is in order to:
  - Ascertain eligibility for employment, welfare benefits or asylum support; and
  - Determine whether the family can only receive support if this is necessary to prevent a breach of their human rights.
- Whether emergency support needs to be provided whilst assessments are being carried out.

At this first point of contact the parent can be asked for information relating to their financial circumstances, which may be used to inform the child in need assessment to determine whether the family are eligible for support. Families should not be refused support without proper enquiries being made to identify needs of the child.

#### 5.1.1 Checking Immigration Status

When a family requests accommodation and/or financial support, the local authority will establish nationality and immigration status of the parents for several purposes:

1. To ascertain any possible entitlement to welfare benefits, housing assistance, employment or Home Office asylum support;
2. To identify whether the parent is in an excluded group and so can only be provided with support where this is necessary to prevent a breach of their human rights (see [Section 5.3, Assessments when the Exclusion under Schedule 3 Nationality, Immigration and Asylum Act 2002 Applies - Human Rights Assessment](#));
3. Where a parent is in an excluded group, find out whether there are any immigration claims pending with the Home Office or appeal courts, or other

legal barriers preventing them from leaving the UK or returning to their country of origin.



The primary reason for establishing the parent's nationality and immigration status is because local authorities need to find out whether the family can only receive 'support or assistance' under section 17 of the Children Act 1989 if such support is necessary to prevent a breach of their human rights

### **5.1.2 Threshold to Undertake a Child in Need Assessment**

This will be in accordance with the [City of Stoke on Trent Safeguarding Partnership Threshold Framework Accessing the Right Help at the Right Time](#) . A child in need assessment is likely to be required for any family presenting on the basis that they do not have adequate accommodation and/ or sufficient income to meet their living needs because of their inability to access benefits or employment, or where the child's circumstances suggest this may be the case. For example:

- The child regularly does not have adequate food, warmth, shelter or essential clothing;
- When a parent's limited financial resources or having no recourse to public funds increases the vulnerability of the children to criminal activity e.g. illegal working;
- When a parent is unable to provide for material needs, which negatively impacts on the child.

### **5.1.3 Emergency Support**

Local authorities will undertake a detailed investigation and complete a comprehensive children and families assessment into the family's financial and housing circumstances to establish whether the family will be eligible for support under section 17 Children Act 1989.

Under section 17, a local authority has the power to provide emergency housing and/or financial support to a family when a child's welfare is at risk whilst assessments or enquiries are being carried out.

## **5.2 Assessing Need under Section 17 Children Act 1989**

### **5.2.1 Which authority must undertake an assessment?**

Various court cases have found that the duty to assess under section 17(1)(a) of the Children Act 1989 is triggered by the physical presence of a child in need in the local authority's area. There may be a requirement for an additional local authority to co-operate, e.g. where the child resides in one local authority area but attends school in a different local authority area.

## 5.2.2 Assessment Considerations

As part of the assessment, the local authority would need to establish what other support options are available to the family in the UK, or whether return to country of origin may resolve the family's inability to self-support in the UK when the parent is in an excluded group.

The courts have been clear that the purpose of section 17 is to provide a safety net of support for families who either cannot leave the UK or who are lawfully present in the UK but are prevented by their immigration status from being able to claim benefits usually provided to families with a low income.

The local authority must gather information which is adequate for the purpose of performing its statutory duty under section 17 Children Act 1989, and must also have due regard to the child's best interests in the context of having regard to the need to safeguard and promote the welfare of children.

Any information and evidence already gathered by the local authority as part of its initial enquiries must be considered within the child in need assessment, in balance with other factors relating to the welfare of the child:

- How the family's financial and housing circumstances are affecting the child's health and development, what assistance the child needs and how the child would be affected if they do not receive such help;
- How urgently the family needs assistance;
- Details of any medical conditions affecting the child or their family members;
- Details of the child's current and previous schools;
- If the child's other parent is not in the family household, their details including nationality and immigration status, what contact the parent and child has with them and whether they are providing any support.

Depending on the family's particular circumstances, information and documents relating to the family's finances and housing will need to be requested.

The child in need assessment must consider all relevant information, all findings and the reasoning behind them must be fully documented, with the parents being given an opportunity to respond.

### **5.2.3 Limitations on the Ability to Self-support**

When considering the parent's ability to self-support it is important to be aware of the restrictions imposed by the Immigration Act 2014 and Immigration Act 2016 that apply to people who do not have any current immigration permission:

- Since 12 December 2014, banks and building societies have been prohibited from allowing a person with no current immigration permission to open a new current account;
- A person with no immigration permission may have their bank accounts closed or frozen, as since 1 January 2018, banks and building societies have been required to check details of current account holders against a database of Home Office information on a quarterly basis;
- Since 1 February 2016, private landlords in England have not been able to legally rent or sub-let a property to a person who does not have any current immigration permission and who has not been granted permission to rent on an exceptional basis by the Home Office. This also applies to renting a room to paying lodgers;
- Since 1 December 2016, landlords have been required to take action to end a tenancy or evict a tenant when they find out or have reasonable cause to believe that the occupier does not have any immigration permission; when the Home Office informs a landlord that this applies to their tenant, the landlord may undertake possession proceedings without having to obtain a court order;
- On 12 July 2016, undertaking work or self-employment became a criminal offence, punishable by imprisonment, for people who do not have any current immigration permission, or have a condition attached to their leave to remain restricting employment.

Local authorities must be fully aware of these measures in order to ensure that they do not inadvertently encourage or condone criminal activity when determining what alternative support options are available to a family.

When a local authority finds that a child is not in need because the parent can secure accommodation or has other housing arrangements available to them, the local authority must consider whether the family can realistically access this alternative support and whether the suggested accommodation arrangement is suitable for the child.

### **5.2.4 Considerations when Parents are in an Excluded Group**

When a parent is in one of the groups of people that are excluded from receiving accommodation and financial support under section 17, a human rights assessment will also need to be undertaken in conjunction with the child in need assessment in order to determine whether support must be provided to prevent a breach of the family's human rights.

If return to country of origin is being considered, the child in need assessment should also address the child's needs within the country of origin and how they may or may not be met, as this information would be relevant to the human rights assessment.

### **5.2.5 Providing Support**

The local authority has a power to provide a wide range of services in order to meet assessed needs under section 17 Children Act 1989. The local authority is not under a duty to meet all formally assessed needs; section 17 is a target duty and may take into account its resources in determining which needs are to be met, but such a decision must be reached rationally and the local authority must act reasonably.

The Court of Appeal in **R (C, T, M & U) v LB Southwark [2016] EWCA Civ 707**, set out the following principles:

- An assessment must be carried out to determine the needs of a particular child, in line with statutory guidance and with proper consideration of the best interests of the child;
- Support for families with NRPF should not be fixed to set rates or other forms of statutory support without any scope for flexibility to ensure the needs of an individual child are met;
- Local authorities must undertake a rational and consistent approach to decision making, which may involve cross-checking with internal guidance or other statutory support schemes so long as this does not constrain the local authority's obligation to have regard to the impact of any decision on a child's welfare.

Case-law has held that Section 17 could only be used to fund travel assistance to the country of origin when the local authority is confident that the child would no longer be 'in need' in that country.

### **5.2.6 Ongoing Duty to Reassess Need**

Section 17 is an ongoing duty, and when a family's circumstances change the local authority must decide whether this means that the child's needs must be reassessed.

## 5.3 Assessments when the Exclusion under Schedule 3 Nationality, Immigration and Asylum Act 2002 Applies - Human Rights Assessment

### 5.3.1 Excluded Groups

When a family with NRPF requests support, the local authority must establish whether the parent is in an excluded group, and therefore the family can only be provided with the support or assistance that is necessary to prevent a breach of their human rights—a 'human rights assessment'.

Section 54 and Schedule 3 Nationality, Immigration and Asylum Act 2002 (as amended) set out categories of person who are not eligible for support from local authorities, being families where a parent is:

- In breach of immigration laws, for example, is a visa overstayer, illegal entrant, or appeal rights exhausted (ARE) in-country asylum seeker;
- An ARE asylum seeker who has failed to comply with removal directions;
- A person with refugee status that has been granted by another EEA country.

They can only receive 'support or assistance' under section 17 Children Act 1989 if such support is necessary to prevent a breach of their human rights.

The exclusion will not apply when an EEA national has:

- Settled status and they are habitually resident in the UK;
- Pre-settled status and are exercising a qualifying right to reside.

In such cases, eligibility for support will be determined through a needs assessment, and a human rights assessment will only be required when these classes of EEA national are 'in breach of immigration laws'.

For further information, see [Eligibility Rules for EEA nationals \(NRPF Network\)](#).

Schedule 3 does not mean that assistance can automatically be refused to a family when the parent is in an excluded group, because support must be provided where this is necessary to avoid a breach of the family's human rights.

The purpose of Schedule 3 is to restrict access to support for a family where the parent is in an excluded group because they either have no permission to remain in the UK, or can no longer self-support, and when returning to country of origin (where they may be able to access employment and receive services), would avoid a breach of human rights which may occur if they remain destitute in the UK. This means that, along with establishing whether there is a child in need, local authorities must identify whether there are any legal or practice barriers preventing the family's return to the parent's country of origin, as return cannot be considered unless these are cleared. This is done by undertaking a human rights assessment.



### 5.3.2 Families that are Not Excluded

The Schedule 3 exclusions do not apply to all families with NRPF. A family will not be excluded from receiving assistance under section 17 where the parent has one of the following immigration status types:

- Leave to enter or remain in the UK with the NRPF condition;
- Pre-settled status (five years' limited leave to remain)
- Settled status (indefinite leave to remain)
- EEA family permit or EU Settlement Scheme family permit
- Asylum seeker;
- Refused asylum seeker who claimed asylum at port of entry (providing the other categories specific to refused asylum seekers do not apply).

Such families are not excluded from section 17 support and would need to be provided with assistance if they are found to be eligible for this following a child in need assessment.

When a parent can work but is unable to claim benefits to top up a low income, such as housing benefit and tax credits, and cannot access more affordable social housing, they will face difficulties funding childcare and sustaining employment that enables them to afford accommodation and provide for their family's living needs. When the child is 'in need' as a result of this, local authorities will be required to provide accommodation and/or financial support in the absence of such benefits. The courts have found that this is a positive duty and also that national policies restricting access to mainstream welfare support are lawful because section 17 of the Children Act 1989 provides a safety net to protect destitute children.

### 5.3.3 Conducting the Human Rights Assessment

The human rights assessment should consider whether the family can freely return to the parent's country of origin. If so, would return result in a breach of the family's human rights?

#### **Determining Whether the Family Can Freely Return**

The first stage of the assessment is to identify whether return is reasonably practicable, which means establishing if there are any **legal or practical barriers** preventing the family from leaving the UK. If there is a barrier preventing return, then further consideration at this time will not be needed, and the human rights assessment in such cases may therefore be brief, simply documenting and evidencing the barrier, and noting at what point it may need reviewing.

**Legal Barriers to Return** - e.g. an outstanding application or appeal to the Home Office on human rights grounds.

**Practical Barriers to Return** - e.g. where a family member is unable to:

- Obtain identity or travel documentation;
- Travel due to ill health or a medical condition; or
- Travel due to being at late stages of pregnancy or caring for a new-born baby.

When such barriers apply they may only be temporary, and it might be appropriate to provide support to the family on a short term basis and assist them to overcome this barrier, for example, by helping to obtain travel documentation.

### **Determining a Breach of Human Rights**

When it is clear that return is reasonably practicable because there are no legal or practical barriers preventing a family from leaving the UK, the next step is to determine whether the family can return to the parent's country of origin to prevent a human rights breach from occurring, or whether return would give rise to a human rights breach and therefore support must be provided.

If a parent has dual nationality, or has the nationality of one country and a right of residency in another country, then return to both countries must be considered.

### **Return to Country of Origin**

When concluding that the provision of accommodation and financial support under section 17 of the Children Act 1989 is not required because the family can return to the parent's country of origin to avoid a breach of human rights which may be incurred if they remain destitute in the UK, then this must be clearly documented in the human rights assessment. Potential barriers to return must be addressed and a detailed assessment of return must be documented.

The human rights assessment must also outline what options the family may be offered in order to prevent a breach of human rights:

- Whether accommodation and financial support will be provided pending return;
- What method of return has been recommended and whether any additional support will be provided, for example, through a Home Office assisted return.

## **5.4 Refusing or withdrawing support**

A decision to refuse or withdraw support under section 17 of the Children Act 1989 may be made following a child in need and/or human rights assessment.

When the provision of accommodation and financial support is being refused following a human rights assessment, which has determined that the family can return to the parent's country of origin, then assistance with return must be offered to the family. This could be provided by the Home Office or local authority.



When section 17 support is being terminated because there has been a change of circumstances that means that a family can now claim welfare benefits and homelessness assistance, they will need to be given a notice period and support with making these claims. Local authorities are under a legal duty to refer a family to the housing authority of their choice for homelessness assistance. In England the housing authority is required to establish whether homelessness can be prevented when a person is eligible and threatened with homelessness within 56 days.

## 6. Independent Family Returns Panel

Under s. 54A Borders, Citizenship and Immigration Act 2009 (inserted by s.3 Immigration Act 2014), the Secretary of State must consult the Independent Family Returns Panel in each family returns case, on how best to safeguard and promote the welfare of the children of the family, and in each case where the Secretary of State proposes to detain a family in pre-departure accommodation, on the suitability of so doing, having particular regard to the need to safeguard and promote the welfare of the children of the family.

A family returns case is a case where a child who is living in the United Kingdom is to be removed from or required to leave the United Kingdom, together with their parent/carer.

Pre-departure accommodation is a secure facility designed to be used as a last resort where families fail to co-operate with other options to leave the UK, such as the offer of assisted voluntary return.

The Panel may request information in order that any return plan for a particular family has taken into account any information held by other agencies that relates to safeguarding, welfare or child protection. In particular a social worker or manager from Children's Services may be invited to contribute to the Panel.