

NRPF General Knowledge and Practice Q&A

Information sheet
V2 March 2021
based on the NRPF Network Guidance

General Knowledge

1. No Recourse to Public Funds (NRPF)

NRPF is an **immigration condition** restricting the individual access to certain welfare benefits and social housing.

Care and Support under the Care Act **is not classified as a public fund** so NRPF does not exclude a foreign national (including European Economic Area (EEA) nationals) from accessing Care Act Support. A foreign national may however still be excluded from Care Act support by other legislative means. (See Nationality Immigrations Asylum Act 2002 Schedule 3 exclusions).

2. Why it is important to know nationality and immigration status

- To ascertain the person's potential eligibility for welfare benefits, housing assistance, employment or asylum support from the Home Office, and
- To determine whether the person falls within a group excluded from receiving support or assistance under the Care Act.

3. Effects of Brexit on EEA Nationals

EEA Nationals and family members are, as of 31 December 2020, subject to the same immigration laws as Non EEA Nationals -although some residence rights of EEA nationals are protected by the withdrawal agreement.

An EEA national who is **lawfully** present in the UK will be eligible for social care and support based on the outcome of a needs assessment only. This applies when the EEA national has one of the following types of immigration status:

- Settled Status (indefinite leave to remain)
- Pre-settled status (five years' limited leave to remain)
- Protected status during the grace period (to 30 June 2021) Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020
- EEA family permit or EU Settlement Scheme family permit

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4. Those who will have NRPF

A **foreign national** who is **subject to immigration control** i.e:

- A visa overstayer
- An illegal entrant
- Asylum seekers awaiting a decision
- An individual granted leave to remain with a NRPF condition attached (this will include an EEA national who has arrived in the UK on or after 1 January 2021 to visit, study or work)
- An individual with indefinite leave to remain as adult dependent relative (first 5yrs only)

An adult who has **immigration permission with NRPF** will have 'no public funds' written on their immigration documentation

5. Not all foreign nationals have NRPF

A Foreign national **has recourse** to public funds when they:

- Have indefinite leave to remain (except adult dependent relative for first 5yrs) (**An EEA national with settled status will have indefinite leave to remain**)
- Are a dependent of someone who has been granted indefinite leave to remain (after 5 years)
- Have been granted refugee status by the Home Office
- Have humanitarian protection status granted by the Home Office
- Have discretionary leave to remain (including a person who has received a conclusive grounds decision that they are a victim of trafficking or modern day slavery)
- have been declared destitute with a domestic violence concession
- have Limited leave to remain (family and private life rules + destitute)
- UASC* leave (*Unaccompanied asylum-seeking children)

An EEA national who has pre-settled status has five years **limited leave to remain**

6. An individual with NRPF can access Social Services

The NRPF condition itself does not exclude people from accessing the following:

- Social services care and support
- NHS treatment
- Education and student finance
- Legal aid
- Gov't funded childcare
- Work related welfare benefits
- Concessionary travel passes

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BUT there may be **other** reasons based on the person's nationality and immigration status that makes them ineligible to access/claim these. (such as Schedule 3 Nationality Immigration Asylum Act 2002)

7. Schedule 3 Nationality Immigration Asylum Act 2002

Schedule 3 **prevents local authorities from providing support** or assistance (ie social care) under Part 1 of the Care Act 2014 to certain groups and their dependent family members:

- unlawfully present in the UK (this will include EEA nationals who have not applied for settled status by 30 June 2021)
- Refugee status granted by another state
- Refused asylum seeker who has failed to comply with removal directions
- Refused asylum seeker who has failed to comply with removal directions
- Refused asylum seeking family, certified by Home Office as failed to take steps to voluntarily leave

8. The Schedule 3 exclusion does not apply to a person who is:

- Lawfully present ie has limited leave to enter/remain with the NRPF condition
- An asylum seeker
- A port of entry Refused asylum seeker (ie made a claim for asylum at port of entry -rather than later once in the country)

A **lawfully** present foreign national can access Care Act support in the same way that every other adult would ie subject to eligibility criteria, financial assessment. **After December 31,2020 this includes** a lawfully present EEA national

9. Excluded by Schedule 3 does not mean automatically refused care and support

Where the person is **unlawfully present** and so excluded from receiving Care Act support by Schedule 3, then, despite the exclusion, care and support **must** be provided where it is necessary **to avoid a breach** of the person's **human rights**.

See also Q&A section below 'Can we Meet urgent need?'

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10. When to conduct a Human Rights Assessment

Where a person has had their care and support needs **assessed** and they have **eligible needs** under the Care Act but they are excluded from receiving Care Act support by Schedule 3, **then** a human rights assessment will be necessary

A human rights assessment is required to establish whether, or to what extent care and support under Part 1 of the Care Act 2014 should be provided in order to avoid a breach of human rights.

11. When a Human Rights Assessment is not required

Where a person **has NRPF** but they are **not in a group excluded** by Schedule 3 from care and support under the Care Act, then their eligibility for receiving care and support will depend on the **outcome of the Care Act needs assessment only** -ie do they have needs that meet the Care Act eligibility criteria? A human rights assessment will not be required.

Fig 1

Establishing eligibility for care and support

Adult is not in excluded group	Adult is in excluded group
Needs assessment s9 of the Care Act	Needs assessment s9 of the Care Act Human Rights assessment

12. Human Rights Assessment

Step 1- Determine whether the person can freely return to their country of origin. Are there any legal or practical barriers? Where there is a barrier that can't be overcome, meaning they cannot return, we must provide support if refusing support would leave them destitute in the UK, as that would amount to a breach of human rights. But it is important to review the status of the barrier regularly because once the person is freely able to return to their country of origin there is no duty on KCC to support.

Step 2- If a return to country of origin is possible, assess the impact of return on their human rights and whether there would be a breach if they were returned to their country of origin.

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If return to country of origin is recommended it must be clearly shown that there are no barriers to return and refusing or withdrawing support is not a breach of human rights.

NB in practice it would be difficult to return an EEA national during the grace period as they would still be entitled to apply under the EU settlement scheme, so they should be assisted to access immigration advice.

13. Determining a Breach of Human Rights

It is likely that only certain articles of the European Convention on Human Rights (ECHR) will need to be considered:

Article 3: No one shall be subject to torture, inhuman or degrading treatment or punishment.

- Protection cases -the person is at risk of the above if returned to their country of origin
- Medical cases – the person will be deprived of the type or level of medical treatment they are receiving in the UK (note the courts have set the threshold for being granted leave to remain on medical grounds alone at a very high level ie dying)

Article 8: Right to family and private life. This is not an absolute right so a certain amount of infringement is permitted to maintain immigration control or to preserve the economic well being of the country

Article 6: Right to a fair hearing. If someone is involved with legal proceedings it is likely they can remain while the proceedings continue.

It is important that Human Rights assessment decisions are clearly set out and fully documented. See NRPF network [Human Rights Assessment Form](#) found in Templates of KNet Social Care Policy pages

14. Families

A child without accommodation is a child-in-need. The courts have established that a child without accommodation will be a child in need as destitution is highly likely to impact on a child's wellbeing and development. As well as establishing destitution, the child-in-need assessment for a child with NRPF should remain child focused and consider all aspects of the child's welfare, in order to ensure that any needs that are unrelated to destitution are identified. A referral should be made to Integrated Children's Services.

When a child has been found to be in need due to the family being destitute, the local authority should provide accommodation and/or financial assistance to not only meet the

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child's needs, but the whole family's needs relating to destitution. Section 17 of the Children Act 1989 requires local authorities to promote the upbringing of such children by their families when this is consistent with safeguarding and promoting the child's welfare and allows for any services, including accommodation and financial support, to be provided to the family in order to safeguard or promote the child's welfare. This means that assistance to alleviate destitution would need to be provided to the whole family. It is not, therefore, an appropriate response to offer to look after the child on a voluntary basis or to instigate care proceedings when there are no safeguarding concerns, as assistance under section 17 of the Children Act can otherwise be provided to safeguard and promote the child's welfare.

Practice related Q&A

1. Can we meet urgent need?

The Care Act provides local authorities with a power to meet an adult's needs for care and support which appear to it to be urgent (regardless of whether the adult is ordinarily resident in its area) before a needs assessment or determination of whether their needs are eligible.

For people subject to immigration control, the Care Act powers to help in advance of assessment can only be used where the adult has at least some sign of need for care and support, ie the person is clearly not solely destitute.

The Localism Act should be considered and used for those who are likely to be only and solely destitute, without any appearance of care and support needs, pending enquiries.

For people prohibited from receiving Care Act support under schedule 3 of the Nationality Immigration and Asylum Act, the human rights/EU treaty rights exceptions justify use of the Care Act to avoid an imminent breach of human rights or EU treaty rights.

2. How can I verify NRPF status?

If the person is unable to produce appropriate documentation, or the documentation they produce raises concern, you should verify their status with the Home Office database by using the NRPF Connect service as KCC subscribes to this. You need to fill in this form [NRPF form](#) with as much information as you can.

This will be added as a new case to the NRPF Connect site. The Home Office will review and respond within 10 working days.

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3. When can accommodation be provided to meet needs?

It is necessary to establish if there are 'accommodation related' care and support needs. For example: if a person has no realistic alternative accommodation options (includes living with friends or family) and has been assessed as requiring support with dressing and washing every day, this would be considered as *related* accommodation needs -in that without accommodation it would be difficult to meet these needs. Any type of suitable accommodation may be provided.

KCC has no duty under the Care Act to provide accommodation where it is needed to solely meet a public health risk or needs arising solely from destitution.

KCC may provide interim accommodation pending an assessment to an asylum seeker who is not already accommodated and appears to require residential care.

Asylum seekers with care and support needs that do not extend to residential care needs may receive Home Office support with accommodation pending claim/appeal under the Immigration and Asylum Act 1999.

4. Can KCC provide housing if there are no Care and Support needs?

KCC may use **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. The powers set out in 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 the impact of failing to meet a person's needs could have serious long-term consequences for the individual and KCC.

Where a power is engaged to provide housing (this may include arranging suitable bed and breakfast accommodation) to a person with NRPF, it is important that practitioners and the person receiving accommodation understand if this may be limited, for example, where a change of circumstances may lead to the accommodation being withdrawn.

Where the Care Act power is not engaged, (important to document any reason why power is not engaged), the local authority will be required to consider whether section 1 of the Localism Act 2011 can be used to provide housing. In all cases when considering whether to use section 1 of the Localism Act to provide housing, the local authority will need to consider whether the person has any realistic, suitable alternative housing options.

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Where this power is not used, local authorities should ensure that the information and advice given is appropriate to the person's needs, so is likely necessary to include: where to access immigration advice, local destitution charities, Home Office asylum support, Home Office voluntary returns service and signposting to the NRPF Network website.

5. Can KCC provide subsistence payments to meet needs?

When a person with eligible care and support needs but with NRPF does not have access to any financial support, KCC may have to provide subsistence payments as part of the care and support plan to meet needs. The type of accommodation that is provided to meet needs will impact on how much subsistence is also provided. For example when deciding how much to provide to a person with NRPF who is living in residential care, KCC may wish to refer to the weekly personal expenses allowance of £24.90, which a person who is required to pay for their care in a care home must be left with, or for people who are living in other types of accommodation, KCC should take a flexible approach to determine how much a person requires based on their individual needs.

6. Will a person with NRPF have to pay for NHS treatment?

A person with NRPF is entitled to free primary health care (G.P, diagnosis and treatment of certain contagious diseases, health visits, school nurses, A&E services up to in/out patient admission, NHS walk in/minor injuries centres) regardless of immigration status.

Secondary health care provided by an NHS trust, foundation trusts, local authority (public health) in a hospital or the community is chargeable.

7. What about Section 117 Mental Health Act 1983 (aftercare services)?

Aftercare services must be provided free of charge and **are not subject to any immigration exclusions**, so nationality and immigration status are not factors that affect whether a person can receive aftercare under section 117 MHA.

The local authority responsible for providing aftercare will be that in which the patient was ordinarily resident (if in England or Wales) immediately before they were detained/hospitalised or where they are discharged to if they have no previous or current place of ordinary residence.

Aftercare services can include the provision of any type of accommodation **if** that is required for the purpose of meeting a need arising directly from or related to the patient's mental disorder **and** will help to reduce the risk of their mental condition deteriorating. A person's entitlement to aftercare services will not necessarily include the provision of accommodation, and in many cases won't.

Discretionary powers set out in 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 the impact

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of failing to meet a person's needs could have serious long-term consequences for the individual and KCC.

A person with NRPF who is entitled to receive a

ftercare services under S 117 MHA may still be returned to their country of origin if there are no practical or legal barriers and to do so would not be a breach of their human rights or EU treaty rights. This determination will involve careful consideration of the specific facts of each case and a human rights assessment.

8. Can a person with NRPF receive a Direct Payment?

The Care and Support (Direct Payments) Regulations 2014 do not prohibit KCC from providing a person with NRPF with a direct payment.

There is nothing prohibiting us from providing a direct payment to a carer who does not have any current immigration permission, where we have undertaken a human rights assessment that concludes that carer's support must be provided to p

revent a breach of their human rights or EU treaty rights, for example, because they have a pending immigration application. However, in such instances we will need to consider whether it is appropriate to rely on such a person to provide unpaid care given that their long-term future in the UK is uncertain.

9. What if the person has a carer?

KCC is not required by the Care Act to meet any adult's needs for care and support where it has determined that these are already being met by an unpaid carer and such an arrangement can continue. Should the carer no longer be able/willing to meet some or all of the adult's eligible needs then KCC must ensure those needs are met.

When a friend or family member is providing care, then the immigration status of the carer will need to be taken into account to help inform your decision about whether to continue to rely on the carer's help to meet the person's needs. Where a carer has no current immigration permission, you will need to ensure that the situation is regularly reviewed, as such an arrangement could break down at short notice.

A foreign national can acquire a derivative right to reside if they are the primary carer of a British national adult or child where failing to allow the carer to stay and work in the UK would lead to the British national having to leave the UK.

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10. What if the person does not speak/understand English?

If the person has difficulty communicating, an interpreter may be needed to support communication and engagement in the assessments. The person should be as involved in the process as possible.

Provide an independent interpreter if reliance on family members/friends is not appropriate

TOP TIP

Keep NRPF and Human Rights cases under frequent review. Changes in a person's circumstances can have a direct effect on our duty to continue to support them. A change in circumstance may mean they are no longer entitled to receive social care under the Care Act.

The change might be such that the barrier to the person being returned to their country of origin no longer exists or, returning them no longer amounts to a breach of their human rights

Not found the answer to your question? Email your query to our team mailbox: : aschpolicyandqualityassuranceteam@kent.gov.uk